



UAW ADMINISTRATIVE LETTER

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TO ALL LOCAL UNIONS:

Greetings:

This Administrative Letter addresses the duty of fair representation. This letter updates the prior letter issued August 12, 2008 on the same subject. We restate some general principles of law impacting the duty of fair representation and offer some general guidelines for those in our Union who are responsible for the day-to-day operation of the grievance procedure.

General Principles

- Once a union is certified to represent employees in a bargaining unit, it becomes the “exclusive representative” of all of the employees in the bargaining unit. Under the law, the counterpart to the union’s right to represent all employees is the duty to represent those employees fairly. The union violates that duty when it acts in an arbitrary, discriminatory, bad faith, or perfunctory manner.
- The requirement that a union represent all employees in the bargaining unit fairly means that it must fairly represent unit employees who are both members and non-members of the UAW.
- A UAW-represented employee may request that the union file a grievance to protest an adverse action. Once the grievance is filed, the union has the power to process, settle or withdraw it. The courts have made clear that the union does not have a duty to pursue every case, not even every discharge case. However, generally, a grievance should be processed, unless it is, on its face, without merit or untimely. If it is concluded that a grievance should not be processed, an explanation of that action should be provided to the employee. Where the employee challenges the decision not to process a grievance, it is best to either make a note of the discussion or send the employee a letter confirming the explanation.
- The union is accorded considerable discretion in the handling of grievances. In other words, the union is permitted “a wide range of reasonableness” in deciding whether to process and how to process a grievance.

- The latitude afforded a union under the law, however, is “subject always to complete good faith and honesty of purpose in the exercise of its discretion.”
- The union may not withdraw or fail to process a grievance because of hostility, discrimination or arbitrariness. It may not arbitrarily ignore a meritorious grievance or investigate or handle it in a perfunctory manner, that is, by merely going through the motions.
- No individual member has an absolute right to insist that a grievance be pursued through any particular step of the procedure. Any grievance is the property of the union and can be settled or withdrawn without the consent of the grievant. The union may screen grievances and press only those it concludes should be pursued based on benefit to the unit as a whole, as well as time, expense and other considerations.
- Stated differently, the union may fail to initiate or process and may settle or withdraw a grievance for any valid reason as long as there is a legitimate reason, and the union has some reasonable basis for its action. Mere whim, or no reason at all, may lead to the conclusion that the union official did not exercise proper judgment.

Some Examples

Here are some examples of conduct that might violate the union’s duty of fair representation:

- An all-male grievance committee decides not to appeal a discharge grievance by the leader of a female caucus within the union that is hostile to the incumbent administration. (Discrimination)
 - An International Representative or a committeeperson withdraws a grievance but, when asked why, can offer no rational explanation. (Arbitrariness)
 - The chairperson of the grievance committee has a personal grudge against the grievant and pressures the committee to withdraw the grievance. (Hostility)
 - The chairperson misleads the grievant, inadequately informs, or lies to the grievant. (Dishonesty)
 - The chairperson barely examines the grievance before withdrawing it. (Perfunctory)
 - The committeeperson knows this grievant is always in trouble, or making frivolous complaints, and so he or she fails to investigate the circumstances of this grievance before withdrawing it. (Perfunctory).
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Here are some examples of conduct which probably would not be found violative of the union's duty of fair representation:

- The chairperson of the grievance committee honestly, but mistakenly, believes that the employer has not violated the contract and persuades the committee to withdraw the grievance.
- The committee thinks a grievance has merit even though it is a close case, but the union doesn't have money to arbitrate it.

Guidelines

Most of the guidelines in this section will seem like common sense, but attention to these matters may save the union from time-consuming internal appeals and expensive litigation. Although the actions suggested by our advice are not required by law, or by the UAW Constitution, they protect the interests of both our members and our Local Union Representatives.

- The union should try to avoid even the appearance of bad faith, discrimination, hostility, arbitrary or perfunctory conduct.
 - Union representatives processing grievances should distinguish between minor and serious grievances. A reprimand or a DLO of three days may be unlikely to lead to litigation, but such matters as a six-month layoff, a discharge, the loss of seniority, valuable transfer or promotional rights are serious enough to require more care. This distinction is similar to the difference between a misdemeanor and a felony.
 - We advise that all grievances, and especially important grievances, such as long layoffs, discharges, etc., be investigated promptly and carefully and, if signed statements are not taken from witnesses, timely notations of discussions and statements be recorded and kept on file. Remember the "six W's – Who? What? When? Where? Why? and Whoa?" (the sixth being the double check). It is important that the union representatives obtain and record such basic information promptly. An early and thorough investigation and recording of these kinds of basics cannot be over-emphasized. It is important not only that we conduct a good investigation, but also that we can prove that we did.
 - Union representatives should make and retain good records relating to their handling of the grievance. This includes, but is not limited to, taking thorough notes during meetings or conversations with the grievant, witnesses and the employer, and keeping those notes in the grievance file. It is also advisable to make and retain in the file, records of all communications with the grievant and the employer about the grievance, whether those communications are verbal, by mail, or via electronic means like email, text message or social media. Keep in mind that if you choose to
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communicate via email, text or social media using a personal device or personal email or social media account, those devices/accounts may be subject to discovery or subpoena in a lawsuit or National Labor Relations Board case.

- When a union representative decides not to file a grievance because he/she has concluded that it cannot be won, an attempt should be made to convince the grievant that this was the proper decision. If the grievant is not convinced, it is wise for the union representative to make a written record of the reasons why he or she didn't file the grievance.
 - A union representative is first and foremost an advocate. If there are factual disputes in a given case, the grievance handler should accept the grievant's version of the facts, if credible. Although it is not a legal requirement, in most cases, discharges or serious disciplines should be grieved if there is factual support. In deciding whether to arbitrate a discharge grievance, two important factors to consider are seniority and work record, keeping in mind that union representatives should always avoid filing meritless grievances.
 - If it is decided not to process a grievance involving a serious matter, such as a discharge, because it lacks merit, then a thorough explanation should be made to the grievant. We further advise that union representatives make sure they have all the facts and make written notes of the reasons for dropping or settling grievances.
 - As we have stated, the union has the right to settle grievances it sees appropriate. Any appearance, however, in accurate, that "A" got a better settlement than "B" without a good reason, should be avoided. Moreover, there should be no wholesale grievance handling or horse-trading whereby one grievant is "sacrificed" in order to save others. Nor should there be even the appearance of such actions.
 - It is critical that the grievant be notified promptly of the disposition of his/her grievance. The notice can be written and sent to the grievant by certified mail so as to prove actual notice. If verbal notice is used, it should be adequately documented, for example, by ensuring that you have a witness and/or keeping notes or a log of your conversation with the grievant. A dissatisfied grievant has six months to file an NLRB charge or sue, but the six months does not begin to run until the date the grievant has been notified.
 - In cases involving discharge or a lengthy suspension, if the employer makes a settlement offer that the union representative believes is reasonable, but that falls short of a full make whole remedy -- for example, an offer to pay money to the grievant in lieu of reinstatement, or to reinstate the grievant with less than full backpay -- it is advisable to communicate the terms of the employer's offer to the grievant in writing.
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- If the grievant is a personal, political, or ideological opponent of a union representative, it is better for another union official to process the grievance, when possible. Where a grievance involves a personal dispute between a particular member of management and a worker, and the contract requires grievances be filed with that member of management, the union should request a substitution of management personnel. If the employer refuses, we advise that the grievance be processed at least one more step so that a management official not personally involved has the opportunity to respond.
 - It is not generally advisable to file multiple grievances attacking employer action on many grounds, some frivolous, with the idea of getting a settlement by offering to withdraw some of the grievances.
 - All union representatives should consider the facts surrounding a grievance to be confidential information to be shared only on a “need to know” basis.
 - Union officials should never mislead, confuse, or refuse to inform a grievant of rights available under internal union procedures, or the contract. If a grievant asks about his/her recourse after a grievance is withdrawn, he/she should be referred to the UAW Constitution and told to examine it. In general, UAW remedies under Article 33 must be exhausted before a grievant can sue the Union.
 - The grievant should be informed of the status of the grievance. Under the law, there are broad rights of access to information about a grievance. If the grievant asks about the status of his or her grievance, the union representative should respond promptly. When the grievant requests copies of the grievance “files,” the grievance, the grievance answers, the grievance disposition and the collective bargaining agreement should be made available at no charge. In some cases, additional parts of the file, including witness statements and investigation notes, should also be made available. When there is a concern regarding disclosure of any aspect of the grievance file -- for example, because revealing the identity of witnesses may place them in jeopardy -- the assigned union representative should inform the grievant that portions of the file are being retained, and the reasons why. In difficult cases, the International Representative may contact the Legal Department for more detailed advice.
 - The appropriate National Department or Regional Representative should be contacted if the union representative is uncertain about the meaning of the contract.
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- Do not let the fear of a lawsuit change the way you would ordinarily handle a grievance. Considering the large number of grievances that are processed, there are few duty of fair representation suits, and almost none of those suits succeed. If you are contacted by an attorney regarding a grievance, we suggest you ask your International Representative to review the matter with the UAW Legal Department prior to responding.

Presently Available Materials

The UAW President's Office provides training and materials to Local Union Representatives on the duty of fair representation. In addition, the UAW Education Department offers training programs to Local Union Representatives who are involved in the grievance procedure.

In solidarity,

A handwritten signature in black ink that reads "Ray Curry". The signature is written in a cursive, flowing style.

Ray Curry
President

RC:kmt
opeiu494/afl-cio

