

Duty of Fair Representation in the Grievance Process

Revised by Ramneek Pooni for September 2017 QUFA Executive Retreat

When QUFA Members seek help from the QUFA office, staff's first step is to listen to their stories, then to untangle the various threads to figure out what the union can or has authority to help with, and finally to assist if possible. Answering quick questions or referring to some other office is relatively easy. Resolving more difficult issues, those arising out of the union's responsibility for upholding the integrity of the Collective Agreement, usually involves discussion with Faculty Relations.

In arriving at appropriate resolutions for more difficult issues, the union must consider not only the individual Member's interests, but also the practical and political interests of the bargaining unit as a whole and of the integrity of the Collective Agreement. In some cases, therefore, the best interests of the Member may be overridden by larger union interests. That is acceptable if the union has given the matter proper consideration. What that means is spelled out in the Ontario *Labour Relations Act* and is called the duty of fair representation (DFR):

74. A trade union or council of trade unions, so long as it continues to be entitled to represent employees in a bargaining unit, shall not act in a manner that is arbitrary, discriminatory or in bad faith in the representation of any of the employees in the unit, whether or not members of the trade union or of any constituent union of the council of trade unions, as the case may be.

Members do not have an absolute right to have their complaints grieved or taken to arbitration unless a collective agreement states that they do, and the QUFA-Queen's Collective Agreement does not. Each situation must be assessed on its own merits, and as the union is the exclusive bargaining agent, it is incumbent on it to exercise its authority fairly.

It should be noted that the DFR is a procedural right, not a right to a particular outcome. A Member may be dissatisfied with the union's actions or the outcome of a grievance process, but that does not necessarily mean that the union acted in a manner contrary to the DFR provision. If the union put its mind to the matter, gathered relevant information, weighed the options in a fair manner (including cost, chance of success, possibility of remedy, effects on others of the bargaining unit), and made a decision in a way that was neither capricious nor hostile towards the Member, then it has done its job. Even if a union's decision might be considered wrong by some does not put it in contravention of the DFR.

If a Member believes QUFA has not represented him or her fairly, the Member may file a complaint with the Ontario Labour Relations Board.

Further reading:

These articles provide range of discussion on the subject. They also contain references to court and arbitration cases if you wish to read more deeply.

The Duty of Fair Representation – What does it mean?

by Ontario Labour Relations Board, Bulletin 12 which is linked at this URL

<http://www.olrb.gov.on.ca/english/iblist.htm>

Duty of Fair Representation Complaints Before the Ontario Labour Relations Board

by Allan Rouben, Barrister and Solicitor

<http://www.allanrouben.com/case-study/clares-case-labour-law-duty-of-fair-representation-and-ontario-labour-relations-board/>

The Straight Goods on the Duty of Fair Representation

by Members for Democracy Archive

Part 1 <http://www.m-f-d.org/article/toolkit/hs3apapafq0.php>

Part 2 <http://www.m-f-d.org/article/toolkit/yuyww7tujpn.php>