

Working With People

Fair Representation

Shop stewards often are asked to pursue grievances that may or may not merit action. However, unions have a legal responsibility to fairly represent all employees within a bargaining unit. So when a union decides not to process a grievance, it must have sound and proper reasons. As the following case shows, an employee's refusal to join the union is not such a reason.

Steward's Hatred of Co-Worker Leads to Representation Breach

“What do you mean you're not going to file my grievance?” asked a shocked Joe Shultz. “You are my shop steward, you can't refuse to help me!”

“Well, I just don't see any merit in your grievance. And furthermore, as a freerider, I think you are expecting too much from us. There's only so much that the union can do for scabs,” said shop steward Lee Jones.

Was the steward justified?

Facts: Under the terms of the parties' collective bargaining agreement, the employer was prohibited from assigning overtime work to any employee who already had worked either 10 hours on a regular workday or eight hours on a non-scheduled day. However, such overtime assignments did occur on a regular basis. When these overtime assignments were given out, it was called “penalty overtime” for which, under the collective bargaining agreement, an assigned employee was compensated at a rate that was twice the regular hourly pay.

An employee who worked in the bargaining unit but had resigned from the union several years earlier was upset over the fact that he was getting very few opportunities to work penalty overtime. When he did finally get such an assignment, a co-worker overheard a union steward berating a supervisor for the allowing the nonmember to work the high-paying overtime shift.

In addition to his union duties, the shop steward was responsible for coordinating overtime for the company. In this capacity, the steward was responsible for monitoring all overtime

assignments. Meanwhile, he represented unit employees regarding the resolution of any overtime disputes.

The steward was overheard ordering the supervisor never to assign the employee any penalty overtime in the future. Defending herself from the steward's accusations, the supervisor was heard responding to the steward that she had not given him the assignment, and that another supervisor had done so.

The union steward was extremely hostile toward the employee because of his decision to withdraw from the union. The steward often referred to him as a “scab.” So when the employee presented the steward with his complaints regarding the handling of overtime assignments, the steward and, ultimately, the union, refused to file or process his grievance, according to the board.

Upset over his inability to file a grievance, the employee filed charges against the steward and Branch 3126 of the National Association of Letter Carriers with the NLRB. In defense of the shop steward's refusal to process the employee's grievance, the union maintained that it was not because the employee withdrew from the union but rather, because the steward simply had personal differences with the employee.

Award: The union breached its duty of fair representation when its steward demanded that a supervisor never again give the employee penalty overtime, the NLRB ruled (*United States Postal Service*, 163 LRRM 1190, 330 N.L.R.B. No. 85, 1/31/00).

Discussion: In his capacity as the monitor of overtime assignments, the board determined, the shop steward

was acting as an agent of the employer. Moreover, in pressuring a supervisor never to assign penalty overtime to the employee, the shop steward was attempting to get management to discriminate against the employee based on his nonmember status, the board added. Discrimination against a nonmember in the administration of contractual overtime responsibilities constitutes a breach of the union's duty of fair representation and violated the National Labor Relations Act, the board ruled.

Pointers: Unions have an obligation to represent bargaining unit employees fairly, impartially, and in good faith. The shop steward's actions are key in fulfilling this duty as is the manner in which a union handles an employee's grievance.

However, a union need not move forward on every grievance that is brought to its attention. Nor is it obligated to process every grievance to arbitration. Nevertheless, a union's failure to process a grievance, or to pursue a grievance in a timely fashion, will constitute a breach of its duty of fair representation under the NLRA if the union is motivated by bad faith, or by discriminatory reasons, or if its conduct is arbitrary.

For more on the duty of fair representation, see ULR 34:75.

This case discussion is designed to illustrate the handling of one everyday problem in labor-management relations. It is based on actual court and arbitration rulings, although the names and dialogue are fictitious. Users may find this discussion helpful in steward training.