



INFORMATION BULLETIN

Duty of Fair Representation

IMPORTANT: AN EMPLOYEE WHO WISHES TO FILE A COMPLAINT MUST FIRST TRY TO ENGAGE THE GRIEVANCE/INTERNAL APPEAL PROCESS AND MAKE THE COMPLAINT WITHIN THE TIME LIMITS SET OUT IN THE [TRADE UNION ACT](#). (See below for information on these preliminary issues).

What is the Duty of Fair Representation?

Section 54A(3) of the Trade Union Act sets out the union's Duty of Fair Representation:

No trade union and no person acting on behalf of a trade union shall act in a manner that is arbitrary, discriminatory or in bad faith in the representation of any employee in a bargaining unit for which that trade union is the bargaining agent with respect to the employee's rights under a collective agreement.

This means that when a union is handling an employee's collective agreement dispute with their employer, the union cannot act in a manner that is **arbitrary, discriminatory, or in bad faith**. It is important to understand that the complaint process is not an "appeal" of a union's decision. The Board will not interfere with the union's decision about a grievance as long as the union investigated the grievance fully; obtained full details about the grievance, including the employee's side of the story; and made reasonable assessments of the potential outcomes of the grievance and/or arbitration. The union's duty of fair representation may be higher in cases where human rights and accommodation issues are at stake, and where the consequences for the employee are more serious, such as if you have been fired (see [MF v Union, 2019 NSLB 55 \(CanLII\)](#)). But, just because you disagree with the union's decision, this does not necessarily mean that the union violated its duty of fair representation (see [Paulin v Canadian Union of Public Employees, Local 933, 2018 NSLB 24 \(CanLII\)](#)).

What do "Arbitrary", "Discriminatory", or "Bad Faith" Mean?

Before you file a Duty of Fair Representation complaint, you must understand what these words mean and be able to set out the specific facts to establish your complaint. Your complaint will only be successful if you can show that your union represented you in an arbitrary, discriminatory and/or bad faith manner.

Arbitrary – This is conduct that is ill-informed or reckless, or where the union has not given sufficient consideration to or has been indifferent with regard to your interests. For example, if the union accepted an employer’s version of a grievance without giving you a chance to respond to it, or if it failed to adequately investigate your grievance, then this may be considered arbitrary. However, it is not necessarily a violation if the union makes honest mistakes or exercises poor judgment.

Discriminatory – This includes differential treatment due to personal characteristics such as your race, sex, religion, disability, or just based on individual favouritism, except where justified. For example, if you were treated differently based on irrational or unreasonable grounds, then this may be considered discriminatory.

In Bad Faith - This includes conduct based on ill-will, hostility, or revenge toward an employee. For example, if the union refused to pursue your grievance because you opposed union officials in a union election, or if it engaged in dishonest or deceitful conduct, then this may be found to be in bad faith.

When Can I File a Complaint?

Generally, complaints must be filed within 90 calendar days of when you knew, or the Board determines you should have known, of the circumstances giving rise to the complaint such as when the union advises you it will not assist you in a matter related to your employment under your collective agreement. If your union has filed a grievance, or if your union has an internal appeal process and you are able to access that process, you must use that process first to resolve your dispute with the union. You have 90 calendar days from when your grievance or union appeal is dealt with to file a complaint with the Board. If the union does not deal with it within six months, you may be able to file a complaint at that time.

Will the Union be notified about my Complaint?

Yes, the Union will be notified and provided with a copy of your Complaint Form and any accompanying supporting documentation, emails, etc. submitted to the Labour Board.

How Will My Complaint Be Dealt with by the Board?

You must use [Form 22](#) to file your complaint. You should provide sufficient information and attach any relevant documents to show why you believe the union has acted in an arbitrary, discriminatory or bad faith way.

Once the Board receives your complaint, staff will review it and flag any potential issues concerning the Board’s jurisdiction to receive the complaint. If the complaint is not timely or you have not presented a grievance, or used any internal union appeal process, your complaint may be dismissed. If the Board requires further information, on these preliminary jurisdictional issues you and your union may be requested to provide information and make submissions. If it is determined that the Board has jurisdiction to receive your complaint, the Board may try to resolve the complaint. The Board may also refuse to hear the complaint if it considers it frivolous,

vexatious, or otherwise not worthy of a hearing. Otherwise, the Board will appoint a Review Officer to determine whether there is sufficient evidence of a breach of the Duty of Fair Representation.

The **Review Officer** will review the complaint. If there is no basis for a complaint, a summary decision will be issued and the file will be closed. If the complaint warrants further consideration, then the union will be asked to file a response. Once the Review Officer has received the union's response, the Review Officer will decide whether there is sufficient evidence of a breach of the Duty of Fair Representation. If the Review Officer decides that the evidence is insufficient, the Review Officer will dismiss the complaint. However, if the Review Officer decides that there is sufficient evidence, the Review Officer may try to negotiate a settlement between the parties or if that is not possible, the Review Officer will refer the complaint back to the Board for determination.

The Board will proceed to determine whether the union's conduct was arbitrary, discriminatory or in bad faith. The Board may decide the matter with or without a hearing. The Board does not rule on the merits of the grievance. It only rules on whether the union has failed to represent the employee fairly. If the Board determines that there is no violation, then it will dismiss the complaint. If the Board finds that the union violated its Duty of Fair Representation, then the Board can direct the union to take the steps that the Board decides appropriate in the circumstances.

Where Can I Get More Information About the Process?

Contact the Board office at:

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Halifax, Nova Scotia B3J 2M4

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This Information Bulletin is not intended to be legal advice. Where any of this information conflicts with any statute or regulation, the provisions of the statute or regulation shall be followed. The Labour Board encourages parties to become informed of their rights and obligations which may mean getting independent advice from qualified legal counsel.

