

Duty of Fair Representation

- The exclusive power conferred on a union to act as a spokesperson for the employees in a bargaining unit entails a corresponding obligation on the union to fairly represent all employees comprised in the unit.
- The right to take a grievance to arbitration is reserved to the union - the member does not have an absolute right to arbitration and the union enjoys considerable discretion.
- This discretion must be exercised in good faith, objectively and honestly, after a thorough study of the grievance and the case, taking into account the significance of the grievance and its consequences for the member on one hand, and the legitimate interests of the union, on the other.
- The union's decision must not be arbitrary, capricious, discriminatory or wrongful.
- The representation by the union must be fair, genuine and not merely apparent, undertaken with integrity and competence, without serious or major negligence, and without hostility towards the member.
- If there is not enough evidence to support the case the union should not proceed. This is not in violation of the DFR.

In **Canadian Merchant Service Guild v. Gagnon** [1984] 1 S.C.R. 509, the Supreme Court of Canada determined:

“The following principles concerning a union's duty of representation in respect of a grievance, emerge from the case law and academic opinion consulted.

1. The exclusive power conferred on a union to act as spokesman for the employees in a bargaining unit entails a corresponding obligation on the union to fairly represent all employees comprised in the unit.



2. When, as is true here and is generally the case, the right to take a grievance to arbitration is reserved to the union, the employee does not have an absolute right to arbitration and the union enjoys considerable discretion.
3. This discretion must be exercised in good faith, objectively and honestly, after a thorough study of the grievance and the case, taking into account the significance of the grievance and its consequences for the employee on one hand and the legitimate interests of the union on the other.
4. The union's decision must not be arbitrary, capricious, discriminatory or wrongful.
5. The representation by the union must be fair, genuine and not merely apparent, undertaken with integrity and competence, without serious or major negligence, and without hostility toward the employee."

