



**Council of Administrators
and Supervisors**
Supporting Educational Leadership

TOPICS OF CONCERN FOR PRESIDENTS AND LOCAL ASSOCIATIONS

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Duty of Fair Representation (“DFR”)

As the exclusive agent for all titles in the unit your Association has a Duty of Fair Representation:

- ❑ To serve the interests of all members without hostility or discrimination towards any, to exercise its discretion with complete good faith and honesty and to avoid arbitrary conduct...
- ❑ The bargaining unit may not act arbitrarily, discriminatorily or in bad faith in making decisions which affect members of the unit differently than others. *Vaca v. Sipes*, 386 U.S. 171 (1967).
- ❑ This applies in the collective bargaining process and in other matters for which the bargaining unit provides representation.

Duty of Fair Representation (“DFR”):

What DFR Does NOT Mean:

- ❑ It does not mean that the unit must file all grievances or take all grievances that are filed to arbitration. A decision not to file a grievance is not a DFR violation unless it is motivated by discrimination or is arbitrary or made in bad faith.
- ❑ You can opt not to pursue a meritorious grievance if it isn't in the best interests of the membership to do so.

Duty of Fair Representation (“DFR”):

- ❑ A union can decide not to pursue a grievance to arbitration over the objections of the grievant without violating the duty of fair representation. *Albany Public School Teachers Association (Kleinman)*, 24 PERB 4529.
- ❑ A union can refuse to pursue a grievance, on a matter subsequently ruled by the Commissioner of Education to have been improper, without violating the duty of fair representation. *Margolin v. Newman*, 130 A.D.2d 312.

Duty of Fair Representation (“DFR”):

Example

- ❑ Similarly, a union can settle a member’s grievance in a manner unsatisfactory to the member, and without sharing the basis for its decision with the member without violating the duty of fair representation. *AFSCME Council 82, 22 PERB 4520 (1989)*.
- ❑ It is well-settled that absent bad faith, the duty of fair representation does not preclude an employee organization from reaching agreements that are more favorable to some unit employees than to others. E.g., steps, longevities, doctoral stipends.

DISCIPLINARY INTERVIEWS



'I've written you a disciplinary letter in French to soften the blow.'

REPRESENTING MEMBERS AT DISCIPLINARY INTERVIEWS

Representing Members In Disciplinary Matters

It is a violation of the Taylor Law:

- ❑ To fail to permit or refuse to afford a public employee the right, upon the employee's demand, to representation by a representative of the employee organization, or the designee of such organization, ... when at the time of questioning by the employer of such employee it reasonably appears that he or she may be the subject of a potential disciplinary action.
- ❑ If representation is requested, and the employee is a potential target of disciplinary action at the time of questioning, a reasonable period of time shall be afforded to the employee to obtain such representation.

Representing Members In Disciplinary Matters

- ❑ Education Law 3020-a provides that a tenured educator cannot be compelled to testify at his or her disciplinary hearing.
- ❑ Therefore a school district cannot require tenured educators to answer questions during prehearing investigations or be subject to dismissal for insubordination. *Board of Education v. Mills*, 250 A.D.2d 122

Representing Members In Disciplinary Matters

The Member's Rights:

	Tenured	Non-Tenured
Invocation of right to representation	Yes	Yes
Refusal to answer questions	Yes	No (technically)
Right to copies of findings	No	No

Representing Members In Disciplinary Matters

Your Obligations:

- Provide representation when member requests.
- Union designates representative including union counsel.
- Advise/Speak on Behalf
- Make sure right to refuse to answer questions is upheld
- Take notes
- Ask questions

Representing Members In Disciplinary Matters

Example:

- An administrator has been arrested for DWI off school premises and confides in you as the Association President.
- What advice should you give to the administrator?

Representing Members In Disciplinary Matters

Example:

- You are representing a member at a meeting and the HR person states you can be there but you can't talk.

- What do you do?

Representing Members In Disciplinary Matters

Example

- The superintendent calls you to tell you he is calling in the HSP to question him about a sexual harassment complaint at noon and wants you to be there but tells you not to tell the HSP.

- What should you do?

Representing Members In Disciplinary Matters

Example:

- You are called to central office where the Superintendent has called a principal in and summoned you in response to a request for union representation. The allegation is that the principal was overheard telling a staff member friend that he thought two new female probationary teachers were “hot”, had “great boobs” and he would love to watch them “get it on”.
- In a private caucus the principal admits to you that he said “something like that”.
- What advice to you give him?

Representing Members In Disciplinary Matters

If your District is represented by its attorney **DO NOT MEET** without your CAS attorney!!!

GRIEVANCES



Search ID: aba0879

"I wish you would come to me first with your grievances, instead of going directly to the United Nations Committee on Human Rights."



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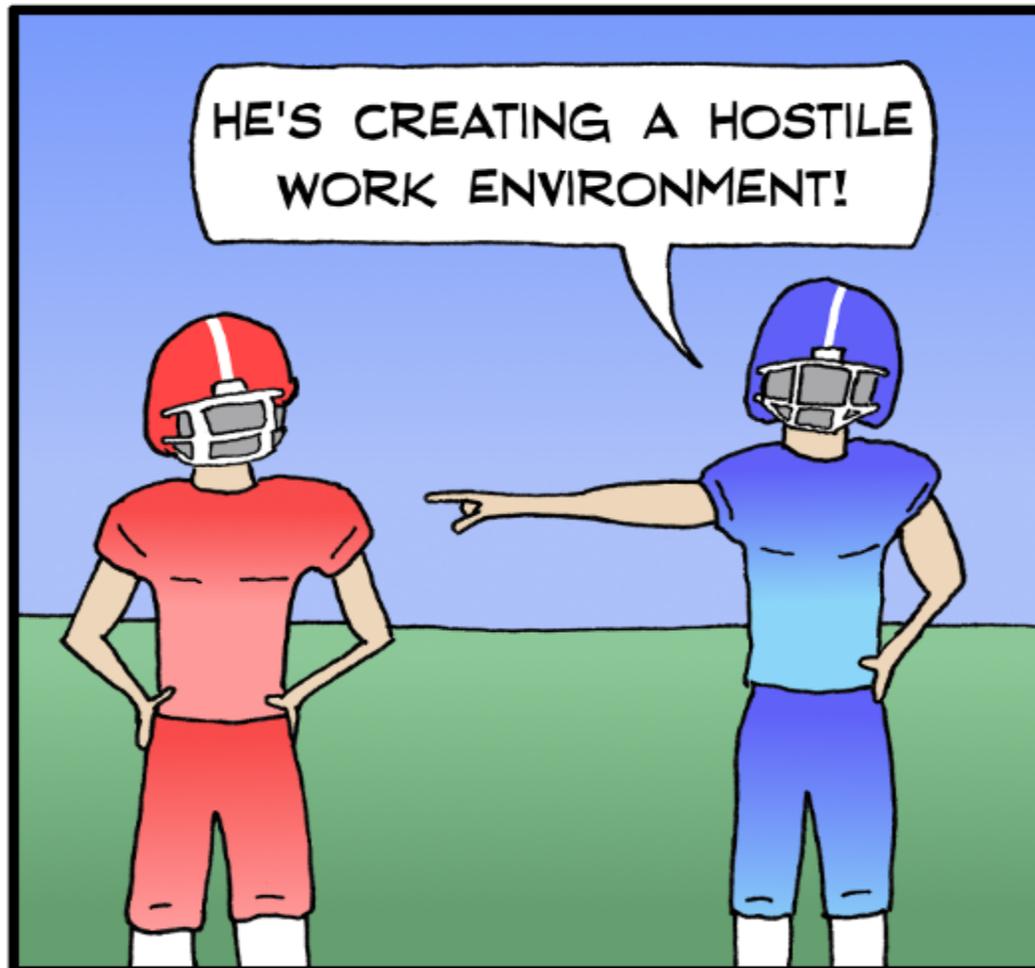
Grievances

1. What is a grievance?
2. How should you go about handling them?
3. Considerations to Contemplate
BEFORE FILING A GRIEVANCE

Grievances

1. Understanding your grievance clause - defining “grievance.”
2. Who can bring/elevate grievances?
3. Where does the grievance process end?

HOSTILE WORK ENVIRONMENT



MYTHDIRECTION.COM

Hostile Work Environment

“Workplace permeated with discriminatory* intimidation, ridicule, and insult severe or pervasive enough to alter the conditions of the victim’s employment.”

*must be based on protected class

Hostile Work Environment

Alter the conditions of the victim's employment:

- Pay
- Benefits
- Demotion
- Failure to promote
- Unreasonable interference with work performance

Hostile Work Environment

“Mere personality conflicts must not be mistaken for unlawful discrimination, lest the antidiscrimination laws become a general civility code.”

Forrest v Jewish Guild for the Blind, 3 N.Y.3d 295, 786 N.Y.S.2d 382 (2004) [emphasis added]

****Review District policy**

Improper Practice Charge vs. Grievance



" I'D LIKE TO SPEAK TO YOU ABOUT AN
UNFAIR LABOR PRACTICES COMPLAINT. "



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Improper Practice Charge vs. Grievance

1. What is an Improper Practice Charge?
2. Public Employment relations board (PERB)?
3. Statute of Limitation?
4. Not all Improper Practices amount to Improper Practice Charges.
5. Not all “grievances” are Improper Practice Charges.
6. Discuss with counsel when there is a change involving a term and condition of employment.
7. IPC can cover many employment aspects.

Past Practice

- Is a right under the Taylor Law related to terms and conditions of employment that is not covered in the contract. (**Reversion Doctrine**)
- It must be unequivocal; and,
- Have continued for a sufficient period of time under the circumstances,
- To create a reasonable expectation that the practice would continue.
- Questions about past practice should always be discussed with counsel.

Past Practice Example

The fact that some administrators attended Board meetings regularly, and all administrators attend if making a presentation to the school board, is not sufficient to allow superintendent to direct all administrators to attend all board meetings.

Past Practice Example

However, if all administrators “voluntarily” attend board meetings for a sufficient period of time, and decide they no longer want to attend, they can be directed to continue attending because it has become a past practice.

COLLECTIVE BARGAINING



" THE UNION TOLD ME WHAT WE COULD DO WITH
OUR CONTRACT PROPOSAL. "

Understanding Collective Bargaining

1. Selecting a Negotiating Committee
2. Preparing for the Negotiations
3. Drafting Proposals
4. Conducting Negotiations
5. Keeping the Members Informed
6. Good Faith Bargaining*

*Collective Bargaining outline handout!

Constitution and By-Laws

1. Executive Board should review periodically
2. Look at Committees & Role of Offices
3. Voting Requirements
4. Election Procedures
5. **CAS office has samples and can assist unit in drafting**

Association Meetings

- Create regular meeting schedule (start of the school year, second semester and end of the year).
- Schedule before or after an administrative meeting or prior to an event majority must attend.
- Develop agenda on letterhead.
- Affirm member achievements and attainment of tenure.
- Establish Committees.

Union Committees

- Grievance Committee
- Negotiation Committee
- Labor-Management Committee
- Curriculum, Hiring or SDM Committees as established by district
- Establishment of administrative-teacher union meetings, respective presidents or EBs
- Social Committee [cocktail parties, holiday parties, etc.] focus on inviting Board members and Superintendent to various gatherings

Internal Union Conflict Resolution

- Various positions and personal interests routinely conflict
- Central office v. **US** mentality - attempt to remind members to go to the union first with certain issues.
- CAS as a mediation service among members?
- Union president often times operates as peacemaker/mediator.

Introductory Information Folder for New and Current Members

- Contract
- Constitution & By-Laws
- District Insurance Forms for Health, Dental and Other Insurance provided by district
- District Leave Forms
- District APPR Plan
- District Separation/Retirement Information
- Contact Info for Local EB members and CAS attorney
- Brief explanation as to right to union representation during possible disciplinary meetings with school district and that employee must request it

Strengthen Local Unit Identity

- Revise / Update unit letterhead with address, executive board members names, and logo.**
- Create a simple unit logo.**
- Create union email address and private emails (i.e. Gmail, yahoo, etc.) for executive board members.**

Local Association Community Involvement

- Consider unit scholarships for students.
- Consider unit recognition of parents or students in local papers.
- Consider sponsoring breakfast, etc. in recognition to a student or class achievement.
- Recognize the accomplishments of members through local papers.

Union Dues & Membership

- Member v. Non-member rights and differences.
- Janus v. American Federation of State, County, and Municipal Employees Council 31*
- Review dues authorization cards and deduction periods.
- Decertification concerns for smaller units. What would that mean?

Thank you!

Questions?



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