

CHAPTER 18

The Rights of Union Members

Unions, as bargaining agents representing bargaining units of employees, have significant power and control over individual employees. Those employees are precluded from dealing with the employer on matters of wages and working conditions; the employees must go through the union in dealing with the employer. Because employees are dependent on the union, they must be protected from the arbitrary or unreasonable exercise of union power. This chapter explores the legal controls of unions to protect the rights of union members.

18-1 Protection of the Rights of Union Members

duty of fair representation
legal duty on the part of the union to represent fairly all members of the bargaining unit

The legal controls on unions are the result of actions by the courts, the National Labor Relations Board (NLRB), and Congress. The courts and the NLRB have imposed a **duty of fair representation** on the part of the union—an obligation to represent fairly all members of the bargaining unit. Congress has legislated a *union members' "bill of rights"* to guarantee that union internal procedures are fair and has prohibited certain practices by unions that interfere with employees' rights under the National Labor Relations Act (NLRA).

In 1947, the Taft-Hartley Act added a list of union unfair labor practices to the NLRA, which included the following:

- Section 7 was amended to give employees the right to refrain from engaging in concerted activity, as well as the right to engage in such activity.
- Section 8(b)(1)(A) prohibits union activity that interferes with, restrains, or coerces employees in the exercise of their Section 7 rights.
- Section 8(b)(2) prohibits unions from causing an employer to discriminate against employees in terms and conditions of employment because they are not union members.
- Section 8(b)(5) protects employees from unreasonable union dues and initiation fees.
- The Landrum-Griffin Act of 1959 added the union member's bill of rights to the NLRA.

Those provisions are discussed in detail later in this chapter.

18-1a The Union's Duty of Fair Representation

The duty of fair representation is a judicially created obligation on the part of the union to represent fairly all employees in the bargaining unit. The duty was developed by the courts because of the union's role as exclusive bargaining agent for the bargaining unit. The initial cases dealing with the duty of fair representation arose under the Railway Labor Act; subsequent cases applied the duty to unions under the NLRA as well. In the following case, the Supreme Court developed the concept of the duty of fair representation.

CASE 18.1

STEELE V. LOUISVILLE & NASHVILLE R.R.

323 U.S. 192 (1944)

Stone, C. J.

The question is whether the Railway Labor Act... imposes on a labor organization, acting by authority of the statute as the exclusive bargaining representative of a craft or class of railway employees, the duty to represent all the employees in the craft without discrimination because of their race, and, if so, whether the courts have jurisdiction to protect the minority of the craft or class from the violation of such obligation.

... Petitioner, a Negro, is a locomotive fireman in the employ of respondent railroad, suing on his own behalf and that of his fellow employees who, like petitioner, are Negro firemen employed by the Railroad. Respondent Brotherhood, a labor organization, is as provided under Section 2, Fourth of the Railway Labor Act, the exclusive bargaining representative of the craft of firemen employed by the Railroad and is recognized as such by it and the members of the craft. The majority of the firemen employed by the Railroad are white and are members of the Brotherhood, but a substantial minority are Negroes who, by the constitution and ritual of the Brotherhood, are excluded from its membership. As the membership of the Brotherhood constitutes a majority of all firemen employed on respondent Railroad and as under Section 2, Fourth, the members, because they are the majority, have chosen the Brotherhood to represent the craft, petitioner and other Negro firemen on the road have been required to accept the Brotherhood as their representative for the purposes of the Act.

On March 28, 1940, the Brotherhood, purporting to act as representative of the entire craft of firemen, without informing the Negro firemen or giving them opportunity

to be heard, served a notice on respondent Railroad and on twenty other railroads operating principally in the southeastern part of the United States. The notice announced the Brotherhood's desire to amend the existing collective bargaining agreement in such a manner as ultimately to exclude all Negro firemen from the service. By established practice on the several railroads so notified only white firemen can be promoted to serve as engineers, and the notice proposed that only "promotable," i.e., white, men should be employed as firemen or assigned to new runs or jobs or permanent vacancies in established runs or jobs.

On February 18, 1941, the railroads and the Brotherhood, as representative of the craft, entered into a new agreement which provided that not more than 50 percent of the firemen in each class of service in each seniority district of a carrier should be Negroes; that until such percentage should be reached all new runs and all vacancies should be filled by white men; and that the agreement did not sanction the employment of Negroes in any seniority district in which they were not working....

... [W]e think that Congress, in enacting the Railway Labor Act and authorizing a labor union, chosen by a majority of a craft, to represent the craft, did not intend to confer plenary power upon the union to sacrifice, for the benefit of its members, rights of the minority of the craft, without imposing on it any duty to protect the minority. Since petitioner and the other Negro members of the craft are not members of the Brotherhood or eligible for membership, the authority to act for them is derived not from their action or consent but wholly from the command of the Act....

Section 2. Second, requiring carriers to bargain with the representative so chosen, operates to exclude any other from representing a craft. The minority members of a craft are thus deprived by the statute of the right, which they would otherwise possess, to choose a representative of their own, and its members cannot bargain individually on behalf of themselves as to matters which are properly the subject of collective bargaining. . . .

The fair interpretation of the statutory language is that the organization chosen to represent a craft is to represent all its members, the majority as well as the minority, and it is to act for and not against those whom it represents. It is a principle of general application that the exercise of a granted power to act in behalf of others involves the assumption toward them of a duty to exercise the power in their interest and behalf, and that such a grant of power will not be deemed to dispense with all duty toward those for whom it is exercised unless so expressed.

We think that the Railway Labor Act imposes upon the statutory representative of a craft at least as exacting a duty to protect equally the interests of the members of the craft as the Constitution imposes upon a legislature to give equal protection to the interests of those for whom it legislates. Congress has seen fit to clothe the bargaining representative with powers comparable to those possessed by a legislative body both to create and restrict the rights of those whom it represents, but it also imposed on the representative a corresponding duty. We hold that the language of the Act to which we have referred, read in the light of the purposes of the Act, expresses the aim of Congress to impose on the bargaining representative of a craft or class of employees the duty to exercise fairly the power conferred upon it in behalf of all those for whom it acts, without hostile discrimination against them.

This does not mean that the statutory representative of a craft is barred from making contracts which may have unfavorable effects on some of the members of the craft represented. Variations in terms of the contract based on differences relevant to the authorized purposes of the contract in conditions to which they are to be applied, such as differences in seniority, the type of work performed, the competence and skill with which it is performed, are within the scope of the bargaining representation of a craft, all of whose members are not identical in their interest or merit. Without attempting to mark the allowable limits of differences in the terms of contracts based on differences of conditions to which they apply, it is enough for present purposes to say that the statutory power to represent a craft and

to make contracts as to wages, hours and working conditions does not include the authority to make among members of the craft discriminations not based on such relevant differences. Here the discriminations based on race alone are obviously irrelevant and invidious. Congress plainly did not undertake to authorize the bargaining representative to make such discriminations. . . .

The representative which thus discriminates may be enjoined from so doing, and its members may be enjoined from taking the benefit of such discriminatory action. No more is the Railroad bound by or entitled to take the benefit of a contract which the bargaining representative is prohibited by the statute from making. In both cases the right asserted, which is derived from the duty imposed by the statute on the bargaining representative, is a federal right implied from the statute and the policy which it has adopted. . . .

So long as a labor union assumes to act as the statutory representative of a craft, it cannot rightly refuse to perform the duty, which is inseparable from the power of representation conferred upon it, to represent the entire membership of the craft. While the statute does not deny to such a bargaining labor organization the right to determine eligibility to its membership, it does require the union, in collective bargaining and in making contracts with the carrier, to represent non-union or minority union members of the craft without hostile discrimination, fairly, impartially, and in good faith. Wherever necessary to that end, the union is required to consider requests of non-union members of the craft and expressions of their views with respect to collective bargaining with the employer and to give to them notice of and opportunity for hearing upon its proposed action. . . .

We conclude that the duty which the statute imposes on a union representative of a craft to represent the interests of all its members stands on no different footing and that the statute contemplates resort to the usual judicial remedies of injunction and award of damages when appropriate for breach of that duty.

The judgment is accordingly reversed and remanded. . . .

So ordered.

Case Questions

1. Is Steele a member of the union? Why?
2. To what conduct by the union and the railroad did Steele object?
3. To which employees does the union owe a duty of fair representation? What is the source of the union's duty of fair representation?

The *Steele* case held that the duty of fair representation arose out of the union's exclusive bargaining agent status under Section 2, Ninth, of the Railway Labor Act. In *Syres v. Oil Workers Local 23*,¹ the Supreme Court held that the duty of fair representation also extended to unions granted bargaining agent status under Section 9(a) of the NLRA.

Unions, in representing employees, must make decisions that affect different employees in different ways. For example, in negotiating a contract, the union must decide whether to seek increased wages or improved benefits—trade-offs must be made in fashioning contract proposals. Older employees may be more concerned with pensions, whereas younger employees may be more concerned with increased wages. Should the courts monitor the union's negotiation proposals to ensure that all workers are fairly represented? In *Ford Motor Co. v. Huffman*,² the Supreme Court held that unions should be given broad discretion by the courts in negotiation practices; the courts should ensure only that the union operates "in good faith and honesty of purpose in the exercise of its discretion."

Ethical DILEMMA

UNION MEMBERSHIP BENEFITS AND COSTS

You are the human resources manager of the Springfield plant of Immense Multinational Business; the plant production employees are represented by a union, and the collective agreement has a union shop clause requiring employees in the bargaining unit to join the union and to maintain their membership in good standing.

You have just hired a new production employee, Waylon Smithers, who asks you if he is required to join the union. He also asks you what benefits he may receive by becoming a union member and what the negative aspects of union membership are. How should you respond to him? Prepare a short memo outlining your response to his questions, supporting your comments with appropriate references.

The courts also give unions some leeway in exercising their contractual duties. In *Steelworkers v. Rawson*,³ the Supreme Court held that the allegations that the union had been negligent in its duty under the collective agreement to conduct safety inspections did not amount to a breach of the duty of fair representation because mere negligence, even in the performance of a contractual duty, does not amount to a breach of the duty of fair representation. Where a union's work assignments were not irrational, the union did not breach duty of fair representation even though the work assignments had the effect of favoring skilled workers over unskilled workers.⁴ However, a union's negligent failure to follow hiring hall rules may be a breach of the duty of fair representation, according to *Jacoby v. NLRB*.⁵

¹ 350 U.S. 892 (1955).

² 345 U.S. 330 (1953).

³ 495 U.S. 362 (1990).

⁴ *Bowerman v. Int. Union, U.A.W., Local 12*, 646 F.3d 360 (6th Cir. 2011).

⁵ 235 F.3d 611 (D.C. Cir. 2000).

Although the courts allow unions broad latitude in negotiations, they may be more concerned with union decisions involving individual employee grievances. In *Vaca v. Sipes*,⁶ the Supreme Court held that an individual does not have an absolute right to have a grievance taken to arbitration, but the union must make decisions about the merits of a grievance in good faith and in a nonarbitrary manner.

In *Vaca*, the union refused to arbitrate the employee's grievance. If the union decides to arbitrate the grievance but mishandles the employee's claim, does it violate the duty of fair representation? What if the union gives the grievance only perfunctory handling? The following case addresses these questions.

CASE 18.2

HINES V. ANCHOR MOTOR FREIGHT, INC.

424 U.S. 554 (1976)

Facts: Two truck drivers employed by Anchor Motor Freight, Inc., were discharged for allegedly submitting expense claims in excess of the actual costs of their motel rooms. The relevant collective agreement provided that discharge required just cause. At a grievance meeting between the union and the employer, the employer presented the following:

- the motel receipts submitted by the employees that showed charges in excess of the rates shown on the motel's registration cards;
- a notarized statement of the motel clerk asserting the accuracy of the registration cards; and
- an affidavit of the motel owner affirming that the registration cards were accurate and that inflated receipts had been supplied to the employees.

The union claimed petitioners were innocent and opposed the discharges. The grievance over the discharge was then submitted to arbitration under the collective agreement. The two employees suggested that the union investigate the motel, but the union responded that "there was nothing to worry about" and that they need not hire their own attorney.

At the arbitration hearing, Anchor presented its case. Then both the union and employees were afforded an opportunity to present their case. The employees denied the claim of dishonesty, but neither they nor the union presented any other evidence contradicting the documents presented by the company. The arbitration panel upheld the discharges.

The employees then retained an attorney and sought rehearing based on a statement by the motel owner that the

discrepancy between the receipts and the registration cards could have been attributable to the motel clerk's recording on the cards less than what was actually paid and pocketing the difference between the amount received and the amount recorded. The arbitration panel unanimously denied rehearing "because there was no new evidence presented which would justify reopening this case." It was later discovered that the motel clerk was in fact the culprit.

The discharged employees filed suit against both the union and the employer. They alleged that because their discharge was not for good cause, the employer was in violation of the collective agreement. They also alleged that the union violated its duty of fair representation by arbitrarily failing to make an effort to investigate the employer's charges of dishonesty. The union relied upon the decision of the arbitration panel, and the employer claimed that the employees had been properly discharged for just cause. The employer also claimed that the employees, diligently and in good faith represented by the union, had unsuccessfully resorted to the grievance and arbitration machinery provided by the contract and that the adverse decision of the arbitration panel was binding upon the union and employees under the collective agreement.

During pretrial discovery proceedings, the motel clerk revealed that he had falsified the records and had pocketed the difference between the sums shown on the receipts and the registration cards. The trial court granted summary judgment for the employer and the union on the ground that the decision of the arbitration panel was final and binding on the

⁶ 386 U.S. 171 (1967).