

DFR CHECK LIST

When a union member wants to file or files a grievance be sure to inform him/her:

1. Grievances can only be filed if the employer has violated the collective bargaining agreement (CBA) in some way.
2. If an employee has a workers compensation claim, advise him/her to seek outside counsel to handle the claim as it will not fall within the purview of the CBA. (Be sure, however, to investigate independently of the employer to see whether the claim is a workers compensation claim or a disability claim. Under the recent case law, in order that the union avoid liability under the Americans with Disabilities Act (ADA) that is not acquiesce in the employer's determination).
3. If an employee has a discrimination claim, advise him/her to file a charge with either the EEOC or Minnesota Department of Human Rights (MHRA) or to seek outside counsel to handle the claim.
4. If the relevant CBA contains an anti-discrimination clause and no election of remedies clause, the employee has the right to grieve the issue as well as seek redress for his/her claim through other channels.
5. If the individual is discharged or "removed" from his/her position for misconduct and if there is no election of remedies clause in the CBA, the employee has the right to challenge his/her removal through either the grievance procedure in the CBA or to file for a hearing under the Veterans Preference Act (VPA). The union will represent the grievant through the grievance procedure. In contrast, the individual will have to retain counsel to represent him/her at the VPA hearing. But, if the individual elects to have a VPA hearing, he/she will be continued to be paid until he/she has been discharged according to the VPA, i.e., after the hearing officer has made his/her decision.
6. The union's duty of fair representation does not include representing individuals in any private cause of action, e.g., a discrimination suit or a workers compensation claim. In addition, the union's duty of fair representation does not include providing a lawyer to represent an individual in these claims.
7. The union's duty of fair representation does not include providing an individual with an attorney to represent him/her through any part of the grievance process, including arbitration.
8. If a case proceeds to arbitration, the union is not required to let a grievant, at his/her own expense, have his/her attorney attend the hearing let alone participate in the hearing.

9. The union's duty of fair representation does not include proceeding to arbitration on every grievance.
10. The union has the right to settle any grievances with management if, based on the union's experience and as a result of the union's investigation, it has reached an agreement with the employer that is in the best interests of the union. Factors to consider in settling are: 1) the grievant's prior disciplinary record; 2) the strength of the case; 3) the union's past experience with other grievances of a similar nature.
11. The union will fully investigate any grievance or potential grievance that is brought forth by one of its members. At the conclusion of its investigation, the union may decide either to proceed with the grievance or to dismiss it. The union will inform the grievant of its decision as soon as practicable.
12. If the union decides to dismiss a grievance, it shall promptly tell the individual of any and all internal processes by which the individual can appeal the union's decision.
13. A grievant should be informed that unless he/she appeals the dismissal of the grievance through the internal union process, the decision is final. The individual has no individual right to proceed with the grievance. The grievance belongs to the union, not the individual.
14. If a grievance proceeds through arbitration and the grievance is denied, the union does not have a duty to appeal the arbitration award. It is the practice of most unions not to appeal arbitration awards. The grievance belongs to the union.

In addition, inform the individual:

1. He/she must cooperate by responding to the union's request for information and by supplying such information in a timely fashion.
2. He/she must keep the union informed of his/her address, telephone number etc. in order that the union can reach him/her in processing the grievance.
3. Failure to cooperate with the union in the handling of the grievance may result in the union dismissing the grievance.

The union representative should keep a detailed file on any grievance or potential grievance. It is especially important to document dates. A DFR claim has a six month statute of limitations. Many court claims for a DFR can be dismissed on this basis provided that the union can supply the necessary documentations.