1. I feel like my union has treated me unfairly. What are my rights?

A union owes a duty of fair representation to all of the workers it represents. This duty requires that the union act fairly, impartially, and without ill will or discrimination when pursuing a worker's grievance or when negotiating a new contract with the employer. The union is required to take reasonable steps to investigate a grievance and must represent members in more than a dismissive manner. It is illegal for a union to treat you in ways that are:

- arbitrary (e.g., a union refuses to pursue your grievance without reason);
- discriminatory (e.g., a union refuses to pursue the grievances of all of its non-white workers);
- or in bad faith (e.g., a union official fails to respond to your complaint just because he/she doesn't like you).

If you feel that the union has treated you in one of these three ways and has breached its duty of fair representation, you may bring legal action against it.

However, the duty of fair representation does not require the union to pursue *all* grievances until the final possible stage of the grievance procedure or to take all the steps that the member might want it to. The duty of fair representation does not even require that the union do a particularly good job at representing grievances. Unions are only prohibited from acting in arbitrary or discriminatory ways, or in bad faith.

2. What if there is a union where I work, but I have chosen not to be a member. If I have a grievance, does the union have to represent me?

Yes. Legally, the union has the same obligation to represent you fairly as it does to represent union members. You can ask the union to file a grievance if you are fired or disciplined, even if you are not a member.

3. What should I do if my union refuses to file a grievance for me?

Sometimes a union shop steward or other representative may refuse to file a grievance. If this happens, you can ask a union officer or someone else who holds a position of power in the union to file a grievance for you.

Unions *do not* have to represent all employees in all grievances. But the union should agree at least to investigate your complaint and, depending on how strong the union representative feels your case is, decide whether to file a grievance and how far it will go in representing you in the grievance procedure. If you have been fired and the union has not yet decided whether to file a grievance, you should consider putting your grievance request in writing, especially before the grievance deadline expires.

If you feel that the union is not responding to your requests, you may be able to make suggestions to them about how to handle your claim. For instance, you can ask them to interview specific witnesses, request certain documents from the employer, and investigate the experiences of coworkers that are similar to yours. Being proactive about your case in these ways may encourage the union to take your claim more seriously.

4. My union refused to pursue my grievance after I lost my hearing, but I want to go to arbitration. Can I sue the union for refusing to go further with my case?

Probably not. Unions have a lot of leeway in choosing which grievances they will handle. If the union honestly believes that your case is not strong enough to continue, it may legally stop representing you. However, if you feel the union stopped pursuing your case just because they didn't like you, or because of your race, gender, or other discriminatory reason, the union may have breached its duty of fair representation

and you may have a claim.

5.

The union agreed to pursue my grievance, but I am not satisfied with result they got for me. Can I sue the union if it has done a bad job?

Again, probably not. The law does not require that the union be smart about the resolution of grievances. As long as they were reasonably thorough and careful, they will not have breached their duty to fairly represent you—even if the result is worse than the situation that caused you to file a grievance in the first place. On the other hand, if you believe the union intentionally mismanaged your grievance because they didn't like you or because of your race, gender, or other discriminatory reason, the union may have breached its duty of fair representation and you may have a claim.

6.

If I think the union did not represent me fairly, how do I file a claim?

You should first pursue all other internal procedures. For example, you may be required to appeal your local union's decision not to pursue a grievance to arbitration with your union's international office. If you are still not able to get complete relief or your grievance reinstated, you can file a claim with the nearest office of the National Labor Relations Board (NLRB) or in federal district court. (Government employees have different requirements, e.g. state and local government employees file claims with the California Public Employees Relations Board (or "PERB") Filing with the NLRB, unlike filing in court, is free and you do not need a lawyer.

Either way, you have 6 months from the day that you exhausted all other internal grievance procedures to file your claim. Your claim will be against the union for breaching its duty of fair representation. However, you can also bring a claim against your employer for your original grievance if the reason you did not get a satisfactory remedy was because of the union's failure to fairly represent you. In the claim against the employer, you must first prove that your union failed to fairly represent you, regardless of whether you are also pursuing a claim against the union.

7.

What am I entitled to if I win my claim with the NLRB or the court?

If your claim is successful, you may get your old job back and back pay for the wages you lost (if you were terminated). You will not get money for any "pain and suffering," distress, or inconvenience that the situation has caused you.

For further information about your employment rights, contact the Workers' Rights Clinic.

Disclaimer

This Fact Sheet is intended to provide accurate, general information regarding legal rights relating to employment in California. Yet because laws and legal procedures are subject to frequent change and differing interpretations, the Legal Aid Society–Employment Law Center cannot ensure the information in this Fact Sheet is current nor be responsible for any use to which it is put. Do not rely on this information without consulting an attorney or the appropriate agency about your rights in your particular situation.