

The ACE Report

The President's Message Blanche Monary, President, ACE

Welcome to a new year.

Here at the Union we are working hard to make you're your interests are well served and we respond to your needs, which at times may include grievance issues.

Do you know how to file a grievance through the Union?

We became painfully aware during our session at the All-Classified Joint Retreat in June that our members do not have a clear understanding of how our grievance process works. I would like to take this opportunity to explain it.

Most of us know what to do when we sense there is a violation of the contract or labor laws; we call our steward. In my own experience, as well as the experience of many of our stewards, has been to hear this from a member: "I think I have a problem, but I don't want to make any waves. I just want to check this out." Then the member relates some outrageous violation. It is important for members to know, **we cannot take any action unless you do.**

You must file the complaint; we cannot do it for you. In fact, it would be an illegal action for stewards or other officers to file a complaint on behalf of a member if there is no member involved, even when we know there is a blatant violation.

There are very few exceptions to this rule. One exception would be if the violation affects the entire membership and is a threat to the unit. In that case, the Union may step forward and file a complaint on its own. A good example of this was when SEIU filed an Unfair Labor Practice (ULP) with the Public Employment Relations Board (PERB) regarding the temporary employee issue in 2002. The consistent, prolonged and common practice of using temps in clear violation of the Ed Code and the contract was a threat to the whole unit. At its peak the chapter chair at the time counted 800 temps when we had about 550 full-time workers, a practice that slowly replaced us with cheaper labor for the same jobs and no benefits. This clearly weakened our bargaining power and could have eventually replaced all members of the unit. That's when SEIU stepped in to file the complaint and didn't need permission to do so.

Another exception would be reporting work previously performed by laid-off workers that is now being done by someone outside the unit. This is a clear violation of the contract as well as the law, and is a threat to the unit. In this case we would not need a member to actually file the complaint. If a member reported this to us, we would investigate, but we could file without a members involvement.

In summary, please be aware that **we cannot take any action unless you do.** You are encouraged to contact your steward and check things out or just start documenting an issue. However, if you aren't willing to come forward and file a formal complaint, there is nothing we can do except listen, which we are always willing to do.

Blanche



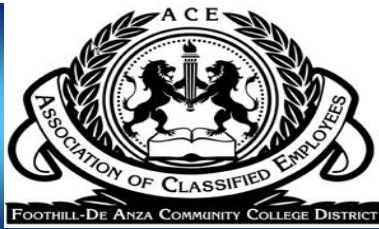
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Overview for Filing a Complaint Blanche Monary

Members do not have to be a full dues paying member to file a complaint, this type of representation is covered by the service fee.

The following is the procedure and what you can expect when you file a complaint:

- 1) Contact your steward
- 2) The steward investigates
- 3) If the investigation reveals a violation, the steward will call a meeting with the steward, the worker and the supervisor to try to resolve the issue informally. This may take several meetings.
- 4) If the issue is not resolved, we then file a formal complaint if the member agrees
- 5) HR must respond to a formal complaint
- 6) Then we meet with HR, the supervisor, a steward, the member and probably our lawyer, to try to resolve the issue
- 7) If the issue is still not resolved, we file a second level grievance. Continue discussions with HR, Attorney, Supervisor and Ace.
- 8) 99% of cases are solved by this step, but if there is still a disagreement, we then go to a hearing or arbitration, where an impartial 3rd party makes the decisions.



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What Members Can Expect From Their Union: The Duty Of Fair Representation

The statutory right of exclusive representation mandates fair representation of all members of a bargaining unit. This obligation emanates from Government Code § 3540 et seq. Government Code § 3543(b) also provides for the processing of grievances by individual employees without interference from the Union, provided that the union has the opportunity to be present at any adjustment, and that such adjustment is not inconsistent with the provisions of the Agreement.

The duty of fair representation requires that the Union represent the interests of all employees fairly and impartially. The Union may refuse to file or process a grievance for any number of reasons so long as they are valid; it may not arbitrarily refuse to process a meritorious grievance or decline to proceed to arbitration because of hostility to the grievant or irrelevant and invidious considerations. Thus, while no employee has a right to have his grievance processed or taken to arbitration if the Union determines, in its discretion, that it lacks merit, still the union may not refuse to process or go to arbitration on a meritorious claim simply because the grievant is widely disliked (or is a non-member). The right to speak for all employees in the bargaining unit carries with it the corresponding duty to protect them as well. Fair representation applies to negotiations, the decision to process or not process a grievance and the way in which a grievance is in fact processed, through arbitration.

Standard of Conduct

The exclusive agent's statutory authority to represent all members of a designated unit includes a statutory obligation to serve the interests of all members without hostility or discrimination toward any, to exercise its discretion with complete good faith and honesty, and to avoid arbitrary conduct.

Neither negligence nor a mistake in judgment on the part of the Union will support a claim that a Union breached the duty of fair representation.

A breach of duty of fair representation occurs when the Union acts based on improper motivation or in a manner that is arbitrary, perfunctory or inexcusably neglectful.

Since a Union will often be required to represent different and conflicting interest, it is allowed a wide range of reasonableness in fulfilling its statutory duties.

DFR Overview

Negotiations

The Union is allowed a wide range of reasonableness in serving the bargaining unit it represents, subject to good faith in the exercise of its discretion. Although ordinary negligence doesn't amount to a breach, a lack of a rational basis for Union decision and egregious unfairness or reckless omissions or disregard for individual employees' fights may constitute a breach.

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Contract Administration

Arbitrariness or bad faith will not be inferred in the decision making process solely because the Union's contractual analysis was unartful, unskillful, or erroneous.

Union's Duty to Investigate

The investigation must be sufficient enough to permit the Union to make a reasoned judgment about the merits of the grievance, rather than an arbitrary choice.

Where the Union decides not to bring a grievance forward based on its **interpretation of clear contractual language**, the Union does not have to investigate because the facts are irrelevant.

Duty in Member vs. Member Conflicts

Subject to the standards of avoiding improper motivation, arbitrariness, perfunctory conduct or inexcusable neglect, the Union may lawfully interpret the contract in a manner that prefers the rights of one employee over another, even though it has a statutory duty to represent both.

In many cases of conflicting interests of employees, such as vacancies and layoffs, the Union must notify employees of grievances that may adversely affect their job rights and must investigate their competing claims in good faith, before deciding whether to pursue the grievances.

Harassment and/or Discrimination Claims

A Union has the discretion to refuse to pursue a grievance protesting illegal harassment and/or discrimination of one member against another, provided the decision is not motivated by discrimination or other hostility toward the grievant, and it is based on the Union's assessment of the merits of the grievance after an investigation of the employees' competing claims.

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