



FLRA.GOV
Federal Labor Relations Authority

Union Unfair Labor Practices

*The Federal Service Labor-Management
Relations Statute*

5 U.S.C. § 7116(b)(1) Interference

- It is a violation of § 7116(b)(1) for a labor organization to interfere with, restrain or coerce an employee in the exercise by the employee of any right under the Statute.
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5 U.S.C. § 7116(b)(2) Discrimination

- It is an unfair labor practice for a Union to cause or attempt to cause an agency to discipline an employee because the employee engaged in activity protected by § 7102 of the Statute.

5 U.S.C. § 7116(b)(2); see *AFGE, Local 3475, AFL-CIO*, 45 FLRA 537 (1992).

5 U.S.C. § 7116(b)(3) Discrimination

- It is an unfair labor practice for a Union to coerce or attempt to coerce a member of the labor organization as punishment, reprisal, or for the purpose of hindering or impeding the member's work performance or productivity as an employee or the discharge of the member's duties as an employee.
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5 U.S.C. § 7116(b)(4) Discrimination

- It is an unfair labor practice for a Union to discriminate against an employee with regard to terms and conditions of membership in the Union on the basis of race, color, creed, national origin, sex, age, preferential or non-preferential civil service status, political affiliation, marital status or disability.
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Discrimination Test for Unions

The Authority applies the same analytical framework set forth in *Letterkenny* for deciding cases involving discrimination by unions as it does in cases involving allegations of discrimination by agencies.

AFGE, Local 1345, 53 FLRA 1789 (1998)

DUTY OF FAIR REPRESENTATION (DFR)

- Under § 7114 of the Statute, where a union is accorded exclusive recognition and is acting as the employees' exclusive representative, it is "responsible for representing the interests of all employees in the unit it represents without discrimination and without regard to labor organization membership." 5 U.S.C. § 7114(a)(1)
 - This is known as the "duty of fair representation."
See NATCA, MEBA/AFL-CIO, 55 FLRA 601 (1999).
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Scope of Duty

- The duty of fair representation does not apply when a union is acting outside the authority granted under § 7114 of the Statute as the exclusive representative.
 - Examples
 - filing a law suit
 - MSPB proceedings
 - EEOC proceedings (not under the collective bargaining agreement)

Fort Bragg Assoc. of Educ., NEA, Fort Bragg, N.C., 28 FLRA 908 (1987); see also *NTEU v. FLRA*, 800 F.2d 1165, 1171 (D.C. Cir. 1986).

DFR Where Membership is a Factor

- A union may not discriminate against non-members
 - When the union is acting as the exclusive representative under § 7114 of the Statute
 - Examples
 - Matters arrived at through collective bargaining
Antilles Consolidated Educ. Assoc., (OEA/NEA), San Juan, P.R., 36 FLRA 776 (1990).
 - Filing grievances
AFGE, Local 1345, Ft. Carson, Colo. (In Trusteeship) & AFGE, AFL-CIO, 53 FLRA 1789 (1998).
 - Distribution of the proceeds of a grievance settlement
AFGE, Local 3354, AFL-CIO, 58 FLRA 184 (2002).
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Discrimination Test

- The Authority applies the same analytical framework for deciding cases involving discrimination against nonmembers by unions as it does in cases involving allegations of discrimination by agencies.

AFGE, Local 3354, AFL-CIO, 58 FLRA 184 (2002); AFGE, Local 1345, Ft. Carson, Colo. (In Trusteeship) & AFGE, AFL-CIO, 53 FLRA 1789 (1998); Letterkenny Army Depot, 35 FLRA 113 (1990).

Letterkenny Test

- The evidence must establish that:
 1. Employee was engaged in protected activity;
 2. Discriminatory action was taken against the employee; *and*
 3. Employee's protected activity was a motivating factor in the Agency's treatment of the employee.

AFGE, Local 1345, Ft. Carson, Colo. (In Trusteeship) & AFGE, AFL-CIO, 53 FLRA 1789 (1998); Letterkenny Army Depot, 35 FLRA 113 (1990).

Letterkenny Test

- Even if the evidence shows a link between the protected activity and the action taken, no violation will be found if:
 - there was a legitimate justification for the union's action;
and
 - the same action would have been taken even in the absence of the protected activity.

AFGE, Local 1345, Ft. Carson, Colo. (In Trusteeship) & AFGE, AFL-CIO, 53 FLRA 1789 (1998); Letterkenny Army Depot, 35 FLRA 113 (1990).

DFR Where Membership is NOT a Factor

- Union action or inaction must amount to more than negligence or ineptitude
- The union's action must have been arbitrary or in bad faith
- The union's action must have resulted in disparate or discriminatory treatment of a unit employee

AFGE, Local 3282, 61 FLRA 426 (2005); *NFFE, Local 1453*, 23 FLRA 686 (1986).

Other Union ULPs

- It is an unfair labor practice for a union to:
 - Repudiate a negotiated agreement
 - Insist to impasse on a non-negotiable proposal.

5 U.S.C. § 7116(b)(5); see *AFGE, AFL-CIO*, 56 FLRA 1021 (2000); *Sport Air Traffic Controllers Organ.*, 52 FLRA 339 (1996); *AFGE, AFL-CIO, Local 1909, Fort Jackson, S.C.*, 41 FLRA 18 (1991).

Other Union ULPs

- It is an unfair labor practice under § 7116(b)(1) and (8) for a Union to engage in internal union business on duty time.
- Examples:
 - Solicitation of union membership
 - Election of union officers
 - Collection of dues

SEIU, Local 556, AFL-CIO, 17 FLRA 862 (1985).
