

FORM XX: Application Alleging an Unfair Labour Practice (Duty of Fair Representation)

Section 20 of The Labour Relations Act

The Duty of Fair Representation requires that when a union is representing an employee in connection with a collective agreement, they must not act in a manner that is **arbitrary**, **discriminatory** or in **bad faith**.

Arbitrary conduct includes making choices without good reasons, acting on unrelated factors or principles, acting in a careless and indifferent manner or committing obvious mistakes with a non-caring attitude. Honest mistakes, errors in judgment, or even negligence do not necessarily mean a union has acted arbitrarily.

Discriminatory conduct means that a union should not treat individuals or groups of individuals differently based on unreasonable or irrational grounds. It also means that a union must not discriminate against an employee on a prohibited ground, such as race, gender, age, religion, medical condition or another characteristic protected by the Human Rights Code. Not all differential treatment constitutes discrimination.

Bad faith conduct includes treating individuals in a way to hurt them on purpose, acting in a manner that is based on ill will or hostility, using dishonesty or misrepresentation, or hiding or covering up information from an individual.

If an employee has been terminated, a union must also act with **reasonable care** in representing the interests of the employee.

Disagreement or general dissatisfaction with the union's representation without specific examples, allegations not supported by any documentation or evidence, or claims that amount only to the union making a mistake or error in judgment typically do not establish a prima facie case. Prima facie (Latin for "at first sight") means that if the facts written in the application are proven true, there is a reasonable likelihood that the complaint will succeed. When filing a complaint, the applicant must show enough evidence to warrant further proceedings, and the evidence must support each element of the alleged violation.

The Board may refuse to accept a complaint where there has been **undue delay** in filing. Generally, complaints should be filed within six months of when the alleged violation occurred. If filing more than six months after becoming aware of the alleged violation, the applicant must provide specific reasons for the delay and provide proof that there were exceptional circumstances for the delay.

Please read the Duty of Fair Representation information and Information Bulletin No. 14, found on the Board's website. It contains more detail about and explains what will happen after a complaint is filed with the Manitoba Labour Board. The information is also available upon request by contacting the Board by phone or email. We recommend having it on hand while filling out this form.

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Applicant:

Bargaining Agent/Union:

Employer:

All information included in your application is provided to the party or parties named in the application, as well as interested parties. Further, such information may be referred to in the order or reasons issued by the Board at the conclusion of the case, on the Board's website and in print and online reporting services that may publish the Board's decision.

1. Who from the Union were you dealing with?

Name:

Email:

Position:

Phone:

2. Have you lost your employment? No Quit Fired Other Date:

3. Did the Union file a grievance on your behalf? Yes No

If yes, what was the grievance about?

What was the result of the grievance?

Please attach a copy of the following:

Grievance

Collective Bargaining Agreement

Related Documents

4. How did the Union allegedly violate Section 20 of the Labour Relations Act? Attach a separate document describing the situation in detail.

- Clearly explain how the bargaining agent/union acted in a way that was **arbitrary, discriminatory**, or in **bad faith**.
- If you have lost your employment, explain how the union failed to take **reasonable care** to represent your interests.
- Include details. Write down what happened, when and where it happened, the names of any people involved, and the names of any witnesses.
- Attach any documents you have that support your claim such as emails, text messages, letters or notes.

5. When and how did you become aware of the alleged violation? If it has been more than six months, explain the delay.

6. If the Manitoba Labour Board finds that the union committed an unfair labour practice, it can order the union to take specific action. What remedy are you requesting? Please select one or more from the list below.

I want the union to reinstate my membership

I want compensation for my loss of income or benefits

I want compensation up to \$2,000 (if no income or benefits were lost)

I want the unfair labour practice to stop immediately

I want the union to fix the situation caused by the unfair labour practice

Other: I want the union to take the action described below to correct the consequences of the unfair labour practice

ATTACH: (.pdf electronic format preferred)

Form A

Documents that support your claim such as emails, text messages, letters, notes

Copy of grievance and related documents (if applicable)

Date:

Name:

Title:

Signature