



INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS

# THE DUTY OF FAIR REPRESENTATION AND INTERNAL UNION ACCOUNTABILITY

April 1, 2026

Lauren McDermott  
and Matthew Watts

# LEGAL DISCLAIMER

---

Please note that this presentation is offered solely for informational purposes, and is not intended, nor should it be relied upon, as legal advice. An individual or affiliate in need of legal assistance on any topic covered in this presentation should contact and confer with legal counsel to obtain legal advice appropriate to the particular situation.



# OBJECTIVES

---

- Identify ways to build a stronger union – and along the way minimize the chances anyone accuses your union of a breach of the duty of fair representation (“DFR”)
- Define the legal criteria for the DFR
- State when the DFR applies
- Sum up potential damages to your union from an accusation that your union violated the DFR
- Identify ways to prevent breaches of the DFR and accusations of DFR violations



# **GOOD GRIEVANT RELATIONS**

# GRIEVANT REPRESENTATION SCENARIO

---

- You are a grievant
- You have been a good employee for a long time
- Your employer accuses you of dishonesty on the job
- The accusation is not true
- Your employer fires you



# GRIEVANT REPRESENTATION SCENARIO

---



**What are the most important things that your union representative can do to make you feel like they have represented you well?**



# GRIEVANT RELATIONS

---



Doing the things that we just discussed will both build a stronger union and



Reduce the chances that someone accuses your union of violating the duty of fair representation



**Good news:** the duty of fair representation is really a matter of common sense



# **PRIVATE SECTOR VS. PUBLIC SECTOR**

# DUTY OF FAIR REPRESENTATION PRIVATE SECTOR

Duty of fair representation judicially created through federal common law

Key cases:

- *Hines v. Anchor Motor Freight, Inc.* 424 U.S. 544 (1976) (union has “**a wide range of reasonableness**” in carrying out its collective bargaining functions)
- *Vaca v. Sipes*, 386 U.S. 171 (1967) (A union breaches its duty of fair representation if its conduct is **arbitrary, discriminatory, perfunctory, or in bad faith; applies to member and non-member alike**)
- *Air Line Pilots Association v. O’Neill*, 499 U.S. 65 (1991)(duty applies to union’s contract administration, enforcement, and negotiations, as well as any other **instances where a union acts in a representative role**)

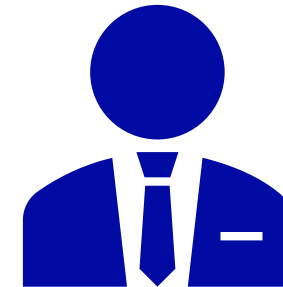


# DUTY OF FAIR REPRESENTATION PUBLIC EMPLOYEES

---



For state public employees, the duty of fair representation may be created by statute



Often part of the state's Public Employment Relations Act or Board (PERA or PERB)



# CONCURRENT JURISDICTION

---

---

State Courts

---

Federal Courts

---

National Labor Relations Board (NLRB)



# THE DUTY OF FAIR REPRESENTATION

# THE DUTY OF FAIR REPRESENTATION

“

A union has a ‘wide range of reasonableness’ in carrying out its collective bargaining functions, and this discretion is limited only by the requirement that the union act with ‘complete good faith and honesty of purpose.’”

— *Hines v. Achor Motor Freight, Inc.*, 424 U.S.  
554, 564 (1976)



# THE DUTY OF FAIR REPRESENTATION

---

A union that is the exclusive bargaining representative of a bargaining unit must represent bargaining unit members in a way that is:

- Reasonable
- Fair and focused on the facts
- Acting honestly and in good faith
- Not discriminatory



**WHEN DOES A UNION  
BREACH ITS DUTY?**

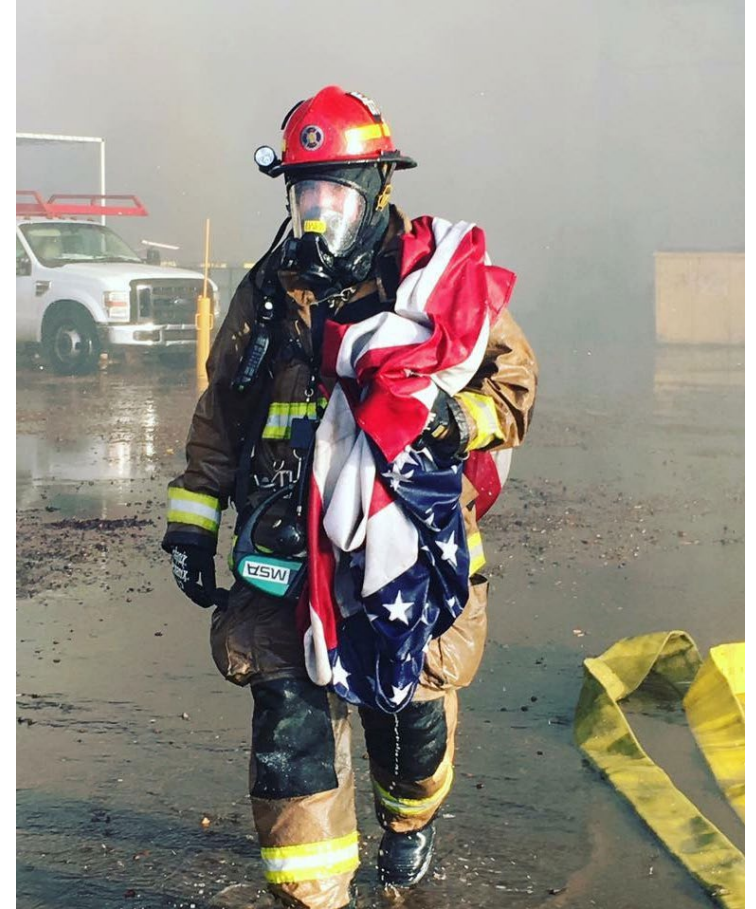
# BREACH OF THE DUTY OF FAIR REPRESENTATION

---

A union breaches its duty of fair representation if its conduct is:

- Arbitrary
- Discriminatory or
- In bad faith

*Vaca v. Sipes*, 368 U.S. 171 (1967)



## **ARBITRARY**

Means you could just as well be flipping a coin. There is no real reason for your decision, and your decision looks completely *unreasonable*.



# DISCRIMINATORY

---

- Means your decision depends on race, gender, religion, politics, union politics, or another characteristic of the grievant that has nothing to do with the grievance.
- Good rule-of-thumb test is whether you would reach the same decision on the same facts for everyone else.
- If yes, probably not discrimination. If no, then you may have a problem.
- Note: Usually okay for a union to make distinctions based on things ***that related to employment***, like seniority or skill level.



# IN BAD FAITH

---



Means you are allowing motives and factors to shape your decision that you would not want to become public.



Examples: revenge for political opposition, to benefit yourself in a way you should not, making misrepresentations, or acting deceitfully.



If you are telling lies, you are at risk for acting in bad faith.



# REPRESENTING NON- MEMBERS

# TO WHOM IS THE DUTY OF FAIR REPRESENTATION OWED

“

The duty of fair representation is owed to all individuals for whom the Union is the exclusive bargaining representative. This means that the Union owes a duty of fair representation to all members of the bargaining unit, **member and non-member alike.**”

— *Vaca v. Sipes*, 368 U.S. 171 (1967)



# CAN GRIEVANT USE HIS/HER ATTORNEY

---

- Only if the Local permits it
- The union controls the grievance/arbitration procedure within its duty of fair representation obligation
- Be mindful of waiving other claims the grievant may be pursuing



# DFR SCENARIO A



## DFR SCENARIO A

The setting is a monthly meeting to review proposed grievances. The stewards need to decide which ones the union should file.



# DFR SCENARIO A - QUESTIONS

---

- Have Pat, Terry, Morgan, and Lynn met their duty of fair representation? Or have they violated it? Why?
- Is there anything else Pat should have done before this meeting? What?
- What should s/he do after the meeting?



**WHEN DOES THE DUTY  
OF FAIR  
REPRESENTATION  
APPLY?**

# APPLICATION OF THE DUTY OF FAIR REPRESENTATION

---



# OBLIGATION TO INVESTIGATE, FILE, AND PROCESS A GRIEVANCE



# INVESTIGATE THOROUGHLY

---

---

**Who** was involved?

---

**What** happened?

---

**When** did it happen?

---

**Where** did it happen?

---

**Why** did it happen?

---

**Witnesses?**

---

**Written documents?**

---

**How** did it happen?

---



# POTENTIAL GRIEVANCES

---

- Violation of the contract
- Violation of the law
- Violation of department rules/policies
- Violation of well-established practices
- Violation of workers' rights



# WRITING THE GRIEVANCE

---



Write a simple statement of the situation and conclude with the relief you are seeking.



Don't limit contract violations. State, "In violation of the contract, including Articles \_\_\_\_\_, the Department \_\_\_\_\_."



Don't limit remedy. Use the general phrase "and made whole in every way".



# FILING AND TRACKING THE GRIEVANCE

---

- Make sure that your grievances are timely filed and timely appealed to each Step and the arbitration.
  - Whatever the issue, never lose out because you missed the time limits set up by your contract.
- Make sure that you sign the grievance if required.
- If the first step is an oral meeting, make sure that you document the meeting in writing after its conclusion.
- Institute a tracking system to ensure grievances are kept track of and timely moved through the grievance/arbitration system.
- Include notifications to the grievant of each Step and its outcome.



# WHEN IS A COMPLAINT NOT A GRIEVANCE

## Personal troubles and requests for advice

- Treat them sympathetically; try to help them and keep confidences strictly to yourself.

## Complaints about fellow workers

- This complaint could become a grievance if management gets involved when it shouldn't or it doesn't get involved when it should.
- Harassment, bullying, discrimination

## Complaints about government agencies and local bodies

## Complaints against management not covered by the contract

- These complaints could be resolved by informal discussions with the employer.

## Borderline cases

- Seek advice
- Report back to the person complaining as soon as possible, explaining what you are doing and why.

## Complaints against the union



# OBLIGATION TO PROVIDE INFORMATION AND COMMUNICATE

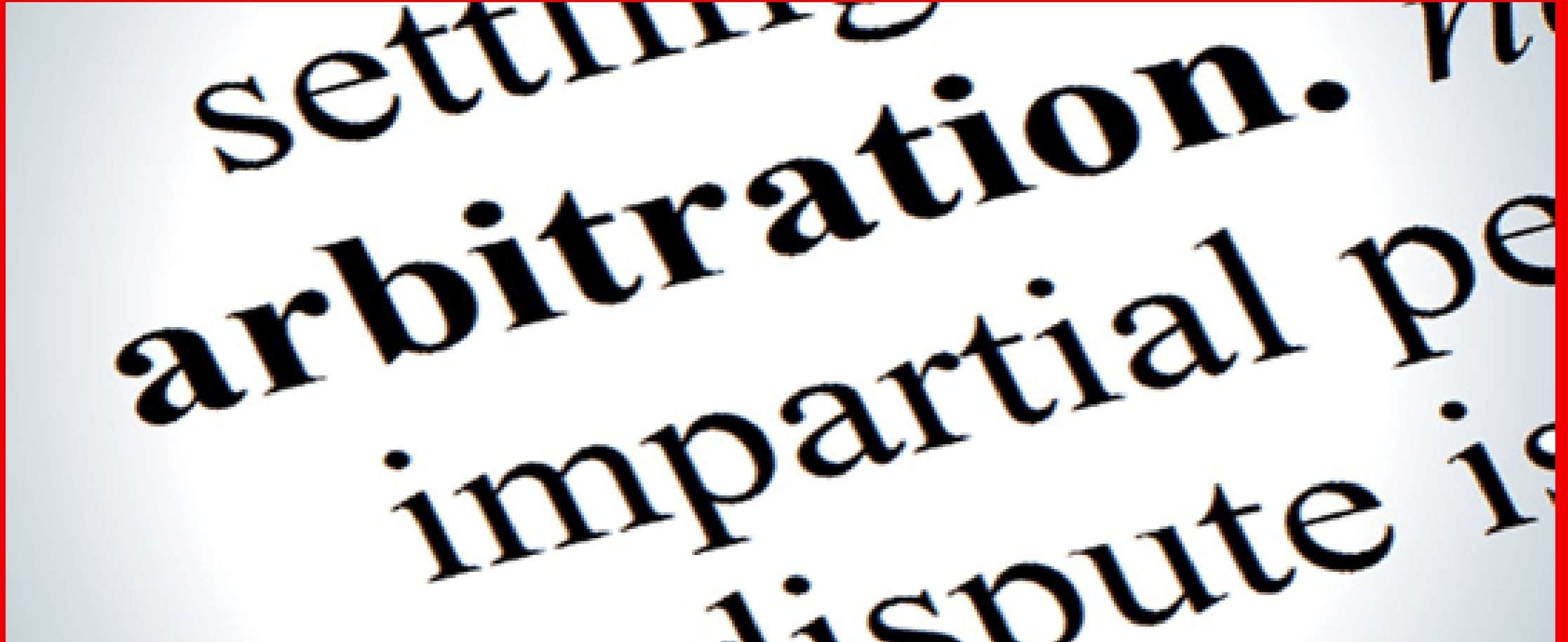


# UNION OBLIGATION TO PROVIDE INFORMATION TO AND COMMUNICATE WITH A REPRESENTED EMPLOYEE

- Provide correct and timely information about the status of the grievance. Make sure the Grievant is aware of all meetings and steps of the procedure.
- Be responsive to inquiries about the status of the grievance, even if there is no new updates.
- Avoid making guarantees about the outcome of the grievance. Be transparent about the matter, including the strengths and weaknesses of the case and the remedies involved.
- Communicate settlement offers.



# OBLIGATION REGARDING ARBITRATION AND SETTLEMENT



# UNION OBLIGATIONS REGARDING THE ARBITRATION OF GRIEVANCES

---

- Examine whether the Union should advance the grievance to arbitration. Why or why not?
- Follow procedures for arbitration.
- Fully prepare for the arbitration.
- Represent the employee's and the Union's interests in the hearing.
- Present the case fairly.



# SETTLING THE GRIEVANCE

- Don't engage in horse-trading
- Management will occasionally ask a steward or union rep to drop one grievance to get a settlement on another.
  - Once you go down this road, management will never settle a grievance without trading it for something.
  - Grievance settlements can involve compromise. But all grievances should be pursued on their individual merits.
- If possible, try to get a good settlement early.
- Try to deal with people who have authority to settle/resolve grievances.



# SETTLING THE GRIEVANCE

- What if the Grievant does not want to accept a settlement that the Union does?
- Weigh the remedy provided in the settlement proposal against what could be obtained through pursuing the grievance against what the Grievant wants.
- Examine the merits of the grievance and the likelihood of success.
- It is the Union's grievance, but the Union must satisfy the DFR.



# OBLIGATION REGARDING CONTRACT NEGOTIATIONS



# DUTY OF FAIR REPRESENTATION IN CONTRACT NEGOTIATIONS

---



Proposals should fairly represent members' interests.



Agreements should be fair, nondiscriminatory and reached in good faith.



Prepare for negotiations.



Have a procedure for ratification votes.



# WHEN DOES THE DUTY OF FAIR REPRESENTATION *NOT* APPLY?

---

- Presenting the grievance as demanded by the grievant
- Pursuing a bad case to arbitration
- Evaluating a settlement based on what the grievant wants rather than on the merits of the grievance and what is in the best interests of the bargaining unit
- The union does not have a duty of fair representation where the union is not the exclusive bargaining representative
  - EEO, civil service, worker's compensation, disability benefits
- Unless the union takes on the representation, then the duty of fair representation may attach again



# ACCUSATIONS OF DFR VIOLATIONS

# ACCUSATIONS OF DFR VIOLATIONS

---

How can an accusation that your union violated the duty of fair representation harm your union?

- Back pay and benefits to affected workers
- Your attorneys' fees
- Your union staff time and effort
- Division and distraction
- Harmful publicity



# **AVOIDING ACCUSATIONS OF A VIOLATION**

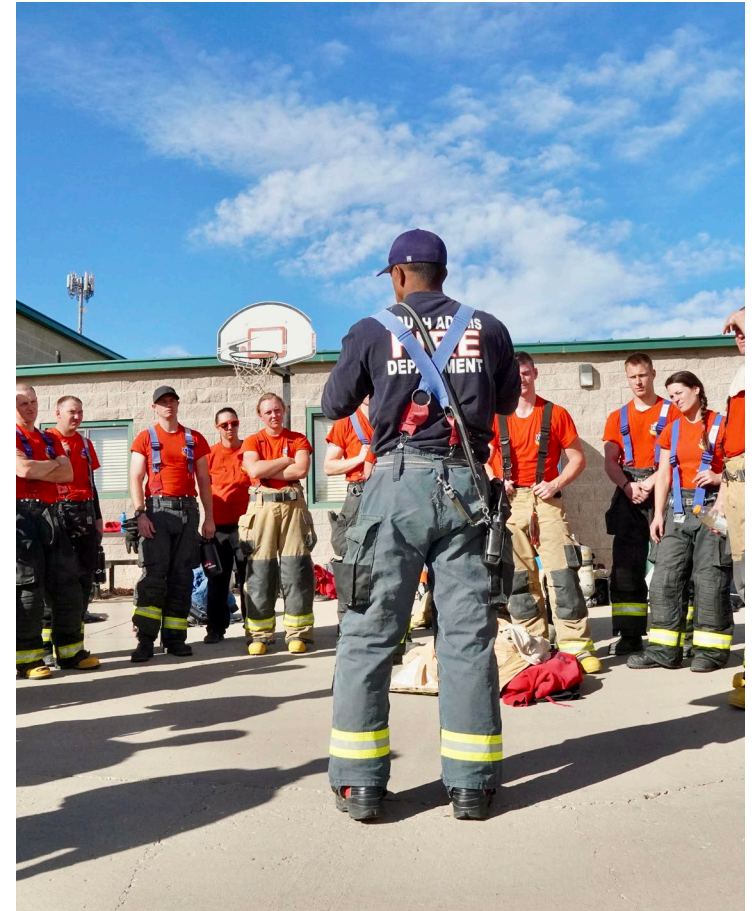
# ACCUSATIONS OF VIOLATIONS

---

How do you avoid accusations that your union breached the duty of fair representation?

---

Note: we are not just talking about being right. We are talking about *avoiding* accusations of being wrong.



# AVOIDING ACCUSATIONS OF VIOLATION

---

- Treat the grievant as you would like to be treated
- Investigate thoroughly
- Check your contract, past practices, and earlier decisions
- Meet grievance deadlines
- Document your case and efforts



# DFR HYPOTHETICALS

# HYPOTHETICALS

---

John is a fire fighter in the bargaining unit. But John refuses to become a member of the Union. In fact, John frequently reports to management on the activities of the Union. John often talks bad about the Union and tries to convince other employees that they do not need to be a member of the Union. One day, the Department changed John's schedule in violation of the collective bargaining agreement. John comes running to you demanding that you need to take action. What, if anything, should you do for John? Do you have any legal obligation to John?



# HYPOTHETICALS

---

Tom is in charge of equipment at the station. Tom was terminated because some equipment from the equipment room went missing. Tom insists that he is innocent, but he has been caught lying to his supervisors before. And the problem is that Tom is the only one who had access to the equipment room at the time. There are no other suspects, and there are no witnesses. Prior to arbitration, the Department offers to return Tom to work with 85% of back pay. You believe that there is a good chance that you will lose the arbitration. When you tell Tom about the settlement offer, he tells you that he does not want to settle the grievance unless the Department offers him full back pay and punitive damages. Do you have any legal obligation to arbitrate the case because Tom does not want to accept the settlement?



# HYPOTHETICALS

---

The Local filed a grievance on behalf of Sam, an engineer who was wrongfully denied overtime. You are the Union representative for the grievance, and somehow, you missed the deadline for appealing the grievance to Step 2. What, if anything, should you do? Why? Have you violated any legal obligation to Sam?



# HYPOTHETICALS

---

Dennis was given a seven-day suspension for excessive absences. During your Step 2 investigation, you meet with Dennis. At that meeting, Dennis insists that you introduce the EEO charges that he has filed against the Department five years ago. What should you do? What legal obligations do you have to Dennis?



# **TOP TEN WAYS TO AVOID A DFR CLAIM**

# 1. PUT IT IN WRITING

---

With too much reliance on verbal communications, we are likely to forget. A written record increases credibility and is evidence you did it right.



## 2. WATCH OUT FOR DEADLINES

---

- Whether or not following the timelines for filing or processing a grievance [collective bargaining agreement rules], filing an NLRB charge [six months], or timely sending the notice to open a contract, once you miss a deadline, its gone.
- Be careful of relying on a past practice of loose timelines in processing grievances when the contract says otherwise.



# 3. PREPARE, PREPARE, PREPARE

---

- Talk to the grievant
- Talk with witnesses
- Review the contract and past practice
- Talk to other union officials
- Get relevant documents



# 4. DON'T TALK TRASH

---

- Don't put down members
- Better to take the high road
- Never forget you owe a duty of fair representation to everyone in the bargaining unit whether they deserve it or not.



# 5. READ THE CONTRACT AND UNION CONSTITUTION

---

- A lot of very helpful information can be found in both
- Don't assume you already know it



# 6. DO NOT PROCRASTINATE

---

- Too late to request and gather documents
- Too late to interview or prepare witnesses
- Too late to do a good job



# 7. DON'T JUMP THE GUN

---

- When you are told about a problem, don't jump to conclusions
- Make sure you have all the facts
- Remember there are two sides to every story



# 8. TELL THE WHOLE STORY – DON'T HIDE FACTS

---

- When you tell only the parts of the story that help you, and then the employer representatives or arbitrator hears the rest of the story from someone else, it hurts your credibility now and in the future.
- Besides, you want to tell the rest of the story from the perspective that helps you the most – not in the words of your opposition.



# 9. DON'T ALLOW POLITICS OR FRIENDSHIPS TO DETERMINE THE OUTCOME

---

- When you process a grievance, your duty is to investigate it and decide it on its own merits and not on the basis of who is your friend or who helped get you elected.



# 10. RETURN PHONE CALLS PROMPTLY

---

- When you don't return phone calls, you encourage the feeling that you don't care about the person's problem and that you are not doing anything about it.
- It is often the very reason that workers complain that their union breached its duty of fair representation.





**THANK YOU!**  
**ANY QUESTIONS?**

**Lauren McDermott**

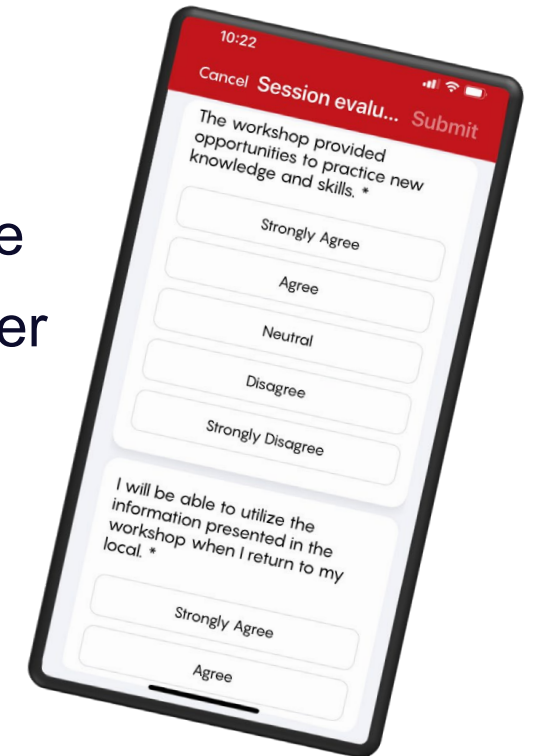
IAFF Legal Counsel |  
lmcdermott@iaff.org

**Matthew Watts**

IAFF Legal Counsel |  
mwatts@iaff.org

# EVALUATION AND WIN AN IPAD!

- **Submit your workshop and overall evaluations to be automatically entered in two drawings for a new iPad!**
- **Complete your evaluations using the IAFF app:**
  1. Download the IAFF app and sign in with your iaff.org username
  2. Tap the 2026 Strive for Excellence Summit event image to enter the event's dashboard
  3. Tap "Sessions" and tap on the workshops you attended
  4. Tap "Evaluation" and complete the evaluation
  5. Tap "Submit"



**For the event's overall evaluation, follow steps 1 and 2, then tap "Event Evaluation" located in the event's Dashboard.**

