JUBELIRER, PASS & INTRIERI, P.C.
Attorneys-at-Law

Joseph J. Pass
Edward H. Walter
James A. Welker
Joseph Santino Pass*
Steven E. Winslow
Patrick K. Lemon

*also admitted in Ohio

of counsel
Neal R. Cramer

Ben Paul Jubelirer (1904–1983)
Frank P. G. Intrieri (1942–1976)

TEAMSTERS JOINT COUNCIL 40
REPORT OF LEGAL COUNSEL
October 17, 2018

The National Labor Relations Board Turns Up The Heat On Unions

On September 14, 2018, the NLRB General Counsel published a problematic memorandum directing the NLRB regional offices to aggressively pursue duty of fair representation cases against Unions in the private sector.

Under the National Labor Relations Act, a Union breaches its duty of fair representation to its members and can incur substantial liability if the Union engages in conduct which is arbitrary, discriminatory, or in bad faith. However, under longstanding legal precedent, a Union's mere negligence in processing a grievance does not constitute arbitrary conduct substantiating a DFR charge. As such, Unions can and have offered mere negligence as a defense when faced with a DFR charge.

Under the guise of "protecting" workers, the General Counsel directed regional NLRB offices to demand more proof from Unions when defending a DFR charge based on mere negligence, such as losing track of a certain grievance. More specifically, Unions will now be required to demonstrate established, reasonable procedures or systems to track grievances or the negligence defense will fail. In addition, the General Counsel commented that a failure to communicate decisions related to a grievance or respond to inquiries for information from a grievant could also be more than mere negligence and subject the Union to DFR liability. As a result, Unions should maintain communication with members during the processing of a grievance and keep documentation of such communications in grievance files.

The GC's memorandum indicates a clear shift from how DFR charges have been pursued in the past and effectively announces the Board's intention to aggressively pursue DFR cases against Unions. Unions should be familiar with these new enforcement policies and should diligently follow them in order to avoid the potential liability of a DFR charge. If you have any questions about these new requirements or would like assistance in drafting a policy for your Union regarding the tracking of grievances and communications with grievants during the processing of grievances, please contact our office.

In light of the above, remember that elections have consequences!

Respectfully submitted,
JOSEPH S. PASS, ESQUIRE