

AFGE Fair Practices: Criteria for Representation

Ask any elected union officer the key to their success and he/she will tell you, “Give the members what they want.” Union Members demand workplace equality. They see over 10,000 federal workers going to hearing before EEOC Judges each year. Successful unions send union representatives to these hearings (they aren’t fooled by the myth that the EEO Counselor is the worker’s rep!) the same way they send union representatives to arbitration or to MSPB. Representatives of EEO complainants get reasonable “official time” under the EEOC regulations. This EEOC “official time” is not controlled by the union contract, and thus provides official time to union reps who have no official time remaining under the collective bargaining agreement. These reps often use the AFGE EEO workbook as a guide, some have attended EEO trainings, some consult with the Fair Practices Department or other practitioners for advice, but all become better union reps by their participation in the EEO process.

Often, union reps (or the complainant) will seek assistance from the Fair Practices Department in EEO case presentation. The Fair Practices Department has just three attorney EEO specialists who cover a wide range of duties, from trainings (so local reps can proceed independently) to litigation in courts, arbitrations, MSPB and EEOC hearings. To treat each of these requests for assistance fairly, given the obvious recognition that the three attorneys cannot begin to cover the 10,000-plus EEOC trials each year (not to mention court litigation, appellate briefs, etc.), standard review criteria are applied to each request for representation from the National office.

Criteria for Representation:

The Fair Practices Department asks three simple questions: **Who, When, and Why?**

Who: Sometimes, the Fair Practices Department receives requests for representation from non-members. Other times, members who have previously been represented by the local union on identical complaints, call to shop around for another opinion. It is important that local officers participate in the members’ requests for representation from the National office, and all such requests are therefore turned back to the local for consultation and recommendation. We will not take cases behind the back of the elected Local President and National Vice President.

When: Typically, attorneys need to review the investigative file, called Report of Investigation (or ROI), before evaluating the merits of a case. Our limited staff cannot afford to become involved in the counseling and investigative stages of an EEO complaint. Therefore, we await the ROI and only get involved in EEO matters at the hearing stage. Most local unions feel comfortable doing the hearing, but may need assistance in evaluating and pursuing appeals. Thus, we also accept requests for appeals of final decisions.

Why: With so many requests, and so much success by local representatives acting alone, there has to be some basis why one particular case is accepted and processed, which does not mean that other cases cannot be accepted. But EEO attorney specialists can only be at one place at a time. For instance, in just one week in August, the Fair Practices Department received requests to review and accept 30 EEO cases. While the case must have merit, that alone is not enough. The Fair Practices Department applies the criteria adopted by the National Executive Council that is known as the Legal Representation Fund criteria: cases accepted for representation must present meritorious issues of either *precedential* value or *substantial significance* to the Federation as a whole.

It can be a daunting task just to review each request for representation. The Fair Practices Department is fortunate to have the assistance of legal interns from nearby law schools who contribute to handle the intake responsibilities, and we also look to the District Coordinators for their recommendations as to why a case meets the criteria for acceptance. The Department often proceeds as a co-counsel in cases along with local representatives, dividing workloads and providing the opportunity to mentor future union leaders. And we continue to consult and advise hundreds of on-going cases where we are unable to make an appearance and where the AFGE local union maintains the role of complainant’s rep. Union members raising EEO issues (whether in arbitrations, MSPB, or EEOC) expect their union to be there for them, and the Fair Practices Department is ready to provide you the tools to make it happen.