

## **A Brief Glossary of Common Bargaining Terms**

**ACROSS THE BOARD INCREASE** - A general wage increase that covers all the members of a bargaining unit, regardless of classification, grade or step level.

**BACK PAY** - Wages due for past services, often the difference between money already received and a higher amount resulting from a change in wage rates.

**BAD FAITH** - Under state labor law, the parties have a duty to approach negotiations with a sincere resolve to reach a collective bargaining agreement, to be represented by properly authorized representatives who are prepared to discuss and negotiate on any condition of employment, to meet at reasonable times and places as frequently as may be necessary and to avoid unnecessary delays, and, in the case of the employer, to furnish upon request data necessary for negotiation. Bad faith bargaining is the absence of these elements and in which there is no real intent of trying to reach an agreement. It is often characterized by: the failure to engage in the exchange of bargaining; the failure to offer counter proposals; cancellation of sessions; delays in bargaining; failure to meet at appropriate times or places; regressive or surface bargaining; or a general conduct designed to frustrate the bargaining process.

**COLA** - A cost of living adjustment. However, this term is often used to describe wage increases that are granted across-the-board to all employees, without regard to any statistic such as the Consumer Price Index (CPI).

**COLLECTIVE BARGAINING AGREEMENT (CBA)** - A written agreement or contract that is the result of negotiations between an employer and a union. It sets out the conditions of employment (wages, hours, benefits, etc.) and ways to settle disputes arising during the term of the contract. Collective bargaining agreements usually run for a definite period--one, two or three years. Synonymous with Memorandum of Understanding or MOU.

**CONCERTED ACTIVITY** - Action taken by a group of employees in order to improve their working conditions or benefits. Bargaining law considers this type of activity protected from retaliation or reprisal.

**CONTRACT** - A labor agreement that has been negotiated between the employer and the employee union or association for a specific time period covering the wages, hours and other terms and conditions of employment for employees covered by the contract.

**FAMILY AND MEDICAL LEAVE ACT (FMLA)** - Federal law establishing a basic floor of 12 weeks of unpaid family and medical leave in any 12-month period to deal with birth or adoption of a child, to care for an immediate family member with a "serious health

condition", or to receive care when the employee is unable to work because of his or her own "serious health condition."

**FRINGE BENEFITS** – Negotiated contract provisions other than wages and hours; for example, health insurance, welfare fund, pensions.

**GRANDFATHER CLAUSE** - An exception provided in a contract article that either exempts or continues a prior benefit to those covered employees who were employed prior to the negotiation of that article.

**GOOD FAITH** - The mutual obligation of the employer and the employee union to negotiate over mandatory subjects of bargaining. In practical terms, this means approaching bargaining with an open mind, following procedures that will enhance the prospects of settlement, being willing to meet as often as necessary, providing the union with the information it needs to bargain meaningfully, discussing the demands of employees freely and justifying negative responses to these demands and considering compromise proposals.

**IMPASSE** - The point in negotiations at which one or both parties determine that no further progress can be made toward reaching agreement. Declaration of impasse usually precedes engaging in the impasse procedures that are included in the agency's Local rules, if any, or unilateral action to implement its last offer by the employer.

**INFORMATIONAL PICKETING** - A type of picketing done with the express intent not to cause a work stoppage, but to publicize either the existence of a labor dispute or information concerning the dispute.

**IMPACT BARGAINING** – Negotiating sessions that may be held after the contract is settled to address sudden changes in working conditions.

**INTEREST ARBITRATION** - An arbitration, mutually agreed upon by the parties that gives the arbitrator the authority to determine what provisions the parties are to have in their collective bargaining agreement. This differs from grievance arbitration which interprets and applies the terms of an agreement to decide a grievance.

**JOB ACTION** - A concerted, coordinated activity by employees designed to put pressure on the employer to influence bargaining. Examples include: work stoppages or shutdowns, sickouts and protest demonstrations, wearing T-shirts, buttons, or hats with union slogans, holding parking lot meetings, collective refusal of voluntary overtime, reporting to work in a group, petition signing, jamming phone lines, etc.

**JUST CAUSE** - A reason an employer must give for any disciplinary action it takes against an employee. An employer must show just cause only if a contract requires it. Most contracts have just cause requirements that place the burden of proof for just cause on the employer.

**LOCKOUT** - Action by the employer to prohibit employees from entering the workplace during a labor dispute or employee strike. A lockout is the employer counterpart of a strike and is used primarily to pressure employees to accept the employer's terms in a new contract.

**MANAGEMENT RIGHTS** - The claimed rights of employers to control operational aspects of the workplace. Usually found in a separate contract article.

**MANDATORY SUBJECTS OF BARGAINING** – Topics that must be negotiated if the union and employer are to engage in good faith bargaining. Mandatory subjects include: hours, wages, and working conditions.

**MEDIATION** - The involvement by a neutral mediator assigned by the state to assist in negotiations by discussing the disputed issues with the parties together or separately, and assisting the parties in reaching a settlement.

**MEMORANDUM OF AGREEMENT [MOU]**- Most often refers to the written document summarizing the terms of settlement for a successor collective bargaining agreement and signed by both parties. Sometime it is also used to refer to the written collective bargaining agreement itself.

**MERIT INCREASE** - Increase in wages determined by employee performance.

**NO-STRIKE CLAUSE** - A clause in a collective bargaining agreement between a union and employer that the union will not engage in any strike or other economic activities against the employer; may include a ban on picketing and/or sympathy strikes. A no-strike clause in a collective bargaining agreement is considered the quid pro quo for an arbitration obligation. Such a clause usually includes a no-lockout provision also.

**PAST PRACTICE** - An unwritten, repeated application of a work rule or policy over a period of time that is known and accepted by both labor and management. Past practice is used by arbitrators to judge how a contract term has been interpreted at the workplace when the language of the agreement is ambiguous.

**PERMISSIVE SUBJECT OF BARGAINING** - A matter that is not a mandatory subject of bargaining but that the parties agree to discuss at the bargaining table. Permissive subjects of bargaining may not be taken into the impasse procedure in the event that bargaining reaches impasse.

**PREMIUM PAY** - An extra amount over the normal hourly time rates, sometimes a flat sum, sometimes a percentage of the wage rates, paid to workers to compensate them for inconvenient hours, overtime, hazardous, or unpleasant conditions, or other undesirable circumstances.

**PROHIBITED SUBJECT OF BARGAINING** – A matter that would deny either party its legal rights or a matter the state has determined the parties cannot bargain over.

**PROTECTED ACTIVITY** - Activity by an employee such as participating in union activity, filing an appeal, appearing as a witness on behalf of another employee or the union, marching in a picket line. Such activities are called "protected" because the employee is legally protected from retaliation by the employer for engaging in such activities.

**QUID PRO QUO** - A Latin phrase meaning literally, "What for what." The phrase describes an implied or expressed expectation that one party will get something for something else given up.

**RATIFICATION** - A vote or other action by the union or association to accept or reject a contract that has been negotiated between the union and the employer. Likewise, the action by the governing body to adopt the agreement, thus making it a binding contract.

**REGRESSIVE BARGAINING** - Reneging on a proposal submitted in negotiations or making a proposal that moves away from agreement by removing or reducing the value of items previously placed on the table.

**REOPENER CLAUSE** - A clause that sets a date or circumstance to open negotiations on one or more issues in the contract but does not open the entire contract for negotiation.

**RETROACTIVE PAY** - Retroactive pay (or back pay) is a retroactive wage increase. For example, a negotiated contract expires December 31st but employees continue to work while a new contract is negotiated. A new contract is approved the following March which includes a pay increase retroactive to January 1st. The retroactive increase, or back pay, is paid for work beginning January 1st.

**SCOPE OF BARGAINING** - The subject matter that employers and exclusive representatives (unions) may bring within the area of the collective bargaining agreement or memorandum of understanding

**SENIORITY** - A worker's length of service with the employer. Seniority often determines layoff order, promotions, recall or transfers. Various forms of seniority may be negotiated, including: facility-wide seniority; bargaining unit seniority; and classification seniority.

**SIDE-BAR** - A discussion that occurs away from the bargaining table, usually between the chief negotiators from either side. Often side-bars are used to probe areas of settlement or to clarify questions or to share information. Sidebar talks are always considered to be off-the-record.

**STEP INCREASE** - An automatic increase in pay when an employee advances up a wage scale step. The steps are negotiated by the parties in advance and are usually based on years of service.

**STRIKE** - A concerted act by a group of employees, withholding their labor for the purpose of effecting a change in wages, hours or working conditions.

**SURFACE BARGAINING** - Often referred to as a perfunctory tactic whereby an employer meets with the union, but only goes through the motions of bargaining. Such conduct on the part of the employer is considered a violation of the employer's duty to bargain, Section 8(a)(5) of the NLRA.

**SYMPATHY STRIKE** - Concerted work stoppage by employees of Employer A to express sympathy for striking employees of Employer B and to exert indirect pressure on Employer B.

**TENTATIVE AGREEMENT ("TA")** - Issues that are agreed to during bargaining on a labor contract and set aside as tentatively agreed subject to agreement on all outstanding issues of the contract. Tentative agreements have no force or effect until and unless all of the issues on the bargaining table have been resolved and are therefore not implemented until all issues have been settled and ratified.

**TERM OF AGREEMENT**- The contract clause that specifies the time period during which the agreement is in effect. Where an agreement has a term greater than three years, the agreement serves as a contract bar only during the first three years. An agreement can have an automatic renewal provision, in which case the bar also would be renewed. There may be separate duration clauses for different parts of the agreement. Duration clauses may provide for automatic renewal for a specified period of time if neither party exercises its right to reopen the agreement for renegotiation.

**UNFAIR LABOR PRACTICE ("ULP")** - An action by an employer or a union that violates the bargaining law. Violations include interfering with organizing, discrimination against an individual for union activity and bad faith bargaining. Charges alleging an unfair labor practice are filed with the NLRB (private sector) or the state labor relations commission (public sector).

**UNILATERAL ACTION OR CHANGE** - An action taken by an employer without bargaining with the union.

**WEINGARTEN RIGHTS** - Named after a 1975 U.S. Supreme Court decision which ruled that an employee has the right to a union representative in any interview the employer might hold that is intended to investigate a possible discipline charge against the employee.

**ZIPPER CLAUSE** - A clause in the labor contract that states that the agreement is a full and complete understanding of the parties to the negotiation of all of the issues contained in the contract and that anything not contained therein is not agreed to unless put in writing and signed by both parties.