

# Collective Bargaining Terminology

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

**AGENCY SHOP** - A contract provision under which employees who do not join the union are required to pay a collective bargaining service fee instead. Employees who object on religious grounds to supporting unions must pay an amount equal to the service fees to a non-labor, non-religious charity.

**AMERICAN ARBITRATION ASSOCIATION (AAA)**. A private nonprofit organization that, among other things, provides lists of qualified arbitrators to unions and employers and administers the arbitration process.

**AMERICANS WITH DISABILITIES ACT (ADA)** - National law forbidding discrimination against employees on the basis of disability and requiring reasonable accommodations for qualified disabled employees. The ADA is enforced by the Equal Employment Opportunity Commission (EEOC) and by private lawsuit.

**AT-WILL EMPLOYEE** - Under common-law, this phrase describes the relationship between employer and employee that exists without a written contract or other agreement guaranteeing job security. An at-will employee may be terminated at the will of the employer without reason or cause.

**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 the NLRA or 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.

**BARGAINING** - The negotiation by the employer and the employee union or association over the terms and conditions of employment for employees in represented bargaining units.

**BARGAINING AGENT** - A labor organization that is the exclusive representative of all employees in a bargaining unit, both union and non-union members.

**BARGAINING UNIT** - A group of employee titles or classifications (job descriptions) in a workplace that share a community of interest for labor relations matters and that is represented by a union or association in negotiations and other labor relations matters. A unit may also be unrepresented, in which case it is simply a "unit."

**"BECK" NOTICE** - As a result of a U.S. Supreme Court's 1988 decision in *Communication Workers v. Beck*, *Beck* allows employees paying union dues to "opt out" of paying the portion of dues used towards

political contributions or other activity not related to administration of the collective bargaining agreement. The rule, requires employers to post notices where workplace postings are located and in other “conspicuous places.” The *Beck* decision held that union-represented employees who pay agency fees instead of union dues cannot be forced to pay the portion of the fees that cover union expenditures unrelated to collective bargaining, contract administration and the adjustment of grievances. The situation arises where a union and an employer have entered into a union-security agreement requiring workers to pay fees to the union.

**BOULWARISM** - A management tactic used at the bargaining table where the employer asserts that its first offer is its “final, best and last” offer. A take-it-or-leave-it approach to bargaining where no give-or-take or substantive discussion occurs. This tactic has been ruled to be an unfair labor practice by the NLRB.

**BROADBANDING** - The replacement of a salary schedule or pay classification system that has numerous salary grades or levels with one that has only a few "bands" that each carry wider pay-range spreads.

**BUMPING** - A contractual right (also known as “displacement”) whereby employees scheduled for layoff are permitted to bump or displace less senior employees in other jobs for which they are qualified.

**CAFETERIA PLAN BENEFITS** - A benefit program that offers a choice between taxable benefits, including cash, and non-taxable health and welfare benefits. The employee decides how his or her benefits dollars are to be used within the total limit of benefit costs agreed to by the employer.

**CAPRICIOUS** - A phrase usually used in conjunction as “arbitrary and capricious” describing an action or decision which is made without cause or without consideration of an objective standard, and is totally subject to the whim or pleasure of the person or party in power.

**CAPTIVE AUDIENCE MEETING**- A union term for meetings of workers called by management, on company time and property. Usually the purpose of these meetings is to try to persuade workers to vote against union representation.

**CARD CHECK AGREEMENT** - An agreement in which the employer agrees to recognize a union as the official bargaining agent of its employees once a third party verifies that a majority of the entire group of employees has signed union membership cards; typically, the employer also agrees to begin negotiating for a first contract as soon as it recognizes the union. Such agreements avoid costly, lengthy and divisive elections.

**CEASE-AND-DESIST ORDER** - A written statement issued by the labor board requiring the employer or union to abstain from conduct which has been found to be an unfair labor practice.

**CERTIFICATION** - Formal recognition of a union as the exclusive representative of a bargaining unit, usually accomplished through a representation election by employees in the bargaining unit.

**CHECKOFF** - An arrangement under which an employer deducts from the pay of employees the amount of union dues they owe and turns over the proceeds directly to the treasurer of the union.

**CLOSED SHOP** - An agreement between an employer and a union that, as a condition of employment, all employees must belong to the union before being hired. The employer agrees to retain only those

employees who belong to a union. Closed shop agreements were declared illegal by the Taft-Hartley Act.

**COALITION BARGAINING** - When one or both parties engaged in collective bargaining represents a group of entities, e.g. a group of labor unions forms a coalition to negotiate a single agreement.

**COLA** - A cost of living adjustment or escalator clause tied to inflation rates. However, this term is often incorrectly 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.

**COMMON SITE PICKETING** - A form of picketing in which employees of a struck employer, who work at a common site with employees of at least one employer is not being struck, may picket only at their entrance to the worksite. The employees of neutral employers must enter the workplace through another entrance. Picketing is restricted to the entrance of the struck employer so as not to encourage a secondary boycott on the part of the employees of a neutral employer. Also referred to as "common situs picketing."

**COMMUNITY OF INTEREST** - Factors, such as common supervision, job tasks, hours, working conditions, wages and benefits, etc., which determine which groups of employees the NLRB will include in an appropriate bargaining unit.

**COMPANY UNION** - An employee organization, usually in one company, that is dominated by management. The NLRA declared that such employer domination is an unfair labor practice.

**COMPARABLE WORTH** - The evaluation of jobs traditionally performed by one group of workers (such as women or minorities) to establish whether or not the worth of those jobs to the employer is comparable to the worth of the jobs traditionally performed by white men and the payment of extra wages to those occupying comparable jobs but receiving less income.

**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.

**CONFIDENTIAL EMPLOYEE** - An employee whose job requires him/her to develop or present management positions on labor relations and/or collective bargaining, or whose duties normally require access to confidential information that contributes significantly to the development of such management positions. Confidential jobs are not in the bargaining unit and do not have the right to bargain collectively.

**CONSTRUCTIVE DISCHARGE** - In some cases, a resignation provoked by management harassment so unbearable that the resignation may be construed by the court or an arbitrator as a form of discharge, restoring the employee's right to grieve or hold the employer liable for violating the employee's due process rights.

**CONSUMER PRICE INDEX (CPI)** - The standard index used and published monthly by the U.S. Department of Labor to measure the change in the cost of good and services.

**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.

**CONTRACT BAR** - A period of time during the term of a contract when the incumbent union is protected from a take-over action by an outside union to call for an election in order to gain exclusive representation of employees represented by the incumbent union.

**CONTRACTING OUT** - The employment of outside contractors to perform the work formerly performed by the agency's employees. Also called sub-contracting.

**COPE** - Committee on Political Action or (PAC) Political Action Committee of the union. These are funded by voluntary contributions made by individual members for the purpose of supporting labor-friendly legislation (health and safety, safe needle, safe staffing legislation, etc.) and sometime labor-endorsed political candidates.

**CORPORATE CAMPAIGN**- The use of strategic pressure on an employer's weaknesses to gain leverage during a contract campaign or organizing drive. These campaigns involve analyzing an employer's social, financial, and political networks and mobilizing union members and community members in a comprehensive approach which does not rely on the strike alone as the basis of the union's leverage.

**COSTING** – Calculating how much a change in wages, benefits, differentials, and other economic factors cost the employer.

**CRAFT UNIONS**- Unions that organize workers in a single occupation or set of occupations.

**DAVIS-BACON ACT** - Federal law passed in 1931 by Republican legislators and signed by President Herbert Hoover, that provides for the payment of wages by contractors engaged in construction, alteration or repair of public buildings or Federal contracts that must be no lower than locally prevailing wages and benefits for the same kind of work. These wage rates are fixed by the secretary of labor.

**DECERTIFICATION** - An action by employees of a unit to decertify, or remove, the exclusive representation status of the existing union by the filing of petitions calling for an election to change to a different union, or to become unrepresented.

**DEFERRAL** - A policy of the National Labor Relations Board (NLRB) not to process unfair labor practice charges if the charge can be filed as a grievance and taken up through a grievance and arbitration procedure. Known also as the *Collyer* Arbitration Deferral Policy.

**DEFINED BENEFIT PLAN** - A pension plan which guarantee a participant a pension for as long as he/she and his/her spouse are alive. The amount of the pension is generally based on a formula which takes into account a participant's final average earnings, age at retirement and years of service. The purpose of a defined benefit plan is to provide employees who retire with as much replacement income as possible for as long as they live. The plan is funded by the employer making sufficient contributions to the pension fund. The fund then makes prudent investments of the fund's assets and regardless of how well these investments perform, the obligation to fund the guaranteed pension benefits rests with the employer. Many employers are now trying to shift the burden of paying for retirement benefits onto their

employees by shifting from defined benefit plans to defined contribution plans.

**DEFINED CONTRIBUTION PLAN** - In a defined contribution plan, an employer contributes each year a percentage of an employee's salary into a 401(k)-type individual account and leaves it up to the employee the responsibility of investing these assets prudently. If an employees' investments do not turn out well, or if the employee retires during a period of declining stock values, or if the employee outlives the value of his assets, then the employee is stuck without a core retirement income, and risks becoming a member of the elderly poor.

**D.O.L.** - U.S. Department of Labor.

**DOUBLE BREASTED OPERATION** - A condition where an employer operates two closely related companies—one with a union contract and one without. Under such operation, the employer will normally assign most of the work to the non-union segment of its two companies.

**DOVETAIL SENIORITY** - The combination of two or more seniority lists (usually of different employers being merged) into a master seniority list, with each employee keeping the seniority previously acquired even though the employee may thereafter be employed by a new employer.

**DUAL UNIONISM** - Union members' activities on behalf of, or membership in, a rival union.

**DURATION CLAUSE (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.

**ECONOMIC STRIKE** - A work stoppage by employees seeking economic benefits such as wages, hours, or other working conditions. This differs from an unfair labor practice strike.

**EMPLOYEE RETIREMENT INCOME SECURITY ACT (ERISA)** - This law requires that persons engaged in the administration and management of private pensions act with the care, skill, prudence, and diligence that a prudent person familiar with such matters would use. The law also sets up an insurance program under the Pension Benefit Guarantee Corporation (PBGC) which guarantees some pension benefits even if a plan becomes bankrupt.

**ENDTAIL SENIORITY** - The combination of two or more seniority lists (usually from a merger of different employers) into a single seniority list with the group of employees from one company being placed at the bottom of the new seniority list.

**ESCALATOR CLAUSE** - Union contract provision for the raising and lowering of wages according to changes in the cost of living index or a similar standard; most commonly referred to as a Cost of Living Adjustment (COLA).

**ESCAPE CLAUSE** - A provision in maintenance of membership union contracts giving union members an "escape period" during which they may resign from union membership. Members who do not exercise this option must remain members for the duration of the contract.

**EVERGREEN CLAUSE** - An automatic renewal clause. Such a clause purports to continue the terms of the contract indefinitely until the parties negotiate and ratifies a successor contract.

**EXEMPT EMPLOYEE** - An employee who is not covered by the Fair Labor Standards Act and is therefore not eligible for time-and-one-half monetary payments for overtime. Exempt employees are generally paid a salary rather than an hourly rate.

**EXCELSIOR LIST** - Established in the case of *Excelsior Underwear*, the list of names and addresses of employees eligible to vote in a union election. It is normally provided by the employer to the union within 10 days after the election date has been set or agreed upon at the NLRB. The Excelsior list is used as the list of voters during the NLRB-conducted election.

**EXCLUSIVE REPRESENTATIVE** - A union that has been recognized as having exclusive authority to negotiate wages, hours and working conditions on behalf of employees in the bargaining unit the union represents. Exclusive representation is usually attained by a petition and secret ballot election of employees in the unit.

**FACT FINDING** - A procedure, usually advisory, to submit matters that are unresolved in a bargaining impasse. A hearing is held before a fact finder or a panel of three persons: a neutral fact finder, a person selected by the union and a person selected by the employer. A report and advisory recommendations regarding the disputed issues is issued following the hearing.

**FAIR LABOR STANDARDS ACT (FLSA)** - The 1938 federal Wage-Hour Law which establishes minimum wage, maximum weekly hours and overtime pay requirements in industries engaged in interstate commerce. The law also prohibited the labor of children under 16 years of age.

**FAIR SHARE** - In a union security clause of a contract, the amount a nonunion worker must contribute to a union to support collective bargaining activities. This arrangement is justified on the grounds that the union is obliged to represent all employees faithfully.

**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."

**FEDERAL MEDIATION AND CONCILIATION SERVICE (FMCS)**- Independent agency created by the Taft-Hartley Act in 1947 to mediate labor disputes which substantially affect interstate commerce.

**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.

**HOSTILE ENVIRONMENT** - Continuous, low level discriminatory remarks or behaviors that cumulatively 'poison' the workplace for the aggrieved victim enough to alter the terms, conditions or privileges of the workplace, and are commonly considered by the courts and the EEOC as equivalently unlawful to more overt forms of discrimination.

**HOT CARGO CLAUSES** - Clauses in union contracts permitting employees to refuse to handle or work on goods shipped from a struck plant or to perform services benefiting an employer listed on a union unfair list. Most hot cargo clauses were made illegal by the Taft-Hartley Act but there are some exceptions.

**ILLEGAL SUBJECT OF BARGAINING** - A prohibited subject of bargaining; a matter that would deny either party its legal rights. A proposal by management to restrict the filing of grievances is an example of an illegal subject of bargaining.

**IMPASSE** - The point in negotiations at which one or both parties determine that no further progress can be made toward reaching agreement at that point in time. If the employer declares impasse in the private sector it may lead to an imposition of terms and conditions. The Union could challenge a premature declaration or a false impasse by: filing an unfair labor practice charge; waiting with passage of some time; and/or strike. The "duty to bargain" remains on both parties nonetheless. In many states with public sector collective bargaining, a declaration of impasse is often a part of the process that leads to mediation and/or fact-finding or other dispute resolution methods.

**INDUSTRIAL UNIONS**- Unions that organize workers who produce a single product or set of products.

**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.

**INJUNCTION**- A court order to a person or persons to do or to cease doing some particular thing. Often used in the past to end strikes.

**IMPACT BARGAINING** – Negotiating sessions which 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.

**INTEREST-BASED BARGAINING (IBB)** - A bargaining technique in which the parties start with (or at least focus on) interests rather than proposals; agree on criteria of acceptability that will be used to evaluate alternatives; generate several alternatives that are consistent with their interests, and apply the agreed-upon acceptability criteria to the alternatives so generated in order to arrive at mutually acceptable contract provisions. The success of the technique depends, in large measure, on mutual trust, candor, and a willingness to share information. (Compare with the duty to bargain in good faith.) But even where these are lacking, the technique, with its focus on interests and on developing alternatives, tends to make the

parties more flexible and open to alternative solutions and thus increases the likelihood of agreement. IBB often is contrasted with "position-based" bargaining, in which the parties start with proposals (which implicitly are solutions to known or inferred problems). However, even in position-based bargaining the parties normally are expected to justify their proposals in terms of their interests by identifying the problems to which the proposals are intended as solutions. Once the interests are on the table, the parties are in a position to evaluate their initial and subsequent proposals--whether generated by group brainstorming (a common method of generating alternatives in IBB) or by more customary methods--in terms of the extent they are likely to effectively and efficiently solve problems without creating additional problems.

**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 which place the burden of proof for just cause on the employer.

**LANDRUM-GRIFFIN ACT of 1959** - Also known as the Labor-Management Reporting and Disclosure Act (LMRDA), it provides safeguards for individual union members, requires periodic reports by unions, and regulates union trusteeships and elections.

**LILLY LEDBETTER FAIR PAY ACT OF 2009** - is a federal statute in that was the first bill signed into law by Pres. Barack Obama on January 29, 2009. The Act amends the Civil Rights Act of 1964. The new act states that the 180-day statute of limitations for filing an equal-pay lawsuit regarding pay discrimination resets with each new paycheck affected by that discriminatory action. The law directly addressed *Ledbetter v. Goodyear Tire & Rubber Co.*, 550 U.S. 618 (2007), a U.S. Supreme Court decision that the statute of limitations for presenting an equal-pay lawsuit begins on the date that the employer makes the initial discriminatory wage decision, not at the date of the most recent paycheck.

**LIVING WAGE ORDINANCE** - A living wage ordinance is a local—usually city—law that establishes a wage floor for a specific group of workers. While each ordinance is unique, they all establish a wage floor above that of the federal or state minimum wage. Typically, activists propose a wage level derived by dividing the poverty threshold by full-time, full-year work. The motivation for living wage ordinances originates with two related trends: the deterioration of the economic opportunities available to low-income working families, and the use of taxpayer dollars to create poverty-level jobs. Unlike the minimum wage, which covers the vast majority of the low-wage workforce, living wage ordinances have much narrower coverage—a few hundred in a small city, a few thousand in larger cities like Los Angeles and Chicago.

**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.

**LONGEVITY DIFFERENTIAL** - A payment, above the base rate of pay, based on years of service. This payment does not become part of an employee's base pay.

**MAINTENANCE OF MEMBERSHIP** - A clause that requires all employees who are voluntary

members of a union or association to maintain their membership during the term of the labor contract. Typically, there is a window (“escape clause”) during the term of the contract during which employees may withdraw from the union.

**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.

**MASTER CONTRACT** - A union contract covering several companies in one industry. For example, the National Master Freight Agreement covers Teamsters members employed by a number of companies.

**MEDIATION** - The involvement by a neutral (often the Federal Mediation and Conciliation Service or state agency) to assist in negotiations by discussing the disputed issues with the parties together or separately, and assisting the parties in reaching a settlement. This is a voluntary procedure that is non-binding on the parties.

**MEMORANDUM OF AGREEMENT** - 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 given to one employee by the employer to reward good performance. Merit increases lack objective criteria for awarding increases, and thus allow favoritism to enter into the decision awarding such increase.

**MIDTERM BARGAINING** - Literally, all bargaining that takes place during the life of the contract. Usually contrasted with term bargaining--i.e., with the renegotiation of an expired (or expiring) contract.

**MOST FAVORED NATIONS CLAUSE** - A clause in a collective bargaining agreement where the parties agree that if another contract is signed with another bargaining unit containing more favorable terms, such terms will automatically apply to the present contract.

**NATIONAL LABOR RELATIONS ACT OF 1935 (NLRA)** - Federal law guaranteeing workers the right to participate in unions without management reprisals. It was modified in 1947 with the passage of the Taft-Hartley Act, and modified again in 1959 by the passage of the Landrum-Griffin Act.

**NATIONAL LABOR RELATIONS BOARD (NLRB):** Agency created by the National Labor Relations Act, 1935, and continued through subsequent amendment, whose functions are to define the appropriate bargaining units, to hold elections, to determine whether a majority of workers want to be represented by a specific union or no union, to certify unions to represent employees, to interpret and apply the Act's provisions prohibiting certain employer and union unfair practices, and otherwise to administer the provisions of the Act.

**NEUTRALITY AGREEMENT** - An employer agrees not to interfere in its employees' decisions about whether to join a union and the employees and union agree not to disrupt the workplace through strikes, picketing or boycotts.

**NEUTRALITY/CARD CHECK NEUTRALITY** - A neutrality agreement is one in which an employer agrees not to indicate support or opposition to the efforts of their employees to organize for union representation. The employer agrees to not hold mandatory meetings, issue campaign literature, hire consultants or in any way interfere with the workers' right to choose a union. Card Check neutrality agreements include the provision that the employer will recognize the union without a costly and time consuming election if the majority of workers sign a petition or authorization cards indicating their support of the union.

**NO RAIDING PACT** - An agreement between unions not to attempt to organize workers already under represented by another union.

**NORRIS-THERMADORE RULE** - Where the union and the employer sign a written eligibility agreement, the agreement will control, and challenges will not be heard unless the challenges involve persons, such as supervisors, guards or other professional or confidential employees according to the Act or NLRB policy [119 NLRB 1301, 41 LRRM 1283 (1958)].

**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.

**OCCUPATIONAL SAFETY AND HEALTH ACT (OSHA):** The Law which authorizes the OSHA agency to set standards, obligates employers to provide a safe workplace, and provides for enforcement of the standards. The law encourages the states to develop their own safety laws which displace the federal law.

**OFF-THE-RECORD** - Discussions or talks that occur where no official record is kept, and notes are not taken.

**OPEN SHOP** - A bargaining unit in a company or workplace at which the workers, though represented by a duly-elected union, are not required to pay the union dues or service fees for representation which the union is nevertheless legally required to provide.

**ORGANIZING MODEL OF UNIONS** - The philosophy and concept that the primary function of a union's officers and staff is to organize members to have ownership of their union and to exert collective power to solve problems. This is in contrast to the service model.

**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.

**PATTERN BARGAINING** - Collective bargaining in which the union tries to apply identical terms, conditions, or demands to a number of employers in an industry although the employers act individually rather than as a group.

**PERB (Public Employment Relations Board) may also be called SLRB (State Labor Relations Board) and SERB (State Employment Relations Board) among others** - depending on the state public

employee collective bargaining law. An administrative agency charged with administering the state's collective bargaining statutes covering public employees.

**PERMANENT REPLACEMENTS** - Under current labor law, when employees engage in an economic strike, the employer has the right to hire permanent replacements. After the strike has ended, if no back-to-work agreement is reached between the union and the employer, employees replaced during the strike are put on a preferential hiring list and must wait for openings to occur.

**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.

**PIECE WORK** - Pay by the number of units completed. The theory is that the faster you work, the more you will get paid.

**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.

**PREVAILING WAGE**- Generally the wage prevailing in a locality for a certain type of work. It is a wage determinant for many federal construction projects under the Davis-Bacon Act. The term does not necessarily refer to union wages.

**PRIVITIZATION** – Selling or leasing public sector or government functions to private entities or businesses.

**PROJECT LABOR AGREEMENTS** - A Project Labor Agreement (PLA) is a type of pre-hire agreement designed to facilitate complex construction projects which puts all workers, regardless of union, under a separate, umbrella contract that applies only to a specific project. A product of collective bargaining, PLAs govern the work rules, pay rates, and dispute resolution processes for every worker on the project. These agreements do not require employers to sign collective bargaining agreements. These agreements ensure elimination of all work stoppages for the duration of the project, through a project-long no-strike, no-lockout commitment, with binding procedures to resolve all disputes, assuring productive labor relations.

**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.

**PUBLIC EMPLOYEE** - A person who is employed by a municipal, county, state, or federal agency or state college or university.

**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.

**RAILWAY LABOR ACT OF 1926 (RLA)** - This law regulates labor relations in the railway and airlines industries, guaranteeing workers in these industries the right to form a union and bargain collectively. The RLA severely controls the timing and right to strike. Also, bargaining units under the

RLA are usually nation-wide, making it more difficult for workers to form a union.

**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.

**RED CIRCLE** - A method of targeting certain job classifications for special treatment in wage negotiating, with both good and bad results possible.

**REDUCTION-IN-FORCE (RIF)** - A layoff situation.

**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 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.

**“RIGHT-TO-WORK” LAWS** - An anti-union term coined to describe state laws that make it illegal for a collective bargaining agreement to contain clauses requiring union membership as a condition of employment. Encourages the use of "free riders" by forcing union members to subsidize the benefits of collective bargaining for people not willing to pay their fair share.

**“RIGHT-TO WORK” STATES** - States which have passed laws prohibiting unions from negotiating union shop clauses in their contracts with employers covered by the NLRA. There are currently 25 so-called "right-to-work" states. Unions often refer to these as "right to work for less" states.

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

**SECONDARY BOYCOTT** - Refusal to deal with a neutral party in a labor dispute, usually accompanied by a demand that he bring pressure upon the employer involved in the dispute to accede to the boycott's terms.

**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.

**SERVICE FEE** - An assessment of non-members in a bargaining unit to help defray the union's costs in negotiating and administering the contract (see Agency Shop).

**SERVICE MODEL OF UNIONISM** - The concept that the primary function of a union, its staff, and its officers is to service the members or solve the members' problems for them. This is in contrast to the organizing Model of Unions.

**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. Side-bar talks are always considered to be off-the-record. In some negative instances these have been used to actually reach an agreement with the full negotiating committee not involved.

**SIDE LETTER**- An agreement outside the main body of the contract similar to an addendum, but as binding as anything else in the contract itself unless explicitly stated otherwise.

**STEELWORKERS TRILOGY** - Three Supreme Court decisions which emphasized the importance of arbitration as an instrument of federal policy for resolving disputes between labor and management and cautioned the lower courts against usurping the functions of the arbitrator. See *Steelworkers v. Warrior & Gulf Navigation Co.*, 363 US 574 (1960); *Steelworkers v. American Manufacturing Co.*, 363 US 564, (1960); *United Steelworkers v. Enterprise Wheel & Car Corp.*, 363 US 593 (1960).

**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.

**SUCCESSOR EMPLOYER** - An employer which has acquired an already existing operation and which continues those operations in approximately the same manner as the previous employer, including the use of the previous employer's employees.

**SUCCESSORSHIP CLAUSE**- A clause written into the contract designed to protect the union, the contract and working conditions of the workers in a facility in the event of sale or transfer of the facility to another entity.

**SUPERVISOR** - Individual who has the authority in the interest of the employer to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline other employees, or responsibly to direct them adjust their grievances, or effectively to recommend such actions; the exercise of such authority must not be of a merely routine or clerical nature, but must require the use of independent judgment; supervisors are excluded from the NLRA. Involvement by supervisors in support of an organizing campaign can, in certain circumstances, invalidate an election.

**SUPERSENIORITY** - The automatic placement of union officers at the top of seniority lists for purposes of layoff and recall.

**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.

**SWEET-HEART CONTRACT** - Term of derision for an agreement negotiated by an employer and a union with terms favorable to the employer. The usual purpose being to keep another union out or to promote the individual welfare of the union officers rather than that of the employees represented.

**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.

**TAFT-HARTLEY ACT or LABOR MANAGEMENT ACT (LMRA) of 1947** - An amendment of the NLRA which added provisions allowing unions to be prosecuted, enjoined, and sued for a variety of activities, including mass picketing and secondary boycotts.

**TEAM CONCEPT PLANS** - Methods of reorganizing work in ways which blur the traditional lines of distinction between union work and management work. These plans are usually initiated by management, and may be referred to by a variety of names, including Magnet status, Quality Circles, Quality of Worklife, and Re-engineering. If a union does not respond with an aggressive program of member education and mobilization, these plans generally weaken a union's ability to mobilize its members effectively and thereby undermine the union's bargaining power.

**TEN DAY NOTICES** - Unions that represent employees in health care facilities must file a written ten day notice with the employer and the FMCS before any informational picket or strike takes place at the facility. The requirement is a result of Congress amending the NLRA in 1974 by adding a new Section 8(g). *“A labor organization before engaging in any strike, picketing, or other concerted refusal to work at any healthcare institution shall, not less than ten days prior to such action, notify the institution in writing . . . of that intention . . . . The notice shall state the date and time that such action will commence. The notice, once given may be extended by written agreement of both parties.”* The term "healthcare institution" for purposes of this section of the Act is defined as "any hospital, convalescent hospital, health maintenance organization, health clinic, nursing home, extended care facility, or other institution devoted to the care of sick, infirm, or aged persons.”

**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.

**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).

**UNFAIR LABOR PRACTICE STRIKE** - A strike caused, at least in part, by an employer’s unfair labor practice. During an unfair labor practice strike, management may only hire temporary replacements, who must be terminated at the end of a strike to allow the return to work of the strikers.

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

**UNION DENSITY**- The percentage of the labor force in an industry or geographic area or of total employment belonging to unions.

**UNPROTECTED ACTIVITY** - Any conduct for which employees may be discharged or disciplined by an employer which is not protected by the NLRA. For example, a "sit-down" strike is not protected because it consists of taking over the employer's property and preventing it from running the business; a partial strike is the refusal to do some but not all assigned work, such as the refusal to work overtime. An employee must either perform the work assigned [and file a grievance, if available] or strike. Performance of only some of the work assigned is a partial strike and is unprotected.

**UNION BUSTER** - A professional consultant or consulting firm which provides tactics and strategies for employers trying to prevent unionization or to decertify unions.

**UNION LABEL (or UNION BUG)** - A stamp or tag on a product or card in a store or shop to show that the work is performed by union labor. The "bug" is the printer's symbol.

**UNION SECURITY CLAUSE** - A provision in a contract designed to protect the institutional life of the union, such as union shop and union dues check-off clauses.

**UNION SHOP** - A form of union security provided in the collective bargaining agreement which requires employees to belong to or pay dues to the union as a condition of retaining employment. It is illegal to have a closed shop which requires workers to be union members before they are hired. The union shop is legal, except in so-called "right to work" states.

**VESTING** - The amount of time that an employee must work to guarantee that his or her accrued pension benefits will not be forfeited even if employment is terminated.

**VOLUNTARY SUBJECT OF BARGAINING (or Permissive Subject of Bargaining)** Subjects of bargaining other than those considered to be mandatory (see mandatory subject of bargaining). Either party may propose discussion of such a subject, and the other party may voluntarily bargain on it. Neither party may insist to the point of impasse on the inclusion of a voluntary subject in a contract. For example, the employer may not legally insist on bargaining over the method of selecting stewards or the method of taking a strike vote.

**WAGE SCALE** - A schedule of wages paid for different jobs usually according to grade level. Wage scales often include "step" raise increases that are earned on an employee's anniversary date.

**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.

**WILDCAT STRIKE** - A spontaneously organized strike triggered by an incident on the job, usually unauthorized by the union leadership and of short duration.

**WORK-TO-RULE** - A tactic in which workers agree to strictly follow all work rules, even those which are usually not followed. The result is that less work is performed or that the employer is forced to deal with more paperwork, putting pressure on the employer to settle workers' complaints. Some, but not all, work-to-rule campaigns are considered slowdowns, and may violate no-strike clauses in particular contracts or public sector laws.

**YELLOW DOG CONTRACTS** - Agreements signed by workers as a condition of employment in which they promise not to join or remain in a union. The National Labor Relations Act, the Norris-LaGuardia Act and the Railway Labor Act all prohibit them.

**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.