

Subjects of Bargaining

There are three categories of subjects that are established under the National Labor Relations Act. They are: mandatory; permissive or voluntary; and, illegal subjects.

MANDATORY SUBJECTS

Mandatory subjects are those that directly impact – *wages, hours or working conditions* (or terms and conditions of employment). These are subjects over which the parties must bargain if a proposal is made by either party. This does not mean that the parties have to reach agreement on such proposals, but rather that they have to engage in the process of bargaining in good faith over the subject. Mandatory subjects may be bargained to impasse. It is also legal to strike (or to lock-out) to obtain a mandatory subject of bargaining.

Examples of mandatory subjects are:

Wages	Jury duty pay
Shift premiums	Bereavement pay
Overtime	On-call pay
Premium pay	Severance pay
Longevity	Pensions
Pay for training	Health insurance
Holidays	Leave of absence
Sick days	Tuition reimbursement
Hours of work	Seniority
Work schedules	Job duties
Grievance procedure	Probationary period
Workloads	Testing of employees
Vacancies	Rest and lunch periods
Promotions	Bargaining unit work
Transfers	Subcontracting
Layoff and recall	No strike clause
Discipline and discharge	Non-discrimination
Waiver/zipper clause	Dues check off
Mandatory meetings	Mileage and stipends
In-service trainings	Evaluation procedures
Parking	Health and safety
Bonuses	Clothing and tool allowance
Incentive pay	Management rights clauses
Equity pay adjustments	Dental and vision plans
Legal services	Work rules
Bulletin boards	Meals provided by the employer

PERMISSIVE OR VOLUNTARY SUBJECTS

Permissive, voluntary or non-mandatory subjects of bargaining are subjects not directly related to the work. That is, these subjects fall outside of wages, hours and working conditions and generally are matters that relate to the nature and direction of the business/industry or relate to the internal union affairs. The list can be infinitely long. The parties may agree to bargain over these but are not required to by law and can refuse to discuss them without fear of an unfair labor practice charge. They also cannot be bargained to impasse. Furthermore, it would also be a violation to strike over a permissive subject. Subjects that have a minimal impact on the employment relationship most likely are permissive, but it is not always clear. There could be considerable grey areas in determining whether a proposal is mandatory or permissive and these might have to be litigated for resolution.

Examples of permissive/voluntary subjects are:

Negotiation ground rules	Recognition clause defining the bargaining unit
Supervisor's conditions of employment	Either party's bargaining team make-up
Interest arbitration	Make-up of the employer's board of directors or trustees
Settlement of a ULP charge	Demanding that a Union settle arbitrable grievances filed under the previous contract
Pensions for retire members	
Use of the Union label/flag	
Internal Union matters (how stewards and officers are elected, Union dues, officer structure, Union by-laws, etc.)	

ILLEGAL SUBJECTS

Illegal subjects are those that cannot be legally bargained over by either party. They are subjects that would violate a law and cannot be entered into legally into a collective bargaining agreement even if both parties agree to do so.

Examples of illegal subjects are:

Closed shop provisions	Hot cargo clauses (language that prohibits an employer from dealing with any other employer, usually involved in a labor dispute)
Discrimination against a group of employees based on race, sex, disability, age, veteran's status, religion, sexual orientation, marital status, etc.	