

# DICTIONARY OF BASIC LABOR RELATIONS TERMS AND PHRASES

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July, 2005

As part of our continuing efforts to provide basic educational information to clients and members of the public, we provide the following dictionary of basic labor relations terms and phrases:

Agency Shop: A requirement that all employees in a bargaining unit pay a fee (often called a "fair share" or "service" fee) covering the cost of representation to the employee **organization** that is the exclusive representative of the unit.

Arbitration: A method of resolving disputes between management and labor by submitting the dispute to a neutral third party for decision. **Grievance** or "*rights*" *arbitration concerns* disputes over **interpretation or** application of an existing bargaining agreement. "*Interest*" *arbitration is* a procedure for resolving an **impasse** in negotiations on terms of a new agreement.

Authorization Card: A **form** signed by an employee **authorizing** a union to represent him or her in relations with the employer. Cards may be used as "proof of support" to back a union's request to be **recognized** as the exclusive **representative of** a bargaining unit or to call for a representation election.

Bargaining Agent: The formally designated organization or union which represents employees having collective bargaining rights.

Bargaining Unit: A group of employees recognized and/or certified as appropriate (based on criteria such as **community** of interest or bargaining history) to be represented **by an** employee organization.

CPI: Consumer Price Index issued monthly by the Bureau of Labor Statistics. The CPI program produces monthly data on changes in the prices paid by consumers for a representative basket of goods and services.

Certification: Formal recognition by an employer (or administrative agency) that a union is the "recognized" or "exclusive" bargaining representative of an appropriate bargaining unit.

Checkoff: An arrangement whereby union dues, **assessments**, and initiation fees are automatically deducted from employees' paychecks by the employer and forwarded to the employee organization.

Confidential Employee: An employee who is privy to information that affects employee relations. Under the **MMBA** employers **may** adopt rules for designating confidential employees and excluding them from representing any employee **organization** that represents other employees in the agency.

Contract Bar: A rule prohibiting one union from seeking to decertify a pre-existing union as the exclusive **representative** during the term of a contract between the employer and the exclusive representative.

Contracting Out: Use of outside contractors to perform work previously performed by the employer's **employees**.

Decertification: Withdrawal of recognition by the **employer** (or administrative agency) of a union as the "recognized" or "exclusive" bargaining **representative** of an appropriate unit.

Due Process: The constitutional concept of procedural fairness protecting public employees' employment rights.

Duty of Fair Representation: The obligation of a union to represent in good faith all members of the bargaining unit, including non-members.

Evergreen Clause: Provision in a contract that keeps the terms in force even after contract expiration date.

"Excelsior" List: List of names and addresses of **employees** in a bargaining unit, provided by the employer to employee organizations to enable them to communicate with employees prior to a representation election.

Exclusive Representative: The employee organization or union that has won the sole right to represent employees in a bargaining unit, to negotiate an agreement for the unit, and to represent all employees in the unit, including nonmembers of the organization.

**Factfinding:** A method of impasse resolution, usually advisory, that involves investigation of a bargaining dispute by a neutral third party (or tripartite panel) who reports the results to the parties, usually with recommendations for settling the dispute.

Free Riders: Non-union member employees who enjoy the benefits from the union's activities without paying union dues.

Givebacks: Previously attained benefits contained in a labor contract that a union agrees to forego in a successor agreement.

Good Faith Bargaining: The duty of the parties to meet and confer at reasonable times with a demonstrated willingness to reach agreement on terms of a contract, however, neither party is required to make a concession or agree to any proposal.

Grievance: A complaint that the bargaining agreement (or sometimes other policies, procedures or practices of an employer) has been violated.

Impasse: A point, especially in labor negotiations at which reaching an agreement is impossible because neither party is willing to compromise or change position. Declaration of Impasse usually precedes implementation of impasse resolution procedures or unilateral action by the employer.

Impasse Resolution Procedures: Procedures enabling the parties to break a stalemate in bargaining. Common types include mediation, **factfinding**, and arbitration. Binding interest arbitration of certain police and fire Impasses is authorized in Code of Civil Procedure **Sections**. 1299 et. **seq.**

Injunction: A court order that directs a person or organization to take, or cease, a particular action.

Job Action: Employees acting together to pressure the employer to grant a bargaining concession or take a certain action. Common types include the "slowdown," "**sickout**," and "strike."

Job Tenure: Status granted to a public employee, after a probationary period, that protects him/her from dismissal except "for cause," such as incompetence, gross misconduct, or financial necessity.

Lockout: An employer's refusal to allow employees to work or to be paid in order to gain bargaining **concessions** from an employee organization. Sometimes used to prevent striking employees from returning to work before settlement is reached.

Maintenance of Membership: A contractual requirement that employees who become members of the union must remain members for the duration of the **agreement**.

Maintenance of Standards: A clause in a labor contract that requires all existing conditions of employment, except those specifically changed by the contract, to be continued during the term of the new contract. The clause has the effect of confirming past practices.

Management Rights: Certain rights, often identified in the "management rights clause" of a negotiated agreement, that are not within the scope of bargaining because they are intrinsic to the right to manage. Management may not be required to bargain on these matters, but it is required to bargain on the effects of these actions if they have an **impact** on wages, hours, or other terms and conditions of employment.

Managerial Employee: Ranking employees whose duties include heavy involvement with personnel matters, budget decisions and policy development are excluded from membership in a bargaining unit.

Mediation: Also called "conciliation." Efforts of a neutral third party to help resolve a dispute between an employer and a union. The mediator usually has no power to impose a settlement.

Meet and Confer in Good Faith: The duty of an employer to meet and confer or negotiate on mandatory subjects of bargaining or on matters within the scope of representation and fully consider presentations made by a union prior to arriving at a determination of policy or course of action; the duty of the parties to meet and confer promptly on the request of either party and continue for a reasonable period of time in order to exchange freely information, opinions, and proposals, and to endeavor to reach agreement. Also the duty to abide by agreed upon contract promise and obligations.

Memorandum of Understanding (MOU): A written, **negotiated** agreement or contract between the employer and the union that sets out conditions of employment (wages, hours, fringe benefits, etc.) for a stated period of time.

Meyers-Millias-Brown Act ("MMBA"): Enacted in 1968, the MMBA is the California statute that establishes the rights of public sector workers employed by cities, counties and special districts to join unions and engage in collective negotiations. The provisions of the law closely tracks but varies from provisions of the NLRA.

National Labor Relations Act ("NLRA"): Enacted in 1934, the NLRA, also known as the Wagner Act, is the primary federal statute that establishes the rights of private sector workers to join unions and engage in collective negotiations. NLRA is not applicable to public sector workers such as police officers and fire fighters, although the public employees labor laws in some states closely track the provisions of the NLRA.

National Labor Relations Board ("NLRB"): Enacted in 1934, the NLRB or Board is the federal administrative agency charged with administering the NLRA. The Board is composed of five members appointed by the President and handles unfair labor practice complaints brought by the Office of the General Counsel also appointed by the President.

Organizational Security: Also called "union security." A contract provision that protects the union by assuring it income through mandatory membership or fees and/or employer collection of dues or fees. Common types include "agency shop," union shop," "maintenance of membership," and the checkoff' of dues.

Picketing: Employees or representatives of a union patrolling the employer's facility, carrying signs publicizing a dispute. "Informational pickets" only publicize the dispute and do not seek to prevent people from crossing the line.

Protected Activity: The exercise of rights guaranteed by the statute, such as an employee's right to participate or not participate in union activities.

Public Employment Relations Board ("PERB"): The PERB is a quasi-judicial administrative agency charged with administering the collective bargaining statutes governing employees of California's public schools, colleges and universities, employees of the State of California, employees of California local public agencies (cities, counties and special districts) trial court employees and supervisor employees of the Los Angeles County Metropolitan Transportation Authority. The Board is composed of five members appointed by the Governor.

Representation Election: A secret ballot election by **employees** in a bargaining unit to determine if they wish to be represented by a union.

“Rule of Three”: Procedure used in promotion systems whereby the appointing authority is required to select one of the top three scoring candidates on a ranked list for any vacant position. The rule limits, but does not totally eliminate appointing authority’s use of discretion in making promotional decisions. Some jurisdictions use a similar “rule of five.”

Scope of Bargaining: Also called “scope of **representation.**” Issues within the scope of bargaining are those made negotiable by the bargaining act. Under the **MMBA**, the scope of representation includes “all matters relating to **employment** conditions and **employer-employee** relations, **including**, but not limited to, wages, hours, and other terms and conditions of employment, except, however, that the scope of representation shall not include consideration of the merits, necessity, or organization of any service or activity provided by law or executive order.”

**Sickout:** A job action involving employees failing to report to work on the same day and claiming to be sick.

Sidebar Agreement: A second or supplemental agreement entered into by the parties to an existing contract.

Skelly Rights: The due process right to notice of intended disciplinary action, a copy of materials on which the action is based, and an opportunity to respond orally or in writing to an impartial reviewer prior to discipline being imposed.

Slowdown: **A job** action involving employees working at less than normal efficiency, including “working to the rule.”

Strike: A work stoppage. Employees acting together by refusing to work in order to gain a bargaining concession or persuade the employer to take certain action. Usually occurs when negotiations on a new agreement have reached impasse. A “wildcat strike” is a walkout by employees without authorization of the union.

Substantial Evidence Rule: Procedure commonly used by a court when reviewing an appeal of an administrative agency’s decision. The agency’s decision is presumed correct and will be overturned only if it violates constitutional or statutory provisions; is made in excess of the statutory authority of the agency; is made upon unlawful procedure; is affected by other error of law; is clearly erroneous; or is arbitrary or capricious or characterized by abuse of

discretion. The court will not substitute its judgment for that of the administrative agency even if it disagrees with the agency's ultimate decision.

**Substantial Evidence Rule:** Legal doctrine that requires a reviewing court to uphold an administrative agency's decision (e.g., civil service commission disciplinary action) if the decision is supported by "substantial evidence." "Substantial evidence" is generally defined as evidence that a reasonable mind might accept as adequate to support a conclusion. Court will not substitute its opinion for that of the administrative agency if credible evidence exists to support the agency's decision.

**Supervisory Employee:** An employee with authority to hire, transfer, promote, discipline, or assign other employees or effectively to recommend such action. Often excluded from the bargaining unit of employees whom they supervise and prevented from being represented by the **same** organization that represents employees supervised. The **MMBA** does not define supervisory employees and makes no provision for their separate treatment.

**Sovereign Immunity:** The absolute immunity of a sovereign government, such as a state or municipality, from being sued. Many jurisdictions have partially or totally waived immunity but some place a limit on the amount of monetary damages.

**Unfair Practice:** An action by an employer or an employee organization that violates any right protected by the applicable bargaining act. Under the **MMBA**, unfair practices are not **specified** except for the prohibition against interference with an employee's right to participate or not to participate in an organization.

**Unilateral Action:** An action affecting employment conditions, taken by an employer, without prior negotiations or before negotiations have concluded or after impasse procedures have been completed but before an agreement has been reached.

**Union Shop:** A requirement, usually contained in a negotiated agreement, that all employees in the bargaining unit join the union that is the exclusive representative of the unit. Not permitted under the **MMBA**.

**Wage Pass:** A union agreeing to forego a pay raise within a newly negotiated labor contract in exchange for some other benefit.

**Weingarten Rights:** The right of an employee to have a union representative present at a meeting with the employer if the employee has a reasonable expectation that discipline may result.

Zipper Clause: Statement in an agreement that the agreement reflects all understandings of the parties and that anything not contained in the written agreement has not been agreed to unless reduced to writing and signed by both parties subsequent to the date of the agreement. Precludes either party from reopening negotiations during the term of the agreement.

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