

TERMS COMMONLY USED IN LABOR RELATIONS

Agency Shop—Agreement which requires that all employees in the bargaining unit who do not join the union pay a representation fee in lieu of union dues to help defray the organization's expenses as exclusive representative.

Agent for Negotiations —Any organization, agency, or person authorized or designated by a public employer or public employee union to act on its behalf and represent it or them in the collective negotiations process. If the agent is cloaked with "apparent authority" any illegal actions the agent commits, such as unfair labor practices or conduct subject to court litigation, implicate the employer or union the agent represents, even if the illegal act was not authorized or approved.

Appropriate Unit —*See Bargaining Unit.*

Arbitration—A dispute resolution procedure in which an impartial third party renders a decision on an issue submitted by the parties.

Grievance Arbitration —A contractually agreed-upon procedure for the settlement of grievances, usually involving interpretation and application of the collective bargaining agreement or past practices, by a neutral third party.

Advisory Arbitration—The terms of settlement rendered by the arbitrator are in the nature of recommendations, which the parties are not obligated to accept.

Binding Arbitration—The parties are compelled to accept and abide by the terms of the arbitrator's award, which is enforceable in the courts.

Interest Arbitration—Distinguished from grievance arbitration. Under Washington law, public sector employees do not have the right to strike to settle a labor dispute. For bargaining units that qualify for interest arbitration (i.e. uniformed employees such as police and firefighters), a bargaining dispute may be submitted to a neutral third party chosen by the parties or appointed by an administrative agency to render a final and binding resolution. A bargaining dispute is submitted to the neutral third party after impasse had been reached, and efforts at mediation have been unsuccessful.

Authorization Card—Statement signed by an employee designating an employee organization to act as his/her representative in collective bargaining. An employee's signature on an authorization card does not necessarily mean that he/she is a member of the organization but rather indicates that the employee supports the union in its quest to become the majority representative. The signing of authorization cards is the first step in the establishment of bargaining rights.

Bar Rules –Procedural barriers, established by law to promote labor stability by providing continuity for the bargaining agent and bargaining unit.

Certification/Election Bar–Protects a newly certified representative for a period of at least one year from the possibility of facing another election, and protects a bargaining unit from being modified except through the filing of a unit clarification petition.

Contract Bar–Protection during the life of an agreement that limits the filing of representation petitions to the “open period.”

Bargaining Unit –A group of employees that has been recognized by the employer, or certified by PERC, as constituting an appropriate unit for the purposes of collective bargaining.

Caucus–In collective bargaining, when either party requests a recess from the at-the-table deliberations with the other party, for the purposes of discussing any bargaining issue without the other party’s bargaining team present.

Card Check –Procedure whereby signed employee authorization cards are checked against an acceptable list of employees in a prospective bargaining unit to determine if the organization has majority status. Under Washington law, PERC may call for a card check if 70% of the employees in the unit sought have signed authorization cards.

Certification–The designation of a union as exclusive representation or bargaining agent of a given unit or group of employees.

Chief Spokesperson-The person designated by the bargaining team to present and discuss proposals on behalf of the team.

Coalition Bargaining–*See Coordinated (Coalition) Bargaining.*

Collective Bargaining–A method in which representatives of the employees and employer determine the terms and conditions of employment of all positions in a bargaining unit through direct negotiations. The collective bargaining obligation of a public employer and the bargaining representative of employees refers to the requirement that the parties meet at reasonable times, confer and negotiate in good faith, and execute a written agreement with respect to grievance procedures and collective negotiations on personnel matters including wages, hours and working conditions.

Collective Bargaining Agreement –The document incorporating the results of the negotiations between the parties; a written instrument setting forth the terms and conditions of employment, grievance resolution procedures, and any other accords resulting from collective bargaining. Also known as the contract,

agreement, etc. PERC requires that the terms of a collective bargaining agreement be reduced to writing and that the terms of a collective bargaining agreement cannot be changed unilaterally by either party.

Community of Interest—A factor to be considered in determining whether employees should be grouped together as an appropriate bargaining unit.

Comparative Data—Statistical data used to make comparisons between levels of employee compensation. Frequently used to support bargaining proposals.

Concerted Activity—Refers to any kind of job action by an employee group or groups of employees designed to put pressure on the employer to reach a settlement quickly or address an employment concern.

Confidential Employee—Employee whose functional responsibilities or knowledge in connection with the issues involved in the collective bargaining process would make their membership in any appropriate bargaining unit incompatible with their official duties. In determining the confidential status of a position, PERC looks beyond the job title and the written job description to examine the employee's actual job functions. To be considered a "confidential employee," the job's actual ongoing functions must have a "nexus" to knowledge of the employer's bargaining strategy and negotiations positions.

Contract—See *Collective Bargaining Agreement*.

Contract Administration—Living under, interpreting, and applying the terms of the collective bargaining agreement.

Contract Bar—See *Bar Rules*.

Coordinated (Coalition) Bargaining—A practice in which either several employers or several unions (or locals) form a committee to develop common bargaining objectives to be obtained during negotiations. This can become an unfair labor practice if coordination results in bargaining patterns that ignore the distinct boundaries of separate bargaining units; for example, agreement in negotiations cannot be conditioned upon the terms of other units nor upon settlement of other ongoing negotiations.

Counterproposal—An offer made by either party in collective bargaining negotiations in response to a proposal by the other party. Agreement is usually reached after a series of proposals and counterproposals have been made by each side.

Decertification—A procedure for removing the designation of an employee organization as the certified bargaining representative. This is done after a

petition is filed with PERC alleging that the organization no longer represents a majority of the employees.

Direct Dealing- Occurs when an employer and represented employee discuss and take action, absent the union's knowledge or presence, in matters that fall within the scope of mandatory subjects of bargaining.

Discrimination—The shortened form for “discrimination in regard to hire or tenure of employment as a means of encouraging or discouraging membership in a labor organization.” Such discrimination is an unfair labor practice under federal and state labor laws. It is also the refusal to hire, promote, or admit a person to union membership because of their race, creed, color, sex, national origin, or other protected class.

Due Process –The procedural protections that are enjoyed by all people, including government employees, in their relationships with their various governments; substantive protections that the Constitution and statutes afford public employees.

Dues Check-Off—A union security device by which union fees or dues are collected through payroll deductions.

Duty of Fair Representation—Applies to a union's affirmative duty to represent all members of a bargaining unit that the organization has been designated to represent. The union must represent all bargaining unit employees regardless of their union membership status.

Effects (Impact) Bargaining- Certain decisions are within management's right to make (e.g. entrepreneurial decisions). Although management is not obligated to bargain with the union regarding such decisions, such decisions may impact mandatory subjects of bargaining. The bargaining that must occur over these impacts is known as Effects Bargaining.

Election -A proceeding conducted by PERC in which members of an appropriate bargaining unit cast secret ballots to determine which, if any, employee organization (union, guild, etc.) is desired to become the unit's exclusive bargaining representative. Elections may result from a petition and showing of interest being filed with PERC. The employee organization receiving the majority of valid ballots cast in the election is certified by PERC as the unit's exclusive representative.

Election Bar—*See Bar Rules.*

Exclusive Representative— The employee organization certified to represent employees in an appropriate bargaining unit. The exclusive representative is

designated as the agent for collective bargaining and grievance processing for all employees in the unit, both members and nonmembers.

Garrity Rights- *Garrity* rights are available to any public employee, and arise under the 5th Amendment rights against self-incrimination in a criminal context. The U.S. Supreme Court determined that public employees possess the 5th Amendment right to be free from compulsory self-incrimination should a criminal charge arise out of the same conduct that is at issue in a disciplinary hearing. Under *Garrity*, public employees' compelled answers may not be used against them in a criminal proceeding. *Garrity* only applies to criminal proceedings, hence, information gathered from a compelled statement may be used in an administrative proceeding, civil lawsuit, or criminal proceeding involving other public employees.

Good Faith Bargaining –The requirement that an employer and employee organization meet at reasonable times to negotiate in good faith, with an intent to reach an agreement, with respect to wages, hours, and other terms and conditions of employment. Good faith bargaining is determined based upon a “totality of conduct” and has traditionally been interpreted not to require an employer or union to agree to a proposal or to make a concession, although each party must maintain an open mind and a willingness to be persuaded by the other party.

Grievance –A allegation by an employee, union, or employer that a collective bargaining agreement has been violated. Many collective bargaining agreements provide for specific steps for filing grievances and the progression of grievances, up to and including arbitration.

Grievance Procedure –The mechanism outlined in the collective bargaining agreement which provides employees with a formal procedure by which to appeal managerial interpretations or applications of the terms of the collective bargaining agreement. Grievance procedures generally establish who may grieve, what may be grieved, how the grievance will be processed, and how it will be resolved.

Hearing Examiner—A PERC staff member employed to take testimony and issue recommendations to the Commission in unfair practice matters.

Illegal Subjects for Bargaining –*See Scope of Negotiations.*

Impasse—Stalemate or deadlock in collective bargaining between management and labor representatives; a point at which either or both parties to negotiations determine that no further progress toward settlement can be made through direct negotiation. Next steps may include mediation, arbitration implementation of final offer, or interest arbitration if a uniformed employee group (i.e. police or fire.)

Implementation—An extremely rare procedure in which an employer unilaterally imposes its last offer on all terms and conditions of employment. An employer may only implement after negotiations have reached “true impasse,” and implementation does not signal an end to the bargaining obligation.

Injunction—An order restraining individuals or groups from committing acts which may do irreparable harm. There are two types of injunctions: temporary restraining orders, issued for a limited time and prior to a complete hearing; permanent injunctions, issued after a full hearing, in force until such time as the conditions which gave rise to their issuance have been changed.

Interest Arbitration—*See Arbitration.*

Just Cause—This standard has come to denote a variety of “due process” safeguards, such as rights to notice and a hearing, to assure that discipline has been imposed in an appropriate manner and for sufficient reasons. Many arbitrators employ a “seven steps” of just cause standard to determine if sufficient due process has been employed. Aspects of the seven steps include notice, reasonable rules, thorough investigation, consistent application of rules, and sufficiency of evidence.

Labor Organization—Any organization, agency, employee representative, committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, rates of pay, hours of employment, or conditions of work.

Loudermill Rights- The U.S. Supreme Court has stated that a public employee who has a “property interest” in their employment may not be terminated without a due-process meeting. Under *Loudermill*, prior to final decisions by the public employer to suspend, demote or terminate an employee, the employee is entitled to know what charges of misconduct are being alleged, to have an opportunity to present their “side of the story” and present reasons why the proposed discipline should not occur.

Management Rights—Areas in which employers are held to have the right to make unilateral determinations. These rights are often expressly and specifically reserved to employers in statute, collective bargaining agreements, or memoranda of understanding.

Management Rights Clause—A contract provision spelling out with specificity areas where the employer reserves discretion or expressing areas over which the employer retains control. They often include the right to maintain efficiency and order and to hire and direct the workforce.

Mandatory or Required Subjects for Bargaining—Subjects about which employers are required to bargain, namely “wages, hours and working

conditions”. Examples include, but are not limited to, compensation, overtime, seniority, health insurance benefits, lunch breaks, work schedules and seniority.

Mediation –A process in which a neutral third party assists parties in a bargaining dispute to come to a voluntary agreement by suggesting possible areas of compromise, bringing a different point of view, clarifying issues, and other techniques designed to bring the parties closer together and narrow the disagreement. The function of mediation is to assist the parties by being creative and innovative in finding areas of agreement and compromise to reach final resolution of the dispute.

Memorandum of Agreement/Memorandum of Understanding/Letter of Understanding (MOA/MOU/LOU)- Interchangeable terms that refer to an agreement negotiated by both parties in response to an issue that arises during the life of the contract.

Merit Pay (Pay for Performance)–The linking of salaries of individual employees to an evaluation of their performance, or achievement of a pre-determined target. As a form of compensation, merit pay is mandatorily negotiable.

Neutral–An individual who acts as conciliator, mediator, factfinder, or arbitrator; any disinterested third party who intervenes into negotiation disputes in order to facilitate settlement.

No-Strike Clause–A provision in a collective bargaining contract in which the union promises that during the life of the contract the employees will not engage in strikes, slowdowns, or other job actions.

Open Period –Petitions for exclusive representative status are timely during a certain period prior to the expiration of a contract.

Past Practice- A consistent action or behavior with respect to an issue over time such that employees, the union and the employer come to recognize the practice as the standard. A past practice, however, cannot supercede clear contract language regarding the issue. Past practice is used by arbitrators to interpret ambiguous contract language.

PERC –*See Public Employment Relations Commission.*

Permissive Subject of Bargaining – Topics that fall outside of the mandatory categories of “wages, hours and working conditions.” Permissive subjects may be proposed during bargaining, and bargaining may occur, but it is not legally required. If one party elects not to bargain the topic, the other party must drop the topic. Parties may not bargain to impasse over permissive subjects.

Picketing—The patrolling of the entrance to an establishment by union members. The goal of picketing may be to persuade other workers to stop work or to publicize the existence of a dispute. Picketing may occur to pressure an employer to agree to certain contract terms, to settle a grievance, or to cease and desist from alleged unfair labor practices. Picketing is not synonymous with striking.

Progressive Discipline—A process in which increasingly severe penalties are imposed on an employee when lesser discipline fails to correct the employee's behavior; except for very serious misconduct, the most severe discipline is rarely imposed for a first offense.

Protected Activity —Those activities with respect to the exercise of rights under labor relations statutes which are specifically allowed.

Public Employment Relations Commission (PERC)— A Washington state agency that is responsible for providing impartial, efficient and expert resolution of labor-management disputes and interpretation of state labor laws.

Recognition—The written acceptance by a public employer of an employee organization as the majority representative of employees in an appropriate unit. Recognition is a major step in the establishment of a collective bargaining relationship and usually follows an election in which the majority of employees have selected an organization to represent them. Under certain conditions, employers may also voluntarily recognize an organization without an election or official certification.

Remedy, Remedial Order—An order of an administrative agency, court, or arbitrator to correct a defect; relief or cure.

Reopener Clause—A provision in a collective bargaining agreement stating the time or the circumstances under which negotiations can be requested prior to the expiration of the contract. Reopeners are usually restricted to specific issues and not used for the contract as a whole.

Representation Proceeding — A procedure for the purpose of determining the majority representative of employees, if any, in an appropriate collective bargaining unit; or a question or controversy concerning the representation of public employees for the purpose of collective bargaining.

Scope of Negotiations (Scope of Bargaining)—The range of subjects dealt with by union and management and covered in the collective bargaining agreement (See *Mandatory Subjects* and *Permissive Subjects*, above).

Showing of Interest—Evidence that a certain number of the employees in the proposed bargaining unit wish to be represented by the petitioner for the purposes of collective bargaining. See *Authorization Card*.

Status Quo, Obligation to Maintain—A legal responsibility that an employer maintain all of the terms and conditions of employment contained in an expired agreement until a successor agreement is reached.

Strike—A concerted work stoppage by employees resulting from a bargaining impasse or some other conflict between employer and union. The Washington Supreme Court has held that strikes by public employees are illegal.

Terms and Conditions of Employment —Generally speaking, wages, hours, working conditions, and fringe benefits.

Unfair Labor Practice—A practice on the part of either union or management that violates the provisions of the Washington State labor law. Examples on the part of unions are: (1) causing an employer to discriminate against an employee on the basis of that employee's membership in a union; (2) refusing to bargain collectively with an employer; (3) interfering in an employer's exercise of its rights under the statute; (4) failing to fairly represent all members of the bargaining unit. Examples on the part of management are: (1) controlling or interfering with unions; (2) discriminating against workers for the union support or activity; (3) retaliating against workers for complaining to the administrative agency; (4) refusing to bargain collectively with the exclusive representative.

Union—See *Labor Organization*.

Union Security — Provisions in collective bargaining agreements that protect unions, such as: mandated union membership, payment of dues or representation fees, and arrangement for the employer's collection of those monies.

Unit Clarification or Modification—A change in the original composition of the bargaining unit, consolidation, and accretion. Unit clarification is a procedure for eliminating or adding certain employees to existing bargaining unit. Accretion assimilates employees in positions created after certification into an existing unit. Consolidation is a means for overcoming fragmentation of a unit; a combination of existing units into one comprehensive unit.

Unit Determination —A procedure by which a labor relations agency makes a finding as to the appropriateness of including certain employees within a group for collective bargaining purposes (bargaining units). Unit determination criteria are frequently established by statute and provide guidelines to the agency in judging the fitness of the unit.

Unit Determination Criteria—Factors established for guidance in creating bargaining units. These include community of interest: the existence of a common-enough aspect of employment to make it reasonable for a group to negotiate together; efficiency of operation: the employer's capacity to function in view of the inclusion of certain employees in the same unit; the bargaining history of the parties: the manner in which they have previously functioned; and others.

Voluntary Recognition—*See Recognition.*

Weingarten Rights-This is the right of employees to have Union representation present during investigatory interviews. An investigatory interview occurs when a supervisor questions an employee to obtain information that could be used as a basis for discipline or asks an employee to defend his/her conduct. If an employee has reason to believe that discipline or some other adverse consequence may result from he/she says, then the employee has the right to request Union representation.

Zipper Clause —A provision in a collective bargaining agreement that specifically states that the written agreement is the complete agreement of the parties and that anything not contained therein is not agreed to unless put into writing and signed by both parties following the date of the agreement. The zipper clause is intended to stop either party from demanding renewed negotiations during the life of the contract. It also works to limit the freedom of a grievance arbitrator because he must make his decision based only on the contents of the written agreement.