

GLOSSARY

Administrative Law Judge: An employee of the Public Employment Relations Board who conducts unfair practice hearings and issues proposed decisions, which become final and binding on the parties unless appealed to the Board itself.

Agency Shop: A requirement, usually contained in a negotiated agreement, 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.

Agreement: A written, negotiated contract between the employer and the recognized exclusive representative of the employees in a bargaining unit that sets out conditions of employment (wages, hours, fringe benefits, etc.) for a stated period of time. Often contains a procedure for settling grievances over interpretation or application of the agreement and may include terms governing the parties’ relationship.

Arbitration: A method of resolving disputes between an employer and employee organization by submitting the dispute to a neutral third party (or tripartite panel) whose decision may be binding or merely advisory. *Grievance or “rights” arbitration* is usually the final step in a negotiated procedure for resolving disputes over interpretation or application of an existing bargaining agreement. (See also “Deferral to arbitration.”) *Interest arbitration* is a procedure for resolving impasse in negotiations on terms of a new collective bargaining agreement.

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

Bargaining: See “Good faith bargaining” and “Negotiations”.

Bargaining Unit: A group of employees constituting an appropriate unit for purposes of representation by an employee organization in relations with the employer.

Board Agent: Employee of the Public Employment Relations Board authorized to process unfair practice charges and other matters. See also “Administrative law judge.”

Certification: Formal recognition by PERB that an employee organization is the majority or “exclusive” bargaining representative of an appropriate bargaining unit. Certification usually follows a representation election among employees in the bargaining unit.

Collateral estoppel: A legal principle precluding the same parties from re litigating the same issue in a second case.

Collective bargaining agreement: See “Agreement.”

Concerted activity: See “Protected activity and “Job action.”

Confidential employee: Defined in various ways under the PERB administered statutes. Generally an employee who is privy to management information related to employer-employee relations. Can have important implications for coverage by the act or composition of bargaining units.

Contract bar: A rule prohibiting a rival employee organization from seeking to decertify the exclusive representative during the life of a bargaining agreement between the employer and exclusive representative.

Contracting out: Employment of outside contractors to perform work previously performed by the employer’s employee.

Decertification: Withdrawal of recognition by PERB of an organization as the exclusive representative of a bargaining unit. Usually follows a decertification election by employees in the unit and may be in response to a rival organization seeking to replace the incumbent organization as the exclusive representative.

Deferral to arbitration: There are two types of arbitration deferrals. Under *pre-arbitration deferral*, PERB may defer to the negotiated grievance arbitration procedure any unfair practice charge involving a claim that also is “arguably prohibited” by the parties’ agreement and that is subject to arbitration. Pre-arbitration deferral is discretionary and the board will not defer a charge to arbitration if resort to the grievance procedure would be “futile”, such as where the grievance would be time-barred and the employer refuses to waive time lines. *Post-arbitration deferral* refers to the discretionary authority of PERB to defer to a decision of an arbitrator on contractually grieved matters that also constitute arguable violations of one of the PERB-administered statutes; the arbitrator’s decision is upheld unless it is “repugnant to the act”.

Due process: The constitutional concept of procedural fairness protecting a public employee’s employment rights. See “*Skelly* rights”.

Dues check-off: An arrangement whereby union dues, assessments, and initiations fees are automatically deducted from employees’ paychecks by the employer and forwarded to the employee organization.

Duty of fair representation: The obligation of the exclusive representative to represent in good faith all members of the bargaining unit, including nonmembers of the union.

Dynamic status quo: An established past practice that takes into consideration patterns of change in terms or conditions of employment, such as changes in benefits. Implementing a change that falls within the range of changes previously implemented within the dynamic status quo is not an unlawful unilateral change.

Equitable tolling doctrine: The policy of stopping the running of the clock on the “statute of limitations” (which limits the time period for filing a charge) while the same dispute is litigated in a bilaterally agreed-upon dispute resolution procedure.

“Excelsior” list: A list of names and home 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 that has won or obtained the sole right to represent employees in a bargaining unit and to negotiate an agreement for the unit. The exclusive representative must represent all employees in the unit in grievances and negotiations, including nonmembers of the organization. Generally, this right may be gained by a representation election or granted voluntarily by the employer based on a showing of majority of support by the employees of the unit.

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

Fair share fee: Agency shop fee. See “Agency shop.”

Good faith bargaining: Broadly defined as the duty of the parties to meet and negotiate (or “meet and confer”) at reasonable times with willingness to reach agreement on matters within scope of representation; however, neither party is required to make a concession or agree to any proposal. Failure to negotiate in good faith is an unlawful practice. Furthermore, the parties must begin negotiations sufficiently in advance of adoption of the employer’s budget to allow time for agreement to be reached or impasse to be resolved. Also see separate definitions of “Negotiations”, “Hard bargaining”, and “Surface bargaining”.

Grievance: A complaint that the bargaining agreement has been violated. Grievances may be resolved through a negotiated grievance procedure, usually contained in the bargaining agreement, which may culminate in binding arbitration.

Hard bargaining: Good faith, adamant maintenance of a legitimate bargaining position, as distinguished from conduct designed to subvert the bargaining process. Compare “Surface bargaining”, below.

Impasse: A deadlock or stalemate in bargaining declared by one or both parties. Declaration of impasse usually precedes implementation of impasse resolution procedures or unilateral action by the employer.

Impasse resolution procedures: Procedures to enable the parties to break a stalemate in bargaining mandated under some PERB-administered statutes and permitted by agreement between the parties under other statutes and rules. Common types include

mediation, fact-finding, and arbitration (see separate definitions). Failure to participate in the procedures in good faith is illegal.

Injunction: A court order that directs a person or organization either to take or to 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 slowdowns, sickouts, strikes and “work to rule” (see separate definitions).

Judicial review: Court review of a ruling by an administrative agency.

Lockout: An employer’s refusal to allow employees to work or be paid in order to gain bargaining concessions from an employee organization. Usually occurs when negotiations on a new agreement have reached impasse. May be used to prevent striking employees from returning to work before a settlement is reached.

Maintenance of membership: A requirement, usually contained in a negotiated agreement, that employees who become members of the employee organization must remain members for the duration of the agreement.

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 employer’s managerial role. While the employer is not required to bargain over changes in such matters, it must bargain on their effects if there is an impact on wages, hours, or other terms and conditions of employment.

Management employee: An employee who has significant responsibilities for formulating employer policies or administering programs and who usually is excluded from bargaining units.

Mediation: Also called conciliation. Efforts of a neutral third party to help resolve a dispute (usually involving contract negotiations) between an employer and employee organization. The mediator normally has no power to impose a settlement.

Memorandum of Understanding: A negotiated agreement. See “Agreement”.

Merit system: A system governing employment conditions that assures pay, hiring and discipline are based on employees’ abilities and performance. Also called civil service system.

Me too clause: Also referred to a “most favored nations” or “parity” agreement; a contract provision specifying that one party to a collective bargaining agreement (employer or union, usually union in the public sector) shall obtain any more favorable contractual terms subsequently negotiated by the other part with another employer or union.

Negotiations: The process of the employer and the exclusive representative meeting together and bargaining in a good faith effort to reach agreement on matters within the scope of representation and executing, if requested by either part, an agreement incorporating matters agreed on. Also see separate definition of “Good faith bargaining”.

Organization security: Also called union security. A provision, usually contained in a negotiated agreement that protects the employee organization by assuring it receives 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 dues check-off (see separate definitions).

Parity agreement: See “Me too clause.”

Picketing: Employees or representatives of an employee organization patrolling the employer’s facility, carrying signs publicizing a dispute, often in connection with a strike or job action to explain the nature of the dispute and to persuade individuals not to cross the picket line or enter the facility. “Informational pickets” only publicize the dispute and do not seek to prevent people from crossing the line.

Prima facie case: A prima facie case exists where the acts alleged, if proven, would constitute a violation of the act.

Protected activity: Generally defined as the exercise of rights guaranteed by the statute, such as employees’ rights to join and participate in an employee organization.

Released time: Employer-paid leave for union officials to engage in specified union – related activity.

Representation election: A secret ballot election by employees in a bargaining unit to determine if they wish to be represented by an employee organization and/or to select an organization as the exclusive representative of the unit.

Scope of bargaining: Also called scope of representation. Subjects about which the parties are required by law to negotiate. Generally, scope is limited to matters related to wages, hours of employment, and other terms and conditions of employment, which are specifically enumerated or limited by some of the PERB-administered statutes. Subjects not specifically enumerated in the statute also generally are within scope if they logically and reasonably relate to an enumerated subject, are of sufficient concern to parties that conflict is likely and mediatory influence of bargaining is appropriate to resolve the conflict, and negotiations will not significantly abridge managerial prerogatives. Some subject outside the scope of bargaining are called “permissive subjects”. Parties may bargain over these subjects, but may not insist to impose on a permissive subject. Other subjects are prohibited altogether. PERB has authority to determine whether a particular item is within scope.

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

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 the discipline being imposed.

Slowdown: A job action involving employees working at less than normal efficiency, including “working to the rule,” or meticulously following all workplace rules.

Statute of limitations: -The time period set out in a statute for filing a complaint, suit, or appeal from an administrative or judicial ruling. However, PERB has expressly ruled under some of the statutes it administers that the statute of limitations does not constrain PERB’s jurisdictions; therefore a respondent claiming a lack of timeliness must raise the issue as the affirmative defense. See also “Equitable tolling doctrine.”

Strike: A work stoppage. Employees acting together in refusing to work in order to gain a bargaining concession or to persuade the employer to take certain action. Usually occurs when negotiations on a new agreement reach impasse and lasts until settlement on a new agreement is reached, but may be called for a shorter period as a pressure tactic or to protest employer actions. Usually conducted under leadership of the employee organization, following a vote among members. A “wildcat” strike is a walkout by employees without authorization of the organization. A “rolling” or “yo-yo” strike involves several intermittent walkouts of short duration interspersed among days when employees report to work. A “sympathy strike” is a work stoppage by one bargaining unit to support a job action by another bargaining unit. Also see “Sickout” and “Job action”.

Sunshine law: A requirement that bargaining proposals or other aspects of public employee bargaining be made public.

Supervisory employee: An employee having authority to hire, transfer, layoff, promote, reward, discipline, or assign work to and direct other employees, or to adjust their grievances, or effectively to recommend such action if the exercise of such authority requires independent judgment. Under some PERB-administered statutes, a unit of supervisory employees must include all those employed in the district and may not be represented by the same organization that represents employees whom the supervisory employees supervise.

Surface bargaining: Unlawful bargaining table conduct designed to create the illusion of good faith bargaining but without the requisite intent to reach agreement. Can consist of refusal to act on proposals or introduce counterproposals, efforts to abrogate previously established bargaining ground rules, making proposals contingent on withdrawal of grievances or unfair practice charges, reopening previously settled issues, or dilatory conduct in scheduling and attending negotiations. Compare “hard bargaining”.

Unfair practice: An action by an employer or employee organization that violates any right protected by the bargaining act or by a rule adopted pursuant to authority conferred by the bargaining act. Under some PERB-administered statutes, may also include promulgation of a local rule that conflicts with the enabling bargaining act.

Unilateral action: An action affecting a matter within the scope of bargaining, usually taken by an employer, without affording prior notice and an opportunity to negotiate, or before negotiation have concluded. A unilateral action that has a generalized effect or impact on the bargaining unit is a per se failure to negotiate in good faith.

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. See “Agency shop.”

Work to rule: A job action in which unit members decline to perform any discretionary or voluntary functions but perform only those duties specifically required by their job description.

Zipper clause: Statement in an agreement that it reflects all understandings of the parties and that anything not contained in the written agreement has not been agreed to unless reduced in 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.