



MONTANA NURSES ASSOCIATION

BARGAINING TERMINOLGY

A

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.

B

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.

C

COLA - A cost of living adjustment. However, this term is often 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.

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.

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.

D

DEFINED BENEFIT PLAN - A pension plan that 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 that 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.

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.

E

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.

F

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.

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 of the Federal government created by the Taft-Hartley Act in 1947 to mediate labor disputes that substantially affect interstate commerce.

FRINGE BENEFITS – Negotiated contract provisions other than wages and hours; for example, health insurance, welfare fund, pensions.

G

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.

H

I

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. Declaration of impasse usually precedes engaging in the impasse procedures that are included in the agency's Local rules, if any, or unilateral action to implement its last offer by the employer.

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 that 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.

J

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 that place the burden of proof for just cause on the employer.

L

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.

M

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.

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.

N

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.

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.

O

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 - Discussion or talks that occur where no official record is kept, and notes are not taken.

P

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.

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.

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.

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.

Q

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.

R

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.

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.

S

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

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.

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. Sidebar 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.

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.

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.

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.

T

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.

U

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 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.

V

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.

W

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.

Y

Z

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.