**A GLOSSARY OF TERMS USED IN COLLECTIVE BARGAINING**

**ACROSS THE BOARD INCREASE** - A general wage increase that covers all the members of a bargaining unit, regardless of classification, grade or step level.

**ARBITRATION** – A simple proceeding (usually) voluntarily chosen by parties who want a dispute determined by an impartial judge of their own mutual selection, whose decision based on the merits of the case, they agree in advance to accept as final and binding (Elkouri & Elkouri, How Arbitration Works). Arbitrations are used to settle labor/management disputes. While it varies under state law, generally overturning an arbitration decision is challenging.

**AT-WILL EMPLOYEE** - Under common-law, this phrase describes the relationship between employer and employee that exists without a written contract or other agreement guaranteeing job security. The employment relationship is generally terminable at will by either party with or without cause or justification. An at-will employee is not part of any bargaining unit.

**AUTHORIZATION CARD** - A form voluntarily signed by an employee whereby the employee authorizes a labor organization (union) to exclusively represent him/her for the purposes of collective bargaining. Some cards may also have a section for the employee to sign to authorize for dues deduction.

**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 (see retroactive pay).

**BAD FAITH**  **BARGAINING -** refers to situations in which there is no real intent of trying to reach an agreement. Some examples of bad faith bargaining include: the failure to engage in the exchange of bargaining proposals; the failure to offer counter proposals; unwarranted cancellation of sessions; delays in bargaining; failure to meet at appropriate times or places; regressive or surface bargaining (see below); or a general conduct designed to frustrate the bargaining process. See also “Regressive Bargaining”.

**BARGAINING** - The negotiation by the employer and the employee union or association over the terms and working conditions of employment for employees in represented bargaining units.

**BARGAINING AGENT** - A labor organization that is the exclusive representative of all employees in a bargaining unit, both union and non-union (“fair share”) members.

**BARGAINING UNIT** - A group of employee titles or classifications (job descriptions) in a workplace that share a community of interest for labor relations matters and that is represented by a union or association in negotiations and other labor relations matters.

**CAUCUS** – When either team during a bargaining session requests to break from the joint meeting and meet with their team for a brief period. The following are some reasons to caucus: to strategize; to develop new arguments, to develop counter proposals, to discuss the current status of bargaining issues, to relieve possible tension, etc.

**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, etc.

**COMMUNITY OF INTEREST** - Under labor law, community of interest is an important criterion used by the National Labor Relations Board (NLRB) and the IELRB to determine whether a group of employees should be allowed to act as a bargaining unit. The NLRB has determined that a bargaining unit is determined when the unit shares a community of interests in wages, hours, and other conditions of employment. However, the following factors also indicate a community of interests:

1.Similarity in skills, interests, duties, and working conditions;

2.Functional integration of the work site, including interchange and contact among the employees;

3.The employer's organizational and supervisory structure;

4.The bargaining history; and

5.The extent of union organization among the employees.

**CONCERTED ACTIVITY** - The right to act together to try to improve pay and working conditions. Labor law protects this type of activity from retaliation or reprisal. See Section 7 of the National Labor Relations Act (NLRA) and Section 3 under the Illinois Education Labor Relations Act (IELRA) Protected concerted activity under Section 7 of the NLRA must implicate wages, hours, working conditions or other terms and conditions of employment and must be taken on the authority of other employees and not solely by and on behalf of the employee alone when it seeks to intiate or induce or prepare for group action. An employee’s activities are also protected when individual employees bring truly group complaints to the employer’s attention.

**CONFIDENTIAL EMPLOYEE** – The IELRA defines confidential employee as an employee who (1) in the regular course of his or her duties, assists and acts in a confidential capacity to persons who formulate, determine and effectuate management policies with regard to labor relations or (2) in the regular course of his or her duties has access to information relating to the effectuation or review of the employer’s collective bargaining policies.

**COPE** - Committee on Political Education or (PAC) Political Action Committee of the union. These are funded by voluntary contributions made by individual members for the purpose of supporting labor-friendly legislation (health and safety, safe needle, safe staffing legislation, etc.) and sometime labor-endorsed political candidates.

**COSTING or “costing out”** – Calculating how much a change in wages, benefits, differentials, and other economic factors cost the employer.

**DIRECT DEALING -** When an employer circumvents the union to directly engage a union employee regarding negotiations-related topics with the intent to make changes to the collective bargaining agreement as result of that transaction or conversation. This comes up not just during negotiations.

**DURATION CLAUSE (TERM OF AGREEMENT)** - The CBA 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.

**DUTY TO BARGAIN -** Under the NLRA or IELRA (administered by the Illinois Educational Labor Relations Board, or IELRB), the parties have a duty to bargain. Section 10 of the IELRA describes collective bargaining (duty to bargain) as the “performance of the mutual obligations of the educational employer and representative of the educational employees to meet at reasonable times and confer in good fiath with respect to wages, hours and other terms and conditions of employment. Section 10 also requires the parties to “execute a written contract incorporating any agreement reached” by the duty to bargain obligation.

**FAIR SHARE** - In Illinois, public sector employees who are part of a bargaining unit covered by a collective bargaining agreement which contains fair share language are required to pay the equivalent of union dues, since they are fully covered by the union contract, and receive the same wages, benefits and representation as union members.

**FEDERAL MEDIATION AND CONCILIATION SERVICES** (FMCS) - Under the Labor-Management Act of 1947, FMCS provides free mediation services in collective bargaining negotiation disputes between employers and their unionized employees. All the parties have to do is make a request.

**GOOD FAITH** **BARGAINING** - Bargaining in good faith is characterized by: approaching negotiations with a sincere resolve to reach a collective bargaining agreement, being represented by properly authorized representatives who are prepared to discuss and negotiate working conditions of employment, meeting at reasonable times and places, to avoid unnecessary delays, and, in the case of the employer, to furnishing upon request data necessary for negotiation.

**GRIEVANCE -** A complaint usually lodged by an employee or the union alleging a misinterpretation or improper application of one or more terms in a collective bargaining agreement. Grievances are processed according to the CBA’s grievance procedure. . If a grievance cannot be settled at earlier steps in the defined process, it can be appealed to higher levels of management and will ultimately be heard before an arbitrator (provided the CBA has a binding arbitration clause).

**Grievance Procedure -** The steps established in a collective bargaining agreement for the handling of grievances made by or on behalf of employees.

**ILLEGAL SUBJECT OF BARGAINING** - A prohibited subject of bargaining; a matter that would deny either party its legal rights.

**IMPASSE** - The point in negotiations at which both parties determine they are unable to reach an 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. Informational picketing is legal, as long as those handing out information do not block doorways or other points of access.

**INTEREST ARBITRATION** – Is a method by which an employer and union reach agreement by sending the disputed issues to an arbitrator rather than by settling them through collective bargaining and economic force (strike/lockout) (Elkouri & Elkouri, How Arbitration Works).

**INTEREST BASED BARGAINING (IBB)** - Is a problem solving process used when groups wish to collaborate together to develop solutions that all participants support. The group develops mutually beneficial solutions, based on the interests of the parties. This method is more inclusive than other methods of addressing issues. The process begins with understanding the problem and identifying interests that drive the need for resolution. Issues are defined, and then together the group generates interests and options, evaluates the options, and selects the feasible options to develop a solution. IBB is generally facilitated by Federal Mediation and Conciliation Services (FMCS).

**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. Most contracts have just cause requirements which place the burden of proof for just cause on the employer.

**LOCK OUT -** A temporary work stoppage or denial of employment initiated by the employer during a labor dispute.

**MANAGEMENT RIGHTS** - The claimed rights of employers to control operational aspects of the workplace. These are usually defined 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 party (often the Federal Mediation and Conciliation Service (FMCS)) to assist in negotiations by discussing the disputed issues with the parties together or separately, and assisting the parties in reaching a settlement. Unlike arbitration, this is a voluntary procedure that is non-binding on the parties.

**MEMORANDUM OF AGREEMENT or MOA** **– Memorandum of Understanding or MOU -** A written document summarizing the terms of settlement for a successor collective bargaining agreement and signed by both parties. Also, it may be used when an agreement is reached between the parties during the course of a collective bargaining agreement.

**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.

**Modified Traditional Bargaining** (MTB) – a hybrid of IBB and TB. It is common to start with IBB and then tacitly move into TB once economics are discussed. It is generally facilitated by FMCS.

**NO-STRIKE CLAUSE** - A clause in a collective bargaining agreement between a union and employer that the union will not engage in a strike or other economic activities against the employer. It may include a ban on picketing and/or sympathy strikes.

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

**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.

**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.

**PUBLIC EMPLOYEE** - A person who is employed by a municipal, county, state, or federal agency or state college or university.

**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.

**RATIFICATION** - A vote or other action by the union or association to accept or reject a CBA 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** - Making a proposal that moves away from agreement by removing or reducing the value of items previously placed on the table. This is considered “bargaining in bad faith.”

**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.

**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. Side-bar talks are considered to be off-the-record.

**SIDE LETTER** - An agreement outside the main body of the CBA similar to an addendum, but as binding as anything else in the contract itself unless explicitly stated otherwise.

**STRIKE** - A work stoppage by employees refusal to work typically to protest an employer’s decision (to freeze wages, cut benefits, impose unpopular work rules, or refuse to improve working conditions, for example). The right to strike is protected by the NLRA and the IELRA, but not all strikes are legal. Whether a strike is lawful depends on the purpose of the strike, whether the collective bargaining agreement includes a “no-strike” clause, and the conduct of the strikers.

**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 and Section 10 of the IELRA.

**TRADITIONAL BARGAINING** - The parties begin with predetermined positions, they draft proposals reflecting those positions, and exchange them with the other party. This “dance” continues back and forth with discussion about the proposals until an agreement is reached on each item (TAs). This continues until you reach a “global” TA for the entire agreement.

**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.

**UNFAIR LABOR PRACTICE ("ULP")** - An action by an employer or a union that violates the NLRA or IELRA. 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 (ILRB or IELRB) (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.

**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.

**WEINGARTEN RIGHTS** - Named after a 1975 U.S. Supreme Court decision which held that a union employee has the right to request union representation in an investigatory interview involving matters which the employee has a reason to believe may lead to discipline.

There are two critical elements:

1. Management is **not required** to inform the employee of his/her *Weingarten* rights; it is the employee’s responsibility to make the request. The employee must clearly assert this right before or during the meeting.
2. The employee must **reasonably** believe that the investigation will lead to discipline.

It is the union’s responsibility to inform members as to how and when they can exercise these rights.

When the employee makes the request for a union representative to be present management has three options:
(I) it can stop questioning until the representative arrives.
(2) it can call off the interview or,
(3) it can tell the employee that it will call off the interview unless the employee voluntarily gives up his/her rights to a union representative (an option the employee should always refuse.)

When invoking this right, the employee has the right to representation but not necessarily his/her choice of representation.

**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.