WORDS FOR THE WISE

Glossary of terms you ought to know . . .

You know the difference between “needle-nose pliers” and a “Phillips-head screwdriver,” right? These are common toolbox terms. Let’s take a look at the terminology of labor/management relations.

Following are words you are likely to read or hear. We give you a simple definition and, in some cases, illustrate how you may hear the term used in the workplace. Becoming familiar with these words means that the next time a union business agent threatens to file a “ULP” if you don’t stop doing something, you’ll know what the heck he is threatening.

ADVERSE ACTION: An action that has a negative effect on an employee such as discipline, discharge, or demotion. Employees subject to adverse action in a merit system are entitled to due process to represent their interests in their job. Many agencies do not consider formal letters of reprimand on adverse action.

AGENCY FEE: An agreement under which all employees covered by a labor contract are required as a condition of employment either to become union members or pay service fees to the union. Employees who object on religious grounds to supporting unions must pay an amount equal to the service fees to a non-labor, non-religious charity.

ARBITRATION: Most labor contracts include a grievance arbitration clause. This is a method for resolving disputes over the application or meaning of the contract. A hearing is held before an arbitrator. The arbitration clause may also be used to hear appeals from disciplinary action against employees covered by the contract. Typical arbitration clauses give authority to an arbitrator to render a final and binding decision. Arbitration that is not final and binding is called “advisory arbitration.” Arbitration concerning the interpretation of the labor contract or the appeal of a disciplinary action is called “rights arbitration.”

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

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 single union or association in negotiations and other labor relations matters.
BINDING INTEREST ARBITRATION: An arbitration procedure used to resolve an impasse in bargaining over the formation of the labor contract.

CERTIFICATION: Formal recognition of a union as the exclusive representative of a bargaining unit, usually accomplished through a representation election by employees in the bargaining unit or by PERB certification.

CONDITIONAL BARGAINING: An employer’s offer of a positive benefit such as a salary increase in exchange for a union’s withdrawal of a right such as the ability to file a grievance. Conditional bargaining is, by itself, an unfair labor practice.

CONFIDENTIAL EMPLOYEE: An employee who is privy to information that affects employee relations. Confidential employees are excluded from representation in any bargaining unit.

CONTRACT: A labor agreement, also referred to as a memorandum of agreement, memorandum of understanding, labor contract, or collective bargaining agreement that has been negotiated between the employer and the union for a specific time period covering the wages, hours, and other terms and conditions of employment.

CONTRACT BAR: During the term of a contract, the incumbent union is protected from a challenge by an outside union in order to gain exclusive representation of employees represented by the incumbent union.

CONTRACTING OUT: The employment of outside contractors to perform the work formerly performed by the agency’s employees.

COLA: A cost of living adjustment. This term is often used, however, to describe wage increases that are granted across-the-board to all employees, without regard to any statistical information such as the Consumer Price Index (CPI).

DECERTIFICATION: An action by unit members to decertify, or remove, the exclusive representation status of the existing union by the filing of petitions calling for an election to change to a different union, or to become unrepresented.

DISCRIMINATION: Taking any adverse action against an employee because that employee has engaged in a union activity protected by law (e.g. file a grievance).

DUE PROCESS: Procedural requirements protecting an employee's employment rights.

DUTY OF FAIR REPRESENTATION: A union’s obligation to represent all bargaining unit employees fairly. Arbitrary, discriminatory, or bad faith actions can be seen as a breach of this duty. Charges filed alleging failure by a union of its duty of fair representation are decided by the Public Employment Relations Board (PERB).
EERA: The Education Employment Relations Act that covers California employees of public elementary, middle, and high schools.

EXCLUSIVE REPRESENTATIVE: A union that has been recognized as having exclusive authority to negotiate wages, hours, and working conditions on behalf of employees in the bargaining unit the union represents. Exclusive representation is usually attained by a petition or secret ballot election of employees in the unit.

FACT FINDING: A procedure, usually advisory, to submit matters that are unresolved in a bargaining impasse. A hearing is held before a fact finder or a panel of three persons: a neutral fact finder, a person selected by the union, and a person selected by the employer. A report and advisory recommendations regarding the disputed issues is issued following the hearing. Under the EERA, all schools are subject to factfinding as an impasse procedure.

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, justifying negative responses to these demands, and considering compromise proposals.

GRIEVANCE: A claim by a union or an employee that a term of the contract has been violated. Grievances are processed following the steps in the grievance procedure. The final step of an unresolved grievance is usually an appeal to arbitration.

GRIEVANCE PROCEDURE: The multi-step procedure followed when attempting to resolve a grievance.

HEERA: The Higher Education Employment Relations Act that covers California public employees of colleges and universities.

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 mediation, and sometimes factfinding.

JOB ACTION: Concerted activity by employees, designed to influence bargaining. These include work stoppages or shutdowns, sickouts, and protest demonstrations.

LOCAL RULES: If your agency is covered by the MMBA, it has adopted a set of rules called an Employee Relations Resolution, a Labor Relations Ordinance, or something similar. This is the set of rules governing labor-management situations.
LOCKOUT: Action by the employer to prohibit employees from entering the workplace during a labor dispute or employee strike. Lockouts are rarely exercised by public agencies.

MAINTENANCE OF MEMBERSHIP: A clause in a labor contract 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 during the term of the contract during which employees may withdraw from the union.

MANAGEMENT RIGHTS: Provisions in a labor contract that establish certain management rights, such as the right to hire, fire, and determine the merits, necessity, and scope of a public service or program. Actions by an employer to exercise its rights that also impact the terms and conditions of employment of represented employees, however, require notice and an opportunity to bargain over the matter.

MEDIATION: The involvement by a neutral (often from the State Mediation and Conciliation Service) to assist in breaking an impasse in negotiations by discussing the disputed issues with the parties together or separately.

MEET AND CONFER: A process of negotiating or bargaining over terms and conditions of employment. It requires exhaustion of the applicable impasse procedure before a decision or course of action by the employer may be unilaterally implemented (made effective without agreement by the union). The obligation to meet and confer remains alive, however, even after a unilateral implementation, and can be triggered by request of the union.

MMBA: The Meyers-Milias-Brown Act bargaining law that covers public agencies of cities, counties, special districts, some transit agencies, fire districts, and other political subdivisions of the state.

MOA/MOU: A labor contract, collective bargaining, or agreement.

NEGOTIATION: See: Meet and Confer.

NEXUS: A connection between two things. Specifically, this term is used in labor relations discrimination matters, for example, when the question is asked, “But for the employee’s involvement in the union campaign, would the employee still have been disciplined?” A nexus must be shown between the employee’s protected activity of union involvement and management’s decision to take disciplinary action before discrimination can be proven.
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. Past practice is also a means for defining the status quo ante in unilateral change unfair practice charges.

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, or 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 EMPLOYMENT RELATIONS BOARD: The agency of the State of California with jurisdiction to enforce and administer the bargaining laws (EERA, Ralph C. Dills Act, HEERA, MMBA, TEERA, Trial Court Act, and Court Interpreter Act) by hearing and deciding charges of bad faith, discrimination, representation disputes, or other alleged violations. PERB also oversees unit and agency shop elections. PERB is composed of five members appointed to five-year terms by the Governor. Its principal office is in Sacramento with regional offices in Oakland and Los Angeles. PERB also has jurisdiction to enforce a public agency’s Local Rules and to adopt rules to apply in areas where a public agency has no rule.

RALPH C. DILLS ACT: See: SEERA.

RATIFICATION: A vote or other action by the union 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 on the table.

REOPENER CLAUSE: A clause in the labor contract that sets a date or circumstance that opens negotiations on one or more issues in the contract, but does not open the entire contract for negotiation.

SEERA: The State Employer-Employee Relations Act that covers employees of the State of California.
SKELLY RIGHTS: The predisciplinary constitutional right of California public employees to be informed of pending disciplinary actions, the reasons therefore, and the opportunity to respond before discipline is imposed. Often this involves a meeting with the employee prior to the administration of discipline at which time the employee may submit information of an exculpatory or clarifying nature with respect to the charges outlined in the predisciplinary notice. In effect, this is the employee’s opportunity to hear and understand the charges and to give information that may result in the employer revising the charges prior to imposing discipline.

SUPERCESSION: The superceding or overriding of one enactment over another.

For example, the Meyers-Milias-Brown Act supercedes provisions in local rules that do not conform to the MMBA. Similarly, provisions in Civil Service rules that give the Civil Service Commission the ability to unilaterally set salaries are superceded by the MMBA's requirement to negotiate over salaries as a mandatory subject of bargaining. In such cases, the MMBA and other bargaining laws are said to “occupy the field” of employer-employee relations and supercede contrary local rules or other enactments.

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 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 bargaining law. These include interfering with organizing, discriminating against an individual for union activity and bad faith bargaining. (See: “Good Faith”). Charges alleging an unfair labor practice are filed with PERB.

WEINGARTEN RIGHTS: The right of an employee to have a representative, usually a union business agent or steward, present in a meeting with management if the employee has a reasonable expectation that the meeting involves, or could likely involve, discussion that could lead to disciplinary action against the employee.

ZIPPER CLAUSE: A clause in the labor contract that states that the parties have completed the bargaining process and for the term of the agreement, waive their right to bargain over mandatory subjects.