

**THE BARGAINER'S HANDBOOK**

**2004-2005 EDITION**

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## FORWARD

Typically, the Bargainer's Handbook is updated on an annual basis and its primary purpose is to assist the local association bargainer to improve his/her bargaining skills and knowledge. Because bargainers have enough to do and think about, the information contained within is distilled into a simple, concise format for easy use.

Taking the time to read your handbook can help you to improve and in turn you learn to bring value to the table. How you negotiate determines the value you create. In other words, if you come to the table with a "win-lose" attitude, what you gain they lose, you miss the opportunity to create value since you will not *always* get what you want especially during these tough bargaining times.

Since the role of the bargainer has become increasingly technical, it is critical that you not only bring value to the table it also means that you understand the bargaining process, issues, and the climate in which you negotiate.

The introduction provides you with information about Ohio's bargaining landscape. In it you will read about the current climate at the local, state and national levels as well as the factors that impact the outcome of the bargaining process. It also gives you points to ponder from a state organizational standpoint.

To assist you in improving your skills and knowledge, the collective bargaining, health care and education reform glossaries have been updated. In most cases new terms have been added. Pertinent sections of the handbook have been revised. One example, is the so called, "No Child Left Behind" Act which is a long and complex law. Links have been included so that you know how to access information on testing and "adequate yearly progress" (AYP).

Finally, the handbook contains a section that speaks to the financial climate in Ohio. Learn what a boxing tactic and bargainers have in common.

Patricia A. Turner  
Education Research Development Consultant

## **BARGAINER'S HANDBOOK**

I am excited about the fresh new ideas contained in this edition and am grateful to OEA staff whose work helped to complete the 2004-05 edition of the Bargainer's Handbook:

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## **INTRODUCTION**

The Ohio Education Association has been in existence for over 150 years as an association. Thirty years ago, the seeds of labor unionism took root and have created the vibrant organization that is the OEA today. During its rich history as a professional association of educators and a labor union, OEA has made great strides in the way that it functions as an organization. We have moved from storing information on index cards to hard drives and databases, from distributing information to teachers and school administrators in Ohio by US Mail to communicating with its 132,000 members via email, websites and other virtual means. Due to these technological advancements, the distribution of data and information is more prolific than ever.

Indeed, there is now an overwhelming flow of data and information that we are forced to deal with every day. Although it is advantageous to have rapid access to so much information so fast, having to make sense of unorganized and unanalyzed data can be detrimental to the decision-making process. Therefore, data and information must be analyzed, processed and organized in a fashion that supports decision-makers. What is needed is a vehicle that begins to provide the analysis and organization of data in such a way as to best support the decision-makers and stakeholders of the OEA.

In part by building its data infrastructure and delivery system over the years, OEA has become the clear leader in collective bargaining in the state of Ohio. Many of our methods and practices have become the standard for the field. However, the climate in which we operate continues to change. Issues that were previously not problematic in reaching a negotiated settlement are now becoming major stumbling blocks.

Health care has become a major issue for OEA within the past five years. Many of our members are finding themselves placed in the unenviable position of having to negotiate away wage increases so that they can maintain health benefits. This is a problem that is national in scope, but presents increasingly difficult problems at the local level. The costs for health care are simply being pushed down to the employee, which has the eventual result of causing the negotiations process to be much more difficult.

Other national issues, too, are affecting the bargaining climate this year. The so-called No Child Left Behind act (NCLB) has negatively impacted the bargaining climate throughout the state. Education employers forced to deal with the unfunded mandates that are created by NCLB often must make cuts in other areas to help pay for these mandates, frequently on the backs of the employees.

At the state level, too, external factors have caused difficulties in the collective bargaining negotiations of our members. In its efforts to make Ohio a more attractive place for business, the Ohio Legislature has dramatically changed the tax environment making it much more difficult for school districts to raise the money necessary to operate. Electric and other utility deregulation, personal tangible (inventory) tax rollbacks, and other such initiatives make it necessary for Ohio's school districts to go to the voters for increases in property tax. Every year, the local share of the average school district's budget goes higher and higher, with no end in sight.

The school funding crisis in Ohio continues unabated. Despite four opinions by the Ohio Supreme Court that Ohio's school funding system is unconstitutional, inequitable and inefficient, the Ohio Legislature refuses to deal with the problem. This has had terrible consequences for Ohio's school children, schools and OEA members. Over the next year, we estimate that nearly 4,000 full-time educators will lose their jobs as a direct result of the school funding crisis.

For OEA, there is much at stake. We live in an increasingly challenging and dynamic

environment. Attacks on public education continue despite all of our efforts to neutralize and fend off these attacks. Membership in organized labor as a whole continues to suffer declines in proportion to the general population.

We must consider the following two points in our efforts to continue to advance our cause in Ohio's current collective bargaining framework:

- It is critical that the OEA begin to actively consider the environment in which we exist and to gain a deeper understanding of how we fit within that environment.
- We must begin to take a close look, on a regular basis, at the data which affects us – demographic data, economic data, and educational data – and use that data to assist us in determining our policies, plans and processes.

The OEA can no longer consider itself as separate from the labor movement as a whole. Rather, the OEA should embrace its role as a labor leader in Ohio. Within the last decade, several attempts have been made by conservative legislators to roll-back the clock in terms of public sector collective bargaining rights. These rights have been won only by the hard-fought efforts of OEA members throughout the last thirty years, and we must be ever-vigilant in protecting them on behalf of our membership.

### **BARGAINING IN A CHALLENGING FINANCIAL CLIMATE**

*Rope-A-Dope: A boxing tactic; pretending to be trapped against the ropes while your opponent wears himself out throwing punches (Source: hyperdictionary.com)*

When Muhammad Ali faced the heavily favored George Foreman in Zaire in 1974, Ali's legend ascended to new heights. The former champion employed the now famous "rope a dope" strategy to defeat the undisputed heavyweight champion of the world. After leaning on the ropes for seven rounds, blocking, and absorbing Foreman's relentless attack, Ali waited until his bigger, stronger, younger opponent reached the point of exhaustion before reclaiming the title with an eighth round knockout.

Thirty years after Zaire references to "rope a dope" are still spouted by political, business, and military strategists. As a strategy, "rope a dope" has a place in labor negotiations as well.

More and more, OEA bargainers are finding themselves "rumbling" in a strangling financial "jungle." Statewide, Ohio school districts saw expenses exceed revenues by nearly one-half billion dollars in fiscal year 2004. Nearly seven of every ten districts in the state spent more than they took in. FY2004 was the second straight year in which the majority of districts engaged in deficit spending. Cash balances, while still larger than was typical in the late 1980s and early 1990s, have tumbled 30 percent over the last two years.

In 2004, school districts bled red. The benefits of the economic recovery touted by Bush campaigners seem to have eluded public education. Meanwhile, in Columbus, Ohio's general assembly stubbornly refuses to adequately fund schools despite four Supreme Court rulings demanding they do so. Uncontrollable health care costs and the unhindered growth of charter schools are also key elements of the most challenging financial climate in more than a decade.

Thrown in for good measure is political tunnel vision with respect to high stakes testing. It has been estimated that Ohio school districts will need to generate \$1.4 billion in additional operating

revenue to satisfy the unfunded mandates of Bush's NCLB.

The impact of the current financial climate on collective bargaining is significant and can be seen in several areas:

- An increase in the number of labor contracts with a duration of less than three years.
- Greater pressure to accept lesser wage settlements than were negotiated in previous collective bargaining agreements.
- An increased emphasis by school districts to reduce health benefits and to shift more and more of the cost of insurance onto their employees.

Additionally, districts are responding to the financial climate by eliminating scores of teaching and education support professional jobs. Nearly half of all school districts in the state will be reducing staff for the 2004-2005 school year. Through a combination of layoffs, attrition, and non-renewals as many as 4,000 non-administrative public school jobs could be lost this coming school year. Nearly 2,200 of the positions to be reduced are held by women and men who are represented by the OEA.

Many school districts are approaching the current round of bargaining in the same manner that Foreman attacked Ali. Not only are they expecting Local Associations to accept wage and insurance packages that often amount to a loss of real wages, but they are also demanding concessions in non-economic areas as well. Even many financially sound districts have joined the chorus of those declaring eminent fiscal crisis in an apparent attempt to manipulate the bargaining process.

During this onslaught many OEA negotiators have managed to effectively lean on the figurative ropes avoiding devastating outcomes and positioning themselves for the next round of bargaining. Some general tactics are noted:

- Compression of salary schedule in conjunction with modest across-the-board increases. All members can enhance their career earnings, but the immediate cost to the district is less than that of an increase on the base.
- Portion of salary increase contingent upon passage of a levy or tied to additional funding assuring OEA members a raise if new money becomes available.
- Where wage freezes have been unavoidable, some locals have opted to roll over the entire contract thus maintaining the status quo with regard to insurance and all other terms and conditions of the bargaining agreement.
- Retirement incentive plans that provide both a meaningful economic inducement to OEA members to retire while generating significant payroll savings to school districts.
- Other locals have sought and achieved important non-economic advances such as fairshare and binding grievance arbitration.
- Clear and restrictive definition of financial reasons with respect to reduction in force.
- Rejection of regressive non-economic proposals.

These and other "rope a dope" tactics will almost certainly become increasingly necessary until such a time as a shift in the financial climate occurs. However, the forces that have created the

current financial climate are largely external. Little, if anything, can be done on the local level to improve economic conditions, to fix the state-funding problem, or to reign in rising health care costs. The association as a whole will need to pull itself off the ropes and exert its collective force if a meaningful improvement in the financial climate is to be achieved.

## **The Elementary and Secondary Education Act (ESEA)**

The Elementary and Secondary Education Act (ESEA) authorizes and regulates the majority of federal K-12 education programs. Congress first enacted the law in 1965 to improve achievement among disadvantaged students. The law is reauthorized every five to six years.

The 2001 reauthorization of the ESEA (also known as the “No Child Left Behind Act” or “NCLB”) includes a number of significant provisions that will impact the work of teachers and education support professionals. Under the new law, a state must develop academic standards for students in reading, math and science and test students on their progress in these areas annually. The law calls for progressively severe sanctions for schools which fail to meet Adequate Yearly Progress, or “AYP.”

Members and their local associations can shape the application of the ESEA in Ohio schools through collective bargaining and enforcement of member rights. The following overview of the law, Ohio’s plan to implement the law, and collective bargaining resources are intended to assist local associations in collective bargaining related to ESEA.

### **ESEA FUNDING**

Title I is the largest single program in ESEA and the best known, but it is one of many programs.

ESEA is broken down into several sections, or “titles.” The section that contains the provisions that deal specifically with “ensuring that all children have a fair, equal and significant opportunity to obtain a high quality education and reach proficiency on challenging State academic assessments...” is Title I of the law. Title I provides for the largest amount of funding; as its provisions affect schools most directly, it has come to be referred to interchangeably with “ESEA.” Other titles deal with issues such as charter schools, English acquisition, teacher quality/class size, Indian education, drug-free schools, and civil rights protections.

What makes this ESEA law different from earlier reauthorizations is that it applies to all schools and teachers, not just Title I schools.

The federal government uses various complex formulas to allocate Title I funds to counties and school districts. School districts determine Title I status for individual schools based upon either the percentage of free lunch eligible students or the percentage of students living within the school’s attendance zone who are receiving public assistance. The list of Title I eligible schools is public information that can be obtained from the Ohio Department of Education or the individual school districts. This information may also be found on the OEA ESEA website.

Schools and districts may use Title I funds for a variety of purposes. In addition to the mandated uses of Title I funds, there are a variety of permissive uses. For example, they may use the funds to provide additional help to students performing below certain standards, provide additional after-school or summer programs, implement exemplary reading and math programs, reduce class size, hire paraprofessionals, or provide professional development. Schools and districts may not use these funds to pay for educational programs or services to which students would ordinarily be entitled. The commonly used guide for the use of Title I funds is they may “supplement, not supplant” local funds.

## **What's the difference between a Title I targeted assistance school and a school-wide program school?**

A "regular" or targeted assistance Title I school is one in which the Title I service can only be provided to those students having significant educational needs. This targeted assistance may involve one-on-one tutoring, small group instruction, after-school programs and/or pullout programs. A Title I school-wide program may be used in a school that has a poverty enrollment greater than 40%. These schools can use the Title I funds to benefit **all** the students in the school. Funds in these programs are often used to reduce class size, introduce new reading or math programs, or provide professional development for all teachers, paraprofessionals and other support staff.

Under ESEA's "transferability" provisions, every Local Educational Agency (LEA) is given authority to transfer up to 50% of formula funds among Teacher Quality, Education Technology, Safe and Drug-free Schools, and Innovative Programs. In addition, funds can be transferred into Title I. If the LEA is in school improvement, then it can only transfer 30% of funds, and only into Title I. LEAs in corrective action cannot transfer funds at all. An LEA making a transfer must modify its plan, notify the State at least 30 days in advance, and submit the modified plan to the State within 30 days of the transfer. ESEA ties federal funding to strict accountability as measured by statewide student assessment.

## **TESTING AND AYP**

Annual tests for all students in at least reading and math must be conducted between 2002-2003 and 2005 in one of each of the following: grades 3-5, grades 6-9 and grades 10-12. Beginning in the 2005-2006 school year, states are required to continue annual tests in at least reading and math in grades 3-8 and once for grades 10-12. Beginning in the 2007-2008 school year, states must administer science tests at least once in elementary, middle and high school. For Ohio's testing schedule, use this link:

<http://www.ode.state.oh.us/proficiency/>

Then click on, "New Diagnostics and Achievement Tests", then click "Grades K-12 Implementation Dates."

To confirm state test results, all states are required to participate in the National Assessment of Educational Progress (NAEP) tests in reading and math (grades 4 and 8) every other year.

Schools, districts and states must report test results in reading and math for subgroups of students: special education, English language learners and economically disadvantaged. The law also requires test score reporting by gender and for major racial and ethnic groups.

ESEA requires all students to participate in Ohio's achievement tests, although a school or district can make "adequate yearly progress" if at least 95% of students, measured by total school or district population and by subgroup, participate in a state's annual assessments. Schools and districts can meet this AYP participation requirement using the higher of either the current year's participation or a 2 year average for all students or subgroups.

The Adequate Yearly Progress (AYP) provisions are among the more complex requirements of the Elementary and Secondary Education Act (ESEA). ESEA requires states to establish baselines or starting points they will use to measure their progress over the next 12 years in meeting a key ESEA requirement: That all students are performing at a "proficient" level or above, on state reading and math assessments by 2013-14.

In addition, states must determine how they will define “proficient” student performance in reading and math; decide on indicators of student performance they will include in their definitions of AYP; and set interim AYP targets that establish minimal levels of increased student performance from 2002-03 through 2013-14.

Ohio’s Accountability Plan was approved by the U.S. Department of Education on January 8, 2003. Ohio’s Plan was codified by the passage of House Bill 3 in 2003. (ORC 3302.04) Highlights of the plan include:

### **Ohio’s Baselines**

Between the 2003-04 and the 2013-14 school years, Ohio would need to ensure that 100 percent of all students, and all students in the subgroups mentioned in the law, are performing at the proficient level.

Ohio’s baseline was calculated by averaging 1999-2000, 2000-01, and 2001-02 statewide test scores. Three baselines each will be set for reading and mathematics – one each for elementary (grades three to five), middle (grades six to eight), and high schools. In each case the baseline will be the higher of (1) the percentage of proficient students in the lowest-achieving subgroup and (2) the percentage of proficient students in the school building in which is enrolled the student at the 20<sup>th</sup> percentile of Ohio’s total enrollment.

The reading and mathematics baselines will be applied to each school building and school district, as well as to each subgroup at the school building, district, and statewide levels to determine AYP status.

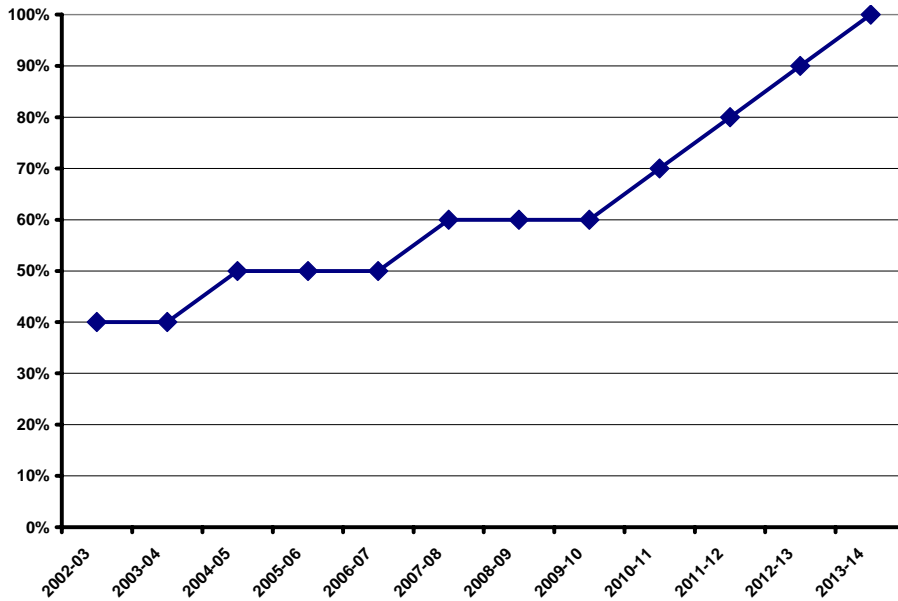
The status of school buildings that encompass grades nine through twelve (but not grades four or six) will be judged against AYP standards based on Ohio’s new tenth grade tests. A baseline, intermediate goals, and annual measurable objectives will be established using scores from the 2002-03 administration of the tenth grade test – the first year of administration.

When calculating the results statewide, for school districts, and for school buildings with multiple levels, as well as for subgroups within them, the baseline will be a weighted average of all tested grades. As Ohio implements new assessments, it will adjust the definition of adequate yearly progress to incorporate data from the new tests while maintaining the timeline for all students to reach proficiency by 2013-14. Following the first year of administration of each new statewide assessment, new baselines will be calculated and the remaining intermediate goals will be adjusted.

### **Ohio’s AYP Trajectory**

ESEA requires states to continually increase students’ performance between 2002-03 and 2013-14. To raise the bar over time, states must specify the minimum percentage of students (and subgroups of students) who, each year, must meet or exceed the proficient level of performance in reading and math. States also must raise the bar in “equal increments” over the 12 years. ESEA requires the first increase within two years (in 2004-05). Each following increase must occur within three years, which means that the bar must be raised at least five times over the 12 years.

The following graph illustrates the AYP trajectory contained in Ohio’s accountability proposal approved by the USED:



**If a school fails to meet AYP for two consecutive years, it enters the first year of School Improvement, and must:**

- Notify parents and prepare a three-year improvement plan
- Use at least 10 percent of Title I funds for professional development
- Provide public school choice for students
- Use 5–15 percent of Title I funds for transportation
- Receive federal School Improvement funds and technical assistance from the school district

**If a school fails to meet AYP for three consecutive years, it enters the second year of School Improvement, and must:**

- Continue activities from Year 1 School Improvement
- Provide supplemental services (e.g., tutoring)
- Use 5–15 percent of Title I funds for supplemental services or 20 percent combined for public school choice and supplemental services
- The local school district should develop a plan to implement *at least one* of the following if necessary in year four below:
  - Replace staff relevant to the failure
  - Implement a new curriculum
  - Decrease local decision-making
  - Extend the school year or day
  - Appoint an outside expert
  - Restructure internal organization

**If a school fails to meet AYP for four consecutive years, it enters the first year of Corrective Action, and must:**

- Continue to provide public school choice and supplemental services, and notify parents about the school’s status
- The local school district must implement *at least one* of the following:
  - Replace staff relevant to the failure

- Implement a new curriculum
- Decrease local decision-making
- Extend the school year or day
- Appoint an outside expert
- Restructure internal organization

**If a school fails to meet AYP for five consecutive years, it enters the second year of Corrective Action, and must:**

- Continue to provide public school choice and supplemental services
- Prepare a plan to implement at least one of the following options under year six if necessary

**If a school fails to meet AYP for six consecutive years, the local school district must implement *at least one* of the following:**

- Reopen the school as a public charter school
- Replace all (or most) of the school staff (which may include the principal) who are relevant to the failure
- Enter into a contract with an entity, such as a private management company, with a demonstrated record of effectiveness
- Turn school operations over to the state
- Undertake other major restructuring that makes major reforms

See ORC 3302.04 or for implementation rules see OAC 3301-56-01. For updates to Ohio's accountability system go online to

[www.ode.state.oh.us/Accountability/default.asp](http://www.ode.state.oh.us/Accountability/default.asp)

## **Subgroups**

Limited English Proficient (LEP) students are treated differently under accountability rules. They are eligible for certain testing accommodations and the inclusion of their test scores in AYP calculations is delayed until after their first year of attendance in the public school system.

For AYP calculations, the minimum subgroup size for groups other than students with disabilities will be 30. Because there are educational and measurement issues that are unique to the students with disabilities, the minimum group size for accountability in Ohio is set at 45.

## **Safe Harbor Provision**

If a school building or district fails to meet the annual measurable objective, or if one or more subgroups fail to meet the annual measurable objective, then the school building or district makes adequate yearly progress if both of these conditions are met:

- 1) The percentage of tested students in that school building, district, or subgroup below the proficient achievement level decreases by at least ten (10) percent from the preceding year. In calculating the percentage decrease, Ohio will average the most recent three years of test scores (including the current year's scores) and compare the results to the current year's test scores. The highest score will be used to determine whether the school building, district, or subgroup achieved the ten (10) percent reduction from the previous year.
- 2) The students in that school building, district, or subgroup meet the threshold for the other

academic indicators or make progress on one or more of the other academic indicators.

### **Ohio's Other Academic Indicators**

In addition to being part of the definition of AYP, school buildings/districts will be required to meet the other academic indicator threshold or make progress on the other indicator as a requirement for the "safe harbor" provision (subgroups that fail to meet AYP standards but succeed in reducing the proportion of students who are not proficient by at least ten percent).

All states must include graduation rates as the other indicator for high schools. For elementary and middle schools, the other indicator will be the student attendance rate.

### **Accountability for All Students and School Buildings**

For accountability purposes, school buildings other than high schools that have no tested grades will be linked with the school buildings into which their students feed. For example, where a kindergarten through grade two school building feeds into a grades three through six school building, the AYP determinations for the grades three through six school building will also apply to the feeder school building.

All public school students will be included in Ohio's accountability system and in the statewide AYP calculation. A student attending the same school building from the October enrollment accounting period through the spring statewide test administration will be included when determining if the school building has made adequate yearly progress (AYP). A student attending the same district from the October enrollment accounting period through the spring statewide test administration will be included when determining if the district has made AYP. A student who attends more than one school building within a district during the school year is only included in determining if the district has met AYP standards. All Ohio students will be part of the statewide AYP calculation, including students who have not been enrolled in any single district for a full academic year.

In cases in which the school building or district that serves a student's attendance area has a say in deciding to educate the student in another institution (e.g., the school building/district decided to place students with a particular disability in a school building other than the student's school of residence), the student will be counted at his/her neighborhood school building. In cases in which the school building or district that serves a student's attendance area had no say in deciding to educate the student in another institution (e.g., students who are placed by a court), the student will be counted at the educating institution. Ohio plans to create one statewide school district to account for all youth who are adjudicated for reasons of unruliness or delinquency (e.g., incarcerated youth and Department of Youth Services placement).

### **Ohio's Performance Index and Growth Calculation**

The accountability plan approved by the U.S. Department of Education includes a performance index calculation that combines the scores of tests for all subjects (i.e., reading, mathematics, writing, science, and citizenship/social studies) into an index score that summarizes attainment and can be used to track school building and district progress. The index will account for all students enrolled in a school building or district, including students who did not take a test.

Value-added assessment uses test scores to measure how far a student has progressed academically for the year. Value-added assessment provides results that track the progress of individual students and groups of students for comparison across classrooms, schools and districts and across time. By calculating statistically significant variances in student test scores over time, the value-added model proposes that a determination can be made as to how well particular instruction or a school or district program is educating students.

The use of value-added data is being piloted under the auspices of Battelle for Kids and the Ohio Department of Education in about 100 school districts through the SOAR project. For more information, go online to <http://www.BattelleforKids.org>

By law, in 2007-08 a value-added measure will replace the Growth Calculation as an indicator on Ohio's Local Report Cards.

## **HIGHLY QUALIFIED TEACHERS**

The ESEA requires that all teachers of core academic subjects are "highly qualified." Core academic subjects include English, reading, language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography (ESEA Section 9101).

### **Timeline for Compliance**

The timeline for meeting this requirement is contingent upon two elements: (1) the date of employment and (2) whether the teacher is working in a program supported by Title I funds (targeted assistance or school-wide).

- If hired after the first day of school in the 2002-03 school year and working in a program supported with Title 1 funds (school-wide or targeted assistance), the teacher must meet the requirements upon employment.
- If hired after the first day of school in the 2002-03 school year and NOT working in a program supported with Title 1 funds (school-wide or targeted assistance), the teacher must meet the requirements by the end of the 2005-06 school year.
- If hired before the first day of school in the 2002-03 school year, the teacher must meet the requirements by the end of the 2005-06 school year, regardless of whether working in a program supported by Title 1 funds or not.

### **Highly Qualified Teachers**

The Ohio State Board of Education has adopted a definition of "highly qualified teacher" (HQT). The Ohio Department of Education has produced a rubric and a worksheet (*Highly Qualified Teacher: How Will I Know if I Meet the Federal Definition of a Highly Qualified Teacher?*) which offers several options by which teachers may demonstrate their qualifications. These materials and updates are available on the OEA ESEA website.

It is important to note that, while Ohio did not require testing for current teachers to demonstrate that they are highly qualified, a teacher may choose testing as an option for demonstrating HQT status, provided there is an approved licensure test for the subject and grade level of assignment..

During the winter of 2004, the U.S. Department of Education "relaxed" the HQT requirements as follows for teachers in rural areas and teachers of special education.

- Teachers in "rural" schools will have until 2006-2007 to become "highly qualified." The definition of "rural" is based on several indicators that are reported to EMIS. ODE has identified a list of 264 "rural" schools. For the list of these schools, please see OEA's Intranet).
- Because IDEA has not been reauthorized, ODE will use the same requirements for special education teachers as in 2003-2004. That is, if a teacher assigned to teach special education students holds a current and appropriate certificate/license in special education, that teacher will be deemed "highly qualified." No additional coursework or

subject area specialties will be required.

## **PARAPROFESSIONALS**

The new ESEA requirements for paraprofessionals apply to school districts that are “receiving assistance” under Title I and paraprofessionals “working in a program supported” by Title I funds. The ESEA requires all new Title I paraprofessionals to have completed 2 years of higher education, **or** obtained an associates’ degree, **or** have met a rigorous state or local assessment of their abilities to assist in instructing reading, writing, and mathematics. Those hired before January 8, 2002, have four years to meet this requirement. All Title I paraprofessionals, regardless of hiring date, must have earned a high school diploma or its equivalent. Exceptions are made for paraprofessionals involved primarily in translation and parental involvement activities.

The definition of “highly qualified paraprofessional”, a worksheet and Q&A appear on the ODE website :

[http://www.ode.state.oh.us/esea/superintendent/web\\_docs/Highly\\_Qualified\\_Teachers.asp](http://www.ode.state.oh.us/esea/superintendent/web_docs/Highly_Qualified_Teachers.asp)

## **High Quality Professional Development**

ESEA requires the Ohio Department of Education (ODE) to annually report the percentage of teachers who have participated in “High Quality Professional Development” (HQPD) as defined in Title IX, Section 9101 (34). To meet federal reporting requirements, ODE has assigned the school principal the responsibility of reporting her/his building’s status. To assist teachers and the principal, ODE prepared the following documents: *Reporting Instructions for Principals*, *Reporting Instructions for Teachers*, *Teacher Participation Questionnaire*, and *Principal’s Recording Sheet for HQPD*. Please refer to:

<http://www.ode.state.oh.us/EMIS/documentation/default.asp>

At the state level, the new **Educator Standards Board** will be promulgating standards for teaching and professional development (see Glossary).

## **National Board Certification**

The process of earning National Board Certification - the teaching profession's highest distinction – constitutes professional development that meets both ESEA and Ohio's current guidelines for quality. ESEA also has created federal grants to subsidize and support NBC; and states and districts can use ESEA funds, along with already designated state funding, to support National Board candidates and activities. Local associations may bargain for money to support NBC candidate applications, salary recognition (supplements, separate lane on salary schedule, lead teacher roles for NBCTs, etc.) For more information, please refer to <http://www.nbpts.org>

Ohio has determined the following ESEA paraprofessional requirements:

**TARGETED ASSISTANCE SCHOOLS**

ESEA requirements apply only to paraprofessionals that have instructional duties in programs supported by Title I funds; exemptions include aides who are translators for second language learners, aides who work solely with parents; playground, bus, or cafeteria aides who do not have instructional responsibilities; special education aides who attend only to hygiene needs of students

**SCHOOLWIDE TITLE I BUILDINGS**

All paraprofessionals with instructional responsibilities must meet the requirements regardless of the source of funding; exemptions include aides who are translators for second language learners, aides who work solely with parents; playground, bus, or cafeteria aides who do not have instructional responsibilities; special education aides who attend only to hygiene needs of students.

**TIMELINE FOR COMPLIANCE**

The law requires that paraprofessionals meet one of three criteria to become qualified; the compliance timeline for meeting one of the three criteria is contingent upon the date of employment:

If employed BEFORE January 8, 2002, a paraprofessional must meet one of the requirements by January 8, 2006.

If employed AFTER January 8 2002, a paraprofessional must meet one of the requirements upon employment.

**THE PARAPRO ASSESSMENT**

The Parapro assessment will be available six times a year at Praxis Test Centers across Ohio. Praxis Test Centers are available at most colleges and universities and at some Sylvan Learning Centers. Online testing will be available for any district who can meet the technology specifications. The cost of the Parapro is \$40 per test with no registration fee. ETS has developed the Parapro Test At A Glance, which provides an overview of the topics covered on the test, and offers a few sample items for practice. A study guide for the test is to be available beginning in January 2003. For more

information or to download the Test At A Glance or a fact sheet about the Parapro assessment, go to [www.ets.org](http://www.ets.org).

### **LOCAL DISTRICT ASSESSMENTS**

Local districts may develop their own assessments. OEA is collaborating with ODE and other organizations to develop guidelines for local assessments. While local districts are empowered by the federal statute to develop local assessments, the Ohio Department of Education, as the grantee from the US Department of Education, has the authority to impose guidelines for local assessments to assure the intent and integrity of the statute.

Principals for each targeted assistance building and each schoolwide Title I building must verify in writing compliance with the requirements of this section; the verification remains on file in the building but may be reviewed by the public upon request.

### **ESEA AND COLLECTIVE BARGAINING**

Collective bargaining is one of the most important tools available to members and local associations to influence the implementation of the law in their school districts. The ESEA provides that none of the provisions for school improvement, corrective action, or restructuring for failure to make AYP will reduce the rights or remedies of employees under the terms of a collective bargaining agreement. Title I, Section 1116(d) of the ESEA states:

**Nothing under this section (Title I, Academic Assessment and Local Educational Agency and School Improvement) shall be construed to alter or otherwise affect the rights, remedies, and procedures afforded school or school district employees under Federal, State, or local laws (including applicable regulations or court orders) or under the terms of collective bargaining agreements, memoranda of understanding, or other agreements between such employees and their employers.**

An ESEA Bargaining Guide for staff was developed by the ESEA Operations Team in conjunction with the OEA Core Advisors Group on Collective Bargaining. The Guide and accompanying Contract Assessment Tool are based on OEA's analysis of the impact of ESEA on education employees in Ohio. The purpose of this assessment tool is to evaluate existing contract language in relationship to the ESEA. The guide and assessment tool contain descriptions of the legal requirements under ESEA, Ohio's education and collective bargaining laws, and offer contract language suggestions and strategic considerations.

Local affiliates are advised to always discuss bargaining strategy and specific proposals with OEA staff before proceeding.

### **Resources and Contacts**

- OEA ESEA Website: <http://esea.ohea.org/>
- NEA Website: <http://www.nea.org/>
- NEA Connect (staff only): <http://connect.nea.org/>
- Ohio Department of Education: <http://www.ode.state.oh.us/>
- OEA Staff:
  - Betsy Waid, Director of Legal Services, [waide@ohea.org](mailto:waide@ohea.org)
  - Karen Fulton, Director of Education Policy & Coalition Relations, [fultonk@ohea.org](mailto:fultonk@ohea.org)
  - Deidra Brown, Director Governmental Services, [brownd@ohea.org](mailto:brownd@ohea.org)
  - Kevin Flanagan, Regional Director, [Flanagan@ohea.org](mailto:Flanagan@ohea.org)
  - Core Advisors on Collective Bargaining:

George Bozovich  
Jane Currey  
Don Dalton  
Matt Dotson  
Ann Field  
Kim Lane  
Bill Pearsol  
Jan Jones  
Cindy Petersen  
Diane Tieman  
Pat Turner

## THE COLLECTIVE BARGAINING PROCESS

If one were to conduct an opinion poll among experienced Association negotiators in Ohio, there would be little disagreement that collective bargaining is properly characterized as a process. However, reaching consensus on the length of the process and the critical aspects of the process would be a very difficult matter. The reason for such divergent opinions is that attitudes are shaped by experience, and bargaining experience varies across the state. Whether positive or negative, bargaining experience is influenced by the history and tradition of the parties involved in the process, the quality of the labor-management relationship, the geographical location of the workplace, the sophistication of the negotiators who must fashion the collective bargaining agreement, and the types of issues over which a compromise must be reached. Despite such broad disparity in experience, there are **three basic elements which dictate whether the process will work effectively to resolve conflict: (1) the skill of the parties in utilizing the process, (2) the desire of the parties to reach a fair and equitable settlement, and (3) the success of the parties in maintaining a relatively equal balance of power.**

The absence of any of these three critical elements is a strong indicator that the process may not work smoothly or effectively to resolve conflict. **It is a common misperception that the collective bargaining process begins several months before the expiration of the existing collective bargaining agreement and ends with the ratification of the successor agreement.** It is important to note that **the collective bargaining process is perpetual** and continues progressively through three stages: the pre-bargaining stage, the formal bargaining stage, and the post-bargaining stage. Although much more attention usually is focused on the formal bargaining stage, **the successful outcome of formal bargaining is often influenced and sometimes determined by events which occur during the other two stages. That is because collective bargaining is also a dynamic process.** The party which has the advantage may change with each issue on the table and with each turn of events impacting upon that issue. Consequently, both parties constantly must be cognizant of the dynamics of the process. Each must anticipate and generate changes in the dynamics of the process, and must plan and execute strategies to maintain equilibrium or to take the advantage when a change in dynamics occurs. **The Ohio Collective Bargaining Law has had a major impact on the dynamics of the process because it has imposed limits on the actions which may be taken by the parties to change the dynamics of the process.** When either party fails to abide by the lawful limitations, the State Employment Relations Board is empowered to impose penalties on the offender(s).

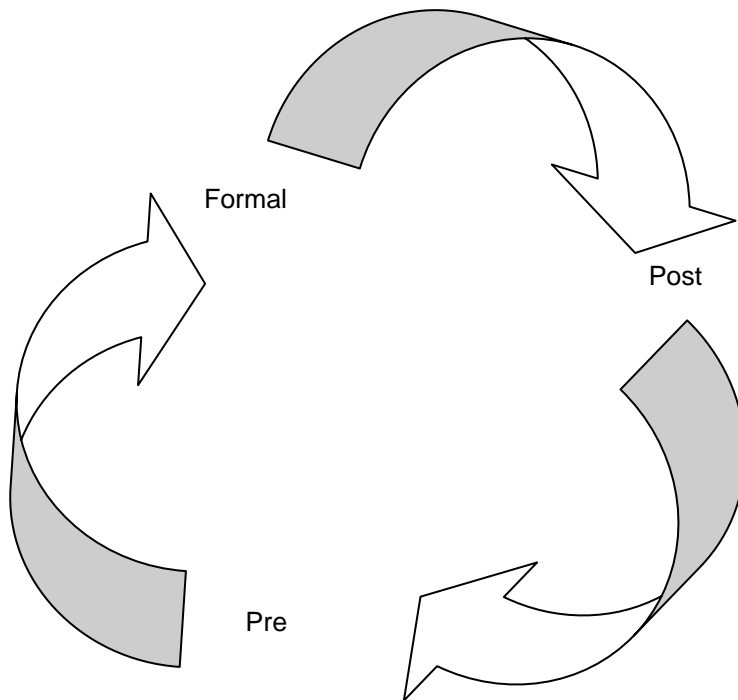
Finally, it is important to emphasize that the collective bargaining process requires collective action.

It is not an activity that is confined to at-the-table dialogue and to an exchange of written proposals between representatives of the employer and the employee organization. Collective bargaining is a process that requires collective input from members of the bargaining unit to members of the bargaining team. It requires collective activity in the prioritization of issues, the drafting of proposals, and the internal and external communications necessary to keep the bargaining unit members and the community informed of bargaining progress. It requires coalitions between the Association and community groups and other employee organizations that are sympathetic to Association issues. It requires an open line of communication between the Association and the power brokers that can influence the decision-making of the employer. And, ultimately, it requires the concerted action of members of the bargaining unit to support the recommendation of its representatives to accept the final package, or to reject it and to move collectively toward a more equitable settlement. Undoubtedly, numerous individuals must be involved in the skillful execution of the process. But while it is true that there is strength in numbers, real strength derives only from those numbers moving collectively toward the same goal at the same time. Anything less than a collective effort can result in dissension, confusion, and lack of confidence among members of the bargaining unit and consequently, weakness in the Association's power base. Therefore, the collectivity of the

process must be preserved at all costs.

**THE COLLECTIVE BARGAINING PROCESS HAS THREE STAGES:**

- ◇ PRE-BARGAINING
- ◇ FORMAL BARGAINING
- ◇ POST-BARGAINING



**THE COLLECTIVE BARGAINING PROCESS IS:**

- ◇ PERPETUAL
- ◇ DYNAMIC
- ◇ COLLECTIVE

## THE EVOLUTION OF COLLECTIVE BARGAINING IN OHIO

### Pre-1960's

School administrators controlled the OEA. There was a strong emphasis on “professionalism.”

New teachers were “encouraged” to sign an OEA membership form at the time they signed their employment contract because it was important to be a member of a “professional organization.”

In terms of the workplace, “professional behavior” was the standard imposed by school administrators. In most cases, a teacher’s behavior was deemed “professional” if he/she was loyal to the school superintendent and building principal, cheerfully assumed extra duties without expectation of additional compensation, and without question, consistently supported the policies and administrative procedures of the district. On the other hand, it was deemed “unprofessional” to ever challenge an authority figure, to demand additional pay for additional work, or to question the reasonableness of any policy or procedure.

Before you dismiss this definition of “professionalism,” you may wish to review an existing Ohio statute which sets forth the grounds for a teacher’s dismissal:

“The contract of any teacher employed by the board of education of any city, exempted village, local, county, or joint vocational school district may not be terminated except for gross inefficiency or immorality; for willful and persistent violations of reasonable rules and regulations of the board of education; or for other good and just cause.” ORC 3319.16 (emphasis added).

Note that the statute appears to reinforce the notion that a good teacher must handle resources efficiently, avoid any perception of immorality, and simply follow the rules. (While the term “incompetency” is conspicuously absent from the language of the statute, the phrase “gross inefficiency” has been interpreted through the litigation process to include incompetency.)

Since teachers who challenged (or even questioned) the adequacy or equity of compensation or raised other workplace issues placed their “professional status” in jeopardy, the OEA acted to censure school districts guilty of poor personnel practices by issuing public sanctions against those districts. The sanctions were issued by an internal commission known as the “Professional Rights & Responsibilities Commission.” The activities of the commission were the first indication that educational employees had rights as well as responsibilities in the workplace.

### Mid-Late 60's

By this time, the rights of teachers focused predominantly on attempting to establish the right of employees to mutually discuss salary and fringe benefits with school employers. In practice, this was initially a meet and confer model with the school administrator making the final decision and the teacher frustration level continuing to rise with each unsatisfactory unilateral management decision.

After all, teachers had been told that they were “professionals” and professionals were supposed to be able to discuss things in a rational way and to reach a mutually acceptable solution. In the absence of a collective bargaining law, local associations codified the right to discuss compensation issues in a document that was commonly identified as a “PN Agreement”—professional negotiations agreement. These agreements were 2-3 page documents that incorporated a broad recognition provision, a negotiations procedure, and usually a weak dispute settlement provision.

By the end of the '60's, it was clear that the professional interests of school administrators and classroom teachers in the workplace were far from mutual. There was a growing militancy among

the ranks of Ohio teachers. Although the professional code of the time still precluded withholding of services as a means to address grievances in the workplace, conducting “professional days” was not. A “professional day” was, in fact, a short-term withholding of services with the mitigating aspect that teachers did not walk picket lines or attempt to organize community support. Instead, they gathered at a local church or community hall, discussed the unprofessional behavior of the school board and administration, and participated in an inservice program which would in some way enhance their professional credentials. At first this strategy was very effective, an indication that Ohio teachers and school boards were learning their first lessons about collective power. Before the close of the decade, teachers were exercising their newly-discovered power inside the OEA and disenchanted administrators left the organization to establish a new power base which was dubbed BASA - Buckeye Association of School Administrators.

As teachers gained more political clout, school boards became more resistant to their “professional demands” for increased input into the decision-making process. The years 1965 through 1969 witnessed the first Ohio teacher strikes that were openly acknowledged to be strikes.

### **Early to Mid-70's**

The first half of the '70's was a period characterized by labor disputes. School employers were determined to “draw the line” against what was perceived as an erosion of management's ability to manage the schools. Strike issues expanded from salary and insurance benefits to recognition, fair dismissal procedures, performance evaluation and grievance procedures. The intensity of the conflict was symbolized by a strike by teachers in the South Point School District in 1975. Teachers walked off the job seeking a fair dismissal procedure and other improvements in their working conditions. The board invoked the Ferguson Act, firing all teachers who failed to return to work by a specified date. The OEA responded by launching a 3-year campaign in support of the discharged teachers. The result was the election of a new school board and the reinstatement of any discharged teacher who desired to return to work in the district.

South Point marked a critical turning point in labor relations in Ohio schools. It was an unmistakable sign that school employers had decided “to take the gloves off” and mete out harsh punishment to employees that dared withhold services as an exercise of power in the workplace.

### **Late 70's - Early 80's**

This period was beset by a proliferation of teacher strikes. School employers continued the “hard ball” tactics, by obtaining court orders to force striking teachers back to work. Teachers defied the orders and were jailed in Dayton, Brunswick, Boardman, Ravenna, and Youngstown. Employers hired security guards, doubled and sometimes tripled the substitute rate of pay to attract scabs, and housed scabs and bused them across picket lines to undermine the effectiveness of the traditional strike. Striking teachers organized community support for strikes and picketed the homes and businesses of school board members. The only OEA strike that was broken during this time period was the Mariemont strike. Mariemont was a local of 90 teachers that engaged in a strike in January 1981. When striking teachers refused to return to work in defiance of a court order, the employer determined that striking teachers had abandoned their jobs and terminated them. Throughout the termination hearings, the hearing officer held that abandonment constituted “good and just cause” for termination of employment. It should be noted that the same law firm that had unsuccessfully represented the South Point School Board represented the Mariemont School Board.

### **1984 - Ohio Collective Bargaining Law**

The Ohio Collective Bargaining Law was passed in July 1983 and became effective April 1, 1984. The inception of the Ohio Collective Bargaining Law brought dire forecasts from public employers and employee unions.

One such employer forecast was that conferring the lawful right to strike would escalate the number of strikes. It didn't happen. Perhaps unions felt that caution should be exercised in testing the new law. Perhaps employers had made such gloomy predictions that unions were reluctant to prove them right—thereby placing the new law in jeopardy. In any case, the number of strikes did not escalate after the passage of the law.

Some unions predicted that the procedural bureaucracy required for a lawful strike would diminish the effectiveness of strike strategy. This did happen to a large extent. The law eliminated the element of surprise and effectively constrained creative union strategies which previously had been effective—e.g. picketing residences and businesses of employer representatives.

Another union prediction was that the law would make it more difficult for unions to come to the mutual aid and support of each other. This was an accurate prediction. Sympathy strikes are unlawful under the Ohio Act and an unlawful strike carries harsh penalties. To engage in a lawful concerted activity, both unions must have expired contracts, each must have exhausted its dispute settlement procedure and have met all other procedural requirements for a lawful strike.

A third union prediction was that the strike as a means of dispute settlement would become ineffective. Through April of '91 this had not happened. OEA affiliates sought and found a creative alternative to the traditional strike, namely the partial (part-day) strike. Prior to April 4, 1991, SERB had held that this type of partial strike met the statutory requirement for a lawful strike. From the union standpoint, it also reintroduced the element of disruption of services necessary for an effective strike by significantly constraining the employer's ability to employ scabs in response to the union's actions. SERB also had held that teachers participating in a partial strike must be compensated for time worked (even during a strike subsequently deemed unauthorized) when the employer failed to seek approval for a retroactive penalty in accordance with ORC 4117.23.

On April 4, 1991, SERB reversed itself when it ruled "Partial strikes will be illegal per se", in response to a request for determination of unauthorized strike filed in a case involving the Summit County Department of Human Services and an AFSCME local. The fact pattern was very similar to that in the Beaver Local decision, in which SERB initially authorized partial strikes. Effective September 21, 1995, partial/intermittent strikes are prohibited by law. HB 200 redefines strike and defines unauthorized strike for the purpose of the Public Employees' Collective Bargaining Law. It also prohibits public employees from engaging in partial or intermittent strikes whether conducted during or after the expiration of the term of a collective bargaining agreement or during or after the pendency of a dispute settlement procedure set forth in ORC 4117.14.

## **OHIO COLLECTIVE BARGAINING LAW**

### **WHAT IS THE STATE EMPLOYMENT RELATIONS BOARD?**

The three-member State Employment Relations Board (SERB) has responsibility for implementing and administering the provisions of the Act. The members are appointed by the Governor, with the advice and consent of the Senate, and serve staggered six-year terms, except for the first appointments which are for one, two and three years respectively. No more than two board members may be from the same political party and each must be experienced in labor relations or personnel practices. The State Employment Relations Board is in Columbus.

### **WHO IS COVERED BY THE ACT?**

Because of the broad definition of “employer” used in the Act, every public educational institution in the state of Ohio will be covered by the Act. Thus, all public school districts, boards of mental retardation and developmental disabilities, and institutions of higher education are subject to the provisions of the Act.

The Act grants organization and bargaining rights to all employees except those specifically exempted by the Act. For school employers the significant exemptions are confidential employees, management level employees, supervisors, students whose primary purpose is educational training, seasonal and casual employees as determined by SERB, and part-time faculty members of an institution of higher education.

Employees with authority to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other public employees or with responsibility for directing them, adjusting their grievances, or effectively recommending such action are “supervisors” within the meaning of the Act (See Note on p.80). Additionally, the Act contains detailed criteria for supervisors within educational institutions. Thus, department chairmen or consulting teachers within school districts are not supervisors, but heads of departments or divisions of state institutions of higher education are supervisors. However, no other faculty member of an institution of higher education is a “supervisor” solely because the faculty member participates in decisions with respect to courses, curriculum, personnel or other matters of academic policy. It is important to note that no teacher shall be designated as a “supervisor” or “management level employee” unless he/she is employed under a superintendent’s or administrator’s contract.

### **WHAT ARE THE EMPLOYEE RIGHTS GUARANTEED UNDER THE ACT?**

Under the Act public employees are guaranteed a wide range of rights relating to union organization and collective bargaining. These rights include the rights to: (1) form, join, assist or participate in, or refrain from forming, joining, assisting or participating in an employee organization; (2) engage in other activities for the purpose of collective bargaining or other mutual aid and protection; (3) representation by an employee organization; (4) bargain collectively with their public employers to determine wages, hours, terms, and other conditions of employment and to enter into collective bargaining agreements; and (5) to present grievances to the employer and have them adjusted. Although employees have the individual right to present grievances to their employer without the intervention of the bargaining representative, the adjustment of such grievances cannot be inconsistent with the terms of the collective bargaining agreement, and the bargaining representative must have the opportunity to be present at the adjustment.

## **WHAT IS THE EMPLOYER'S DUTY TO BARGAIN?**

Employers are required to bargain collectively with the exclusive representatives of their employees. An employee organization may become the exclusive representative of a bargaining unit by either being certified by SERB in a representation election, being voluntarily recognized in accordance with the procedures of the Act, or through "grandfathering" by recognition through a written contract either explicitly or by custom and practice. An employee organization which was so recognized prior to the effective date of the Act remains the exclusive representative until challenged by another employee organization and SERB has certified a new exclusive representative.

The duty to bargain collectively requires the employer representative and employee representative to carry out the mutual obligation to negotiate in good faith at reasonable times and places with respect to wages, hours, or terms, and other conditions of employment and the continuation, modification, or deletion of an existing provision of a collective bargaining agreement with the intention of reaching an agreement or to resolve questions arising under the agreement. The bargaining duty does not require either party to agree to a proposal or to make a concession. The bargaining duty includes not only the obligation to negotiate a collective bargaining agreement, but also the duty to provide the employer representative with requested information that is relevant to the representative's obligation to bargain collectively, to administer the collective bargaining agreement, or to prepare for negotiations. In addition, the duty to bargain continues after the execution of a collective bargaining agreement and, throughout the term of the contract, requires the employer to give the employee representative notice and an opportunity to negotiate proposed changes in "mandatory" subjects of bargaining.

## **WHAT IS THE SCOPE OF BARGAINING UNDER THE ACT?**

Section 4117.08 provides the statutory basis for defining the scope of bargaining. You should take the time to read the statute directly. Section 4117.08 provides that all matters which pertain to wages, hours, or terms and other conditions of employment and the continuation, modification, or deletion of an existing provision of a collective bargaining agreement are subject to collective bargaining between the employer and the exclusive representative. In addition, the Act contains a list of fundamental management rights which, unless the employer otherwise agrees in a collective bargaining agreement are not impaired by the Act, and over which the employer is not required to bargain except as those management rights affect wages, hours, or terms, and other conditions of employment, and the continuation, modification, or deletion of an existing provision of a collective bargaining agreement. The statutory construction of Section 4117.08 has been the focus of considerable, extensive, and controversial litigation, with important consequences to our members.

Generally, the established labor law concept is that subjects of bargaining fall within three basic categories: (1) "mandatory," meaning those subjects which must be bargained; (2) "permissive," meaning those subjects which may be bargained but for which no duty to bargain exists; and (3) "prohibited," meaning those subjects which may not be bargained. Under the statutory scheme, all matters pertaining to wages, hours, or terms and other conditions of employment and changes in existing provisions of a collective bargaining agreement are mandatory subjects of bargaining, as are the effects of management decisions on wages, hours, or terms and other conditions of employment. (But see the discussion of the Lorain decision below.)

The distinction between "mandatory" and "permissive" subjects of bargaining affects both the negotiation of a collective bargaining agreement and actions taken during the term of an existing collective bargaining agreement. Employers and employee organizations are required to negotiate concerning mandatory subjects of bargaining, and either party may insist, to the point of impasse,

upon a proposal concerning a mandatory subject. However, in virtually all jurisdictions, it is an unfair labor practice for either party to insist upon a permissive subject to the point of impasse. Moreover, an employer can act unilaterally during the term of a collective bargaining agreement with respect to any "permissive" subject, but may not with respect to a "mandatory" subject without first affording the employee organization an opportunity to bargain over that subject. The employee organization that fails to act may waive the right to bargain, and the employer's duty to bargain does not require that a concession be made.

The legal battle in Ohio over the scope of bargaining has been to draw the line between what is a mandatory or a permissive subject of bargaining. The Ohio Supreme Court has interpreted the statute in a manner which makes mandatory subjects expansive, and permissive subjects narrow. The Court addressed the meaning of Section 4117.08 in Lorain City School Dist. Bd. of Edn. v. SERB, 40 Ohio St. 3d 257, 1989 SERB 4-2, 533 NE2d 264 (1988). In Lorain, Section.08© interpreted to obligate public employers to bargain over all matters which affect wages, hours, and terms and conditions of employment, and not just over those effects on wages, hours and terms and conditions of employment.

SERB, with its present management-orientation, has attempted to reason around dictates of the Lorain decision. SERB first attempted to undermine the Supreme Court by announcing a confusing 4-part balancing test in a 1993 decision, In re ODOT, SERB 93-005, 4-29-93. SERB later attempted to correct the inconsistencies and conflicts in ODOT through another decision, In re SERB v Youngstown City School District Board of Education, SERB 93-010, 5-4-95. The Youngstown case announced a 3-part test to determine whether a matter was a mandatory subject or a permissive subject of bargaining. SERB adopted a standard in the form of a balancing test to identify those subjects about which public employers must bargain. The standard must balance the right of employers to run the public business with the right of their employees to engage in collective bargaining. Also, SERB declared in Youngstown that a permissive subject does not automatically become a mandatory subject of bargaining "merely" because it is included in a collective bargaining agreement.

Unfortunately, the continued legal struggle over the scope of bargaining will not make things easy at the bargaining table. Management will undoubtedly use the Youngstown decision to assert its "right" to not bargain over numerous subjects. It must be emphasized that the Ohio Supreme Court speaks with greater authority than SERB, and as a matter of law its decisions supercede those of administrative agencies like SERB. Thus, when an employer representative uses Youngstown as authority, the appropriate response is to assert the Association's rights under Lorain.

Nevertheless, the bargainer is advised not to be preoccupied with winning a battle over a principle only to lose sight of the goal of obtaining a good contract. Resolving disputes over such matters usually will take more than the filing of an unfair labor practice charge. First, the bargainer must recognize that regardless of Supreme Court case law, SERB controls the process for determining "probable cause" on unfair labor practice charges, and such determinations are generally not appealable. Also, in every case, the SERB process takes time and will of necessity delay bargaining. These factors, along with the importance of the issue, the strength of the membership, and other bargaining factors and priorities must be taken into consideration by the bargainer to determine the legal and nonlegal strategies which will achieve a fair agreement between a local association and an employer.

#### **WHAT IS MEANT BY "SUPREMACY OF AGREEMENT"?**

The Act reverses the established principle of Ohio law that terms of a collective bargaining agreement are valid only if they do not conflict with, or purport to abrogate, the duties and responsibilities imposed upon the Board of Education by law. Under the Act, a collective bargaining agreement governs the wages, hours, or terms and other conditions of employment. The only

exceptions to this “supremacy of agreement” are expressly identified in the Act. Thus, laws pertaining to civil rights, affirmative action, unemployment compensation, workers’ compensation, the retirement of public employees, residency requirements, the minimum educational requirements contained in the Revised Code pertaining to public education (including the requirement of a license), and the minimum standards of the State Board of Education are expressly excepted. Otherwise, the terms of the contract prevail over conflicting provisions of state law.

## **HOW DOES AN EMPLOYEE ORGANIZATION GAIN RECOGNITION STATUS?**

Under the Act, an employee organization can obtain or maintain recognition as the exclusive bargaining representative in one of three ways: (1) through various grandfather provisions; (2) by voluntary recognition by the employer; or (3) by a recognition election. The grandfather provisions of the Act provide that a union’s exclusive recognition as bargaining representative is preserved if a lawful agreement, contract, or a memorandum of understanding was in effect on October 6, 1983, the effective date of the Act, and the employee organization has been recognized as the exclusive representative either explicitly or through custom and practice.

An employee organization may become the exclusive representative by being recognized voluntarily by the public employer and then certified by SERB. The organization which is requesting recognition must allege to the employer, with a copy to SERB, that a majority of the employees in the bargaining unit wish to be represented by the organization. That allegation must be supported by substantial evidence in accordance with SERB rules. The employer must immediately either request an election or proceed with the voluntary recognition procedures of the Act. SERB will certify the employee organization as the exclusive representative three weeks after the request for recognition unless the employer petitions for an election or SERB receives substantial evidence, in accordance with its rules, demonstrating that a majority of employees do not want to be represented by the employee organization, or that at least ten percent of the employees wish to be represented by another employee organization, or that the proposed unit is not an appropriate unit under the Act.

## **HOW IS THE BARGAINING UNIT DETERMINED?**

The State Employment Relations Board is vested with final and conclusive authority to determine in each case the unit appropriate for purposes of collective bargaining. The Board’s determination is not appealable to court. In fashioning an appropriate unit, SERB is required to consider all relevant factors including: the desires of employees; the community of interest; wages, hours and other working conditions; the administrative structure of the employer; the efficiency of operations of the employer; the effects of over-fragmentation; and the history of collective bargaining. SERB may certify a unit to be appropriate, even though another unit may also be appropriate.

Although the authority of SERB to determine the appropriateness of a bargaining unit is absolute, the Act specifies that SERB shall not decide that any unit is appropriate if it includes both professional and non-professional employees, unless a majority of the professional employees and a majority of the non-professional employees first vote for inclusion in the unit. Additionally, SERB may not designate as an appropriate unit one that contains more than one institution of higher education or, within a single institution of higher education, a unit which would be inconsistent with the accreditation standards governing the institution or any department, school, or college thereof.

With regard to deemed certified bargaining units, amending or altering a deemed certified bargaining unit must be accomplished by mutual agreement between the public employer and the employee organization. Deemed certified bargaining units were those units that had established labor relations prior to the effective date of the Ohio collective bargaining law. These unions were recognized by contract or custom as the sole and exclusive representatives of their respective

employee groups. The law provides that “an employee organization recognized as the exclusive representative shall be deemed certified until challenged by another employee organization.” In re Ohio Council 8, Am. Fedn. of State, City and Mun. Empl., AFL-CIO v. Cincinnati (1994) 69 Ohio St. 3d 677, the court declared that a deemed certified unit could not be “altered or adjusted” by SERB. This case involved the question of whether a deemed certified unit could be adjusted or altered in any way until challenged by a rival organization. There was cause for concern for OEA and its members because the decision was very broad and because the decision could have invalidated every modification to a deemed certified unit that had been made by mutual agreement between the employee organization and the employer. A question is raised with respect to whether SERB may continue to “clarify” deemed certified units. While the Cincinnati decision repeatedly referenced “altering” or “adjusting” deemed certified units as those terms pertain to O.A.C. Rule 4117-5-01 (F), this decision, as well as the Ohio Council 8 decision, was silent with respect to clarification. [Cite as In re Ohio Council 8, AFSCME, SERB 95-021 (12-29-95).]

The Brecksville decision on deemed certified units alleviates these concerns because the court specifically provides that SERB has jurisdiction to consider petitions to amend deemed-certified units which are jointly filed by an employer and an exclusive representative. This means, as stated in the first paragraph, that SERB must approve such mutually agreed to petitions unless there are compelling reasons under the law to not do so. You can read about the entire case by referring to the following cite Brecksville Edn. Assn v. State Emp. Relations Bd. (1996) Ohio St. 3d.

## **WHAT IS AN UNFAIR LABOR PRACTICE?**

One of the essential functions of the Act is regulation of employer and employee organization conduct with respect to collective bargaining and employee rights established by the Act. To enforce these standards of conduct, SERB is empowered to determine whether an employer or employee organization has committed any of the unfair labor practices identified in the Act and to remedy any violations found. It is through unfair labor practice proceedings that SERB will exert its influence on employee relations in Ohio schools.

If SERB determines, after a hearing as provided in the Act, that an unfair labor practice has been committed, it will issue a cease and desist order and require the offending party to take affirmative action to remedy the violation. Such action may include reinstatement of affected employees with or without back pay. However, the board must not order the reinstatement of any individual, or the payment of back pay, if the suspension or discharge was for just cause unrelated to the rights established in the Act and the procedure contained in the collective bargaining agreement governing suspension or discharge was followed. In cases of unilateral changes in working conditions, the remedy typically requires the employer to reinstate the working conditions that were unilaterally changed.

## **WHAT IS A LEGAL STRIKE?**

The Act permits school employees to strike after the appropriate negotiations have been exhausted. The Act specifically prohibits strikes during the term of a labor agreement or during the pendency of settlement procedures. If the parties have exhausted a mutually agreed-upon dispute settlement procedure, or have not reached agreement after complying with the statutory dispute settlement procedure, and if the existing collective bargaining agreement has expired, employees may strike if the required ten-day notice has been given. The Act provides that no public employee

is entitled to pay or compensation from the public employer for the period engaged in any strike.

An employer may seek a seventy-two hour temporary restraining order from the Court of Common Pleas against a strike which constitutes “a clear and present danger to the public health or safety.” During that time, the employer must ask SERB for continued authorization to enjoin the strike. If SERB determines that a clear and present danger exists, the court has jurisdiction to issue further orders to enjoin the strike for up to sixty days. After that time, the injunction automatically terminates and no court may issue any further injunction. During the period of the injunction, the parties must engage in collective bargaining under the auspices of a SERB-appointed mediator.

### **WHAT IS AN ILLEGAL STRIKE?**

Under the Ohio Collective Bargaining Law, the employer may ask SERB to determine whether a strike is authorized. SERB must make its decision on the legality of a strike within seventy-two hours of receiving the request from the public employer. If SERB determines that a strike is illegal, the employer may remove or suspend the employees involved if they continue to strike one day after they are notified of SERB’s decision. Upon the employer’s request, SERB may authorize the employer to impose penalties retroactive to the date the strike commenced. If a strike is unauthorized and the employer did not provoke the strike, the employer must deduct from each striking employee’s wages the equivalent of two days’ pay for each day the employee remains on strike after receiving notice of SERB’s decision. This penalty is not appealable to SERB.

Prior to September 1995, public employees were permitted by law to engage in partial/intermittent strikes. Since the enactment of Amended HB 200, the law prohibits partial/intermittent strikes. The current definition of an unauthorized strike includes, but is not limited to, concerted action during the term or extended term of a collective bargaining agreement or during the pendency of the settlement procedures set forth in section 4117.14 of the Revised Code. See ORC 4117.01(I) for the complete definition of an unauthorized strike.

### **IN-TERM STRIKES**

SERB has ruled that there are several different instances in which a strike during the contract term may be deemed an unlawful strike. One instance is when employees strike prior to the completion of the 60 or 90 day negotiation period or during the term of a collective bargaining agreement, except where there is a specific contract reopener in the existing contract that is subject to the ORC 4117.14 dispute settlement procedure. This exception was declared by SERB in October, 1987, involving The Carlisle Teachers’ Association and Carlisle Board of Education, SERB 87-025 (October 11, 1987).

### **PROCEDURAL FLAWS**

In a decision involving The Mad River-Green Local Education Association, SERB 88-016 (September 29, 1988), SERB ruled that a strike over a specific contract reopener was illegal when the dispute was covered by a MAD (Mutually-agreed upon Alternate Dispute Resolution Procedure) because the MAD was faulty. The reason for the determination was that the MAD did not provide for a discernable exhaustion of the dispute settlement procedure. Since it could not be determined when the dispute settlement procedure had been exhausted, the right to strike was foreclosed. From this dispute decision, one can reasonably deduce that a MAD written so as to clearly indicate when it has been exhausted would allow for a legal, in-term strike. However, at the time of the

decision, no case had been presented to SERB for a definitive ruling on this particular issue.

In Weathersfield Local Education Association, SERB 91-009 (September 5, 1991), SERB ruled that the MAD was ambiguous and thus faulty. Accordingly, no dispute settlement procedure had been exhausted. SERB ruled that, in the absence of an effective contractual impasse resolution procedure, Section 4117.14 applies. SERB directed the parties to follow the statutory dispute resolution procedure. The Weathersfield Local Education Association appealed SERB's unauthorized strike determination and the reasoning that the MAD was faulty because the time limits for reaching ultimate impasse were ambiguous. The Court of Common Pleas rejected SERB's reasoning because the court found that the statutory impasse resolution procedure was equally "ambiguous." The court found, however, that the local association had not exhausted its MAD. Therefore, the strike was unauthorized but not for the reasons articulated by SERB.

In another case involving the Request for the Determination of Unauthorized Strike filed in Niles Classroom Teachers Association, SERB 91-010 (November 8, 1991), the parties' MAD consisted solely of mediation. SERB ruled that a MAD that has mediation as the sole requirement does not render it faulty. In this case the MAD is clear and its exhaustion point is specific (i.e. the expiration date of the contract). This case clearly supported the implications of the Mad River-Green decision.

In Dayton Education Association, SERB 93-003 (April 16, 1993), the employer filed a Request for Determination of Unauthorized Strike challenging the union on the issue of an untimely Notice of Intent to Strike and on whether ORC 4117.14 (D)(2) permits the filing of multiple overlapping notices of intent to strike. On the first issue, SERB concluded that the Notice of Intent to Strike was timely filed since Chapter 4117 does not require 24 hour periods when the Statute references "day". ORC 4117.01(P) states: "Day' means calendar day." However bargainers are advised to allow **for 10 full days** between the date of the filing of the notice and the commencement of the strike date in order to avoid a challenge by the employer that a strike is unauthorized. On the second and more important issue, SERB said that in the future it will "interpret the language of O.R.C. § 4117.14(D)(2) which references a "ten-day prior written notice of intent to strike" (emphasis added) to contemplate the existence of only one notice announcing a strike during a given period of time. When overlapping Notices of Intent to Strike are filed, the later-filed notice will be deemed to have superseded earlier one(s), without regard to the good or bad faith of the filer." SERB's interpretation of 4117.14(D)(2) clearly places parameters on partial strikes.

Other unlawful strike situations, as determined by SERB, can arise when the union fails to properly serve Notice of Intent to Strike on the employer or when the Notice of Intent to Strike filed with the employer and SERB is determined to be "faulty" in some manner, such as failing to provide sufficient time between notification to the employer and strike implementation.

## THE LAWFULLY BINDING CONTRACT

Prior to the Act, the standards for a lawfully binding contract were extracted from common law, from state statutes governing the enforcement of private contracts, and from the standards imposed by federal labor law that governs private sector labor disputes. In the absence of a state statute governing the collective bargaining process, and in a bargaining arena in which the employer was free to refuse to engage in the collective bargaining process, contract administration was no easy matter. (Refer to section on Supremacy of the Agreement.) The Act and SERB's interpretation of the Act have now created some very clear standards upon which contracts may be determined to be binding upon the parties. **At minimum, every collective bargaining agreement should meet these standards.** Collective bargaining agreements **must be in writing and cannot be for a term greater than three years**, although the parties may mutually extend an agreement. All collective bargaining agreements **must contain a grievance procedure** which may culminate in final and binding arbitration of unresolved grievances. Moreover, collective bargaining agreements **must contain a dues checkoff provision** authorizing the employer to deduct dues, fees, and assessments of members of the employee organization upon presentation of a written authorization by the employee. In addition, SERB has determined that collective bargaining agreements **must be signed by both parties, must have a specific expiration date and must address more than "money only" terms.**

In sharp departure from prior law, a collective bargaining agreement may provide, as a condition of employment, that employees in the bargaining unit who are not members of the employee organization pay to the employee organization a "fair share" fee.

The deduction of a "fair share" fee by the employer and its payment to the employee organization is automatic and does not require the written authorization of the employee, once such an agency shop agreement is reached.

The OEA Advocacy Programs Division strongly recommends that the following standards be met in addition to the foregoing legal standards. Every collective bargaining agreement should contain:

**A formal recognition provision** which: (1) clearly states that the employer recognizes the employee organization as the sole and exclusive employee representative for the purpose of collective bargaining; (2) clearly states that the employee organization is an affiliate of the OEA/NEA; (3) provides that an election in accordance with the provisions of ORC 4117 is the only means by which recognition may be withdrawn; and (4) clearly defines who is included in and who is excluded from the bargaining unit.

A grievance procedure culminating in final and binding arbitration,

A dispute settlement procedure that supersedes the statutory procedure (if the statutory procedure is desired, the agreement should contain no dispute settlement procedure) and

**An appendix containing all personnel forms utilized by bargaining unit employees** (which should comply with the appropriate provisions of the collective bargaining agreement).

## TYPES OF DISPUTE SETTLEMENT PROCEDURES

### STATUTORY PROCEDURE - ORC 4117.14

#### Negotiations Period

Minimum 60-day negotiations period (90 days for initial contract) calculated from the date following filing of the Notice to Negotiate.

#### Impasse Resolution

Mediation begins on the 45<sup>th</sup> day prior to contract expiration or earlier if mutually requested by the parties.

Fact-finding begins on 31<sup>st</sup> day prior to contract expiration.

Fact-finding report is due 14 days after fact-finding hearing.

Parties must vote within 7 days of postmark date of recommendation.

#### Adoption

Requires 3/5 rejection of total union membership or legislative body (employer). Election results must be certified to employer and the State Employment Relations Board within 24 hours of vote count. Otherwise, the fact finder's report is deemed accepted.

#### Striking

The union cannot strike until the fact finder's recommendation has been published by the State Employment Relations Board for 7 days after either party's rejection (provided 10-day notice is timely filed).

#### Costs

Costs of the fact finder are paid: ½ by SERB, ¼ by the employer, and ¼ by the union.

#### Pros

Provides a legal method for resolving disputes where none previously existed or when the parties cannot mutually agree to a MAD (Mutually-agreed upon Alternate Dispute Resolution Procedure). It includes the right to strike for strike permissive employees.

#### Cons

At the expiration of the 60-day (or 90-day) bargaining period, impasse is automatic, and the timelines may be too short to accomplish meaningful bargaining. The timelines for voting on the fact finder's report are restrictive and compliance with voting and certification timelines can be problematic, especially for ratifications involving large unions and those occurring during holidays and other recess periods.

The 3/5 rejection is also a problem because the 3/5 standard is based on total union membership and not on the votes of members in attendance at the ratification meeting.

## **MAD PROCEDURES FOR SUCCESSOR CONTRACTS**

### **MEDIATION**

#### Negotiations Period

Minimum 60-day negotiations period calculated from the date following filing of the Notice to Negotiate.

#### Impasse Resolution

Either party may declare impasse; however, if the parties are utilizing the Federal Mediation and Conciliation Service, a joint request must be made to secure the services of a mediator. A mediator is a third party neutral with experience and training in dispute resolution. The mediator specifies a time and place for a meeting, meets with both parties jointly and then each party separately, and tries to clearly determine the positions of both parties. The mediator's task is to find some way to get the parties talking again with a goal of getting one or both parties to alter their intransigent positions which led to impasse. Mediation should be for a specified period of time, with a minimum and maximum period of duration, and should not extend beyond the expiration of the contract unless agreed to in writing by the parties prior to contract expiration.

#### Striking

Once the mediation period has been exhausted, the union may strike after having filed the proper 10-day notice with the employer and the State Employment Relations Board.

#### Costs

No cost is incurred by the parties for the services of a mediator if the Federal Mediation and Conciliation Service is used. Federal Mediation and Conciliation Service is a government agency supported by federal tax dollars.

#### Pros

Allows for intervention of a third party neutral without the parties relinquishing control of the bargaining process.

#### Cons

Does not always result in settlement. If no mutual agreement is reached with the assistance of the mediator, the mediator leaves the parties either to "cool off" or to resolve the dispute without further assistance. The parties' ability to reach a mutual agreement often hinges on the expertise, determination, and the availability of the mediator.

### **FACT-FINDING/ADVISORY ARBITRATION**

#### Negotiations Period

Minimum 60-day negotiations period calculated from date following filling of the Notice to Negotiate.

### Impasse Resolution

Either party may declare impasse and implement the selection process for a single fact finder or, in the case of a tri-partite panel, each party selects an advocate and then the two advocates select a third party neutral to chair the panel. This should happen with ample time for a hearing in which both parties present their positions and the fact finder or panel issues an advisory report prior to the expiration of the existing contract.

### Adoption

Once the advisory report is received by the parties, each should have a specified deadline to accept or reject the report in its entirety.

### Striking

If either party rejects the report, the union may strike after having filed the proper 10-day notice with the employer and the State Employment Relations Board.

### Costs

The contract should specify that the parties share equally, the expense of the fact finder or third party neutral, and that each party is responsible for its own incurred expenses.

### Pros

This procedure yields written recommendations for consideration by the parties' constituents. If the fact finder or panel's recommendations are well balanced, both parties may be able to accept the recommendation. This procedure also provides a face-saving mechanism for the parties who, for political reasons, cannot retreat from a bargaining position. Acceptance of the fact finder's recommendation provides an acceptable rationale for lessening a demand and reaching the desired compromise. If the recommendation favors the union's position over the employer's, the recommendation becomes a powerful tool to be utilized to influence public opinion against the party whose position was not supported by the fact finder.

### Cons

By investing the fact finder or tri-partite panel with the authority to fashion a recommendation, the parties concede part of their power in the bargaining process to a third party. In addition, the employer will often attempt to use the fact finder's report as a position to bargain down from if the union is not perceived as having the ability to implement an effective strike action.

## **BINDING ARBITRATION**

### Negotiations Period

Minimum 60-day negotiations period calculated from date following filing of the Notice to Negotiate.

### Impasse Resolution

Procedure calling for one arbitrator or a panel of arbitrators to determine, after a hearing and issue by issue, those unresolved issues at impasse and to write an award. The award is binding on the parties. Referred to as conciliation under ORC 4117, this form of dispute resolution is mandatory for safety forces (fire, police, prison guards, emergency personnel) and other specified classifications of employees.

### Costs

Costs are shared equally by the parties, except for those strike prohibited employees where the State Employment Relations Board pays  $\frac{1}{2}$  and the employer and union each pay  $\frac{1}{4}$  of the cost.

### Pros

Ensures for finality to the bargaining process. This procedure is recommended when the parties' positions are extremely polarized over critical issues, when impasse occurs and the bargaining unit is too small to engage in an effective strike, or when it is necessary to engage in in-term bargaining.

### Cons

The third party neutral becomes omnipotent. The neutral's recommendations become contract with or without the parties' concurrence. The union gives up the right to vote on outcome and forfeits the right to strike.

## **FOR IN-TERM BARGAINING**

### **STATUTORY PROCEDURE**

A provision that specifically provides for the use of the statutory procedure (ORC 4117.14) when engaging in impact bargaining or bargaining under a reopener that occurs during the term of the contract.

### Pros

To date the statutory procedure is the only procedure which SERB has ruled that strike permissive employees may legally strike during the term of a contract.

### Cons

See page 8, "Statutory Procedure".

## **FACT- FINDING/ADVISORY ARBITRATION**

Same as procedure for successor contract except that bargaining period is usually for 30 days or less and specifically addresses right of strike permissive employees to strike at the exhaustion of the procedure during the term of the contract.

Pros

Usually takes less time than the statutory procedure and does not restrict the parties' selection of fact-finders.

Cons

To date, there is no definitive ruling from SERB indicating that a strike under such a procedure is legal. However, all indications based on past rulings would indicate that they would rule such a strike legal. Also, because this process is only advisory, it does not guarantee satisfactory closure. Often if the fact-finding report is rejected by the employer, the union finds itself in the position of rejecting the employer's penchant for bargaining down from the fact-finding report.

### **BINDING ARBITRATION**

Same as procedure for successor contract except that bargaining period will usually be 30 days or less.

Pros

Same as Successor Contract

Cons

Same as Successor Contract

## FAIR SHARE FEE (Agency Shop)

The Ohio Collective Bargaining Law ORC 4117 and the courts have determined that an employee's freedom of choice is not diminished by the bargaining of a fair share fee provision. Since the employee organization is obligated to represent all bargaining unit members, it should be able to assess all bargaining unit members for the cost of that representation. State and Federal law protects the fair share fee payor from discriminate treatment because the fee payor may not be assessed more than 100% of the total annual dues of a union member and the fee payor is entitled to a rebate, if requested, of any portion of the fee spent for partisan political issues or ideological causes not germane to the realm of Collective Bargaining.

The precedent-setting Supreme Court decision dealing with Fair Share Fee was the Chicago Teachers Union, Local No. 1 v. Hudson (106-S.C.T. 1066,1986). This decision established a newer and more rigid standard for internal union rebate procedures. In an effort to comply with the standards established by Hudson, the OEA revised its internal rebate procedure, beginning with the 1986-87 school year. Because of the legal ramifications of the Fair Share Fee rebate procedure, the bargained language for Fair Share Fee deductions must meet rigid minimum standards. **Under no circumstances should the internal rebate procedure be bargained.**

On May 30, 1991, the Supreme Court issued a decision regarding chargeable activities. This involved the Michigan Education Association and one of its higher education affiliates, the Ferris Faculty Association. In Lehnert v. Ferris Faculty Association, the court ruled that the local bargaining representative may charge objecting employees for their pro rata share of the cost associated with chargeable activities of its state and national affiliates even if said activities were not performed for the direct benefit of the objecting employees' bargaining unit. In addition, activities do not have to fall within a local bargaining representative's duty of fair representation in order to be chargeable to objecting employees. The court also looked at whether certain categories of activities were chargeable. Activities that are not chargeable are Lobbying Expenditures (except those related to the ratification or implementation of a Collective Bargaining Agreement), Unit-by-Unit Activities and Public Relations, i.e. media exposure, signs, posters, buttons, and informational picketing. However, participation in state and national conventions regarding expenditures for local delegates and the reporting of miscellaneous services are activities that are chargeable.

Additionally, in at least one case, Weaver v. University of Cincinnati 970 F2d 1523 (6<sup>th</sup> Cir.1992), a court has found an indemnification clause concerning fair share fee to be unenforceable. The OEA continues to take the position that it will negotiate indemnification clauses and honor any obligations it has that may arise under such a clause.

Also, bargainers should make employers aware that the OEA Fair Share Fee procedures have been found by the Federal District Court to be legally acceptable. Bargainers should be aware, however, that the above-cited case could make it more difficult to obtain a fair share fee provision. Therefore, the chances are minimal that a lawsuit will be brought over the fair share fee provisions.

The following represents some of the pros and cons to be considered when contemplating bargaining Fair Share Fee provisions.

### PROS

- |   |  |
|---|--|
| <ol style="list-style-type: none"><li>1. Establishes the mentality that if an employee profits by the efforts of the Union, the employee should financially support the Union.</li><li>2. Promotes Union economic security.</li><li>3. Promotes Union membership; can help strengthen the Union power base (tends to encourage joining as opposed to payment of fee).</li><li>4. Requires formalization of bookkeeping procedures; requires the Union to be more accountable for how it expends its money</li></ol> | <ol style="list-style-type: none"><li>5. Can reduce internal conflict between Union members (loyal supporters) vs. non-members (free loaders).</li><li>6. Discourages support of rival organizations within the bargaining unit.</li></ol> |
|---|--|

## **CONS**

1. May create an organized vocal minority (of fee payors) to attack the Union.
2. Raises the expectation level of former non-members and fee payor with regard to service (sometimes unrealistically).
3. Encourages the employer to propose excessive quid pro quo at the bargaining table for granting fair share fee.
4. Requires formalization of bookkeeping procedures; requires the Association to be more accountable for how it expends its money for the service and representation of bargaining unit members.
5. May subject the Union and the Union leadership to legal challenges over the right to collect the fee and the amount of the fee to be collected.
6. Causes financial drain on the OEA/NEA in defending affiliates against right-to-work challenges and litigation.



## **SCHOOL FINANCIAL ANALYSIS**

One of the services provided by OEA to members is the review and analysis of school district (and other governmental units) finances. The General Fund Analysis (GFA), much like the five-year forecast, reports historical and projected financial data. The GFA is updated on a yearly basis by OEA's research consultants to reflect changes in the State of Ohio's education budget. The five-year forecast is a financial document that contains 3 years of actual and 5 years of forecasted data (revenues and expenditures). The five year forecast must be submitted by the treasurer to the Ohio Department of Education twice a year (end of October and end of May).

The GFA is comprised of the following worksheets and graphs:

### *GFA Summary*

This worksheet provides an overview of historical information and projected amounts of revenues expenditures, cash balances and new money.

### *OEA and District Estimates of New Money*

This worksheet shows the cumulative amount of additional operating revenues coming into the district over a period of time. Base year calculations are made for both the current and next fiscal years. District projections for revenues from the renewal or replacement of expiring levies (five-year forecast lines 11.01 and 11.02) are included as a separate line item. OEA estimates assume the continuation of all levies with the revenues collected included under operating revenue.

### *OEA and District Revenue Estimate Comparison*

This worksheet provides a side-by-side comparison of OEA and district revenue projections for a four-year period.

### *State Aid*

This worksheet is used to demonstrate OEA state aid estimates using ADM (enrollment after adjustments) and property value projections to determine formula aid along with projections for other state-funded items to determine total state aid (both unrestricted and restricted).

### *Property Values and Rates*

Historical district property values and millage rates are reported and used to estimate future values and rates. OEA projections incorporate updates and reappraisals of property. Adjustments are also made for the phasing-out of business inventory as a taxable source.

### *Property Taxes*

This worksheet shows OEA estimates of revenues from real and personal property. Since annual property taxes are collected over two fiscal years, assumptions regarding the distribution of those payments are made.

### *Income Tax Revenue and Growth*

Historical and projected income tax revenues are provided. This worksheet is applicable to only the approximately 20 percent of districts that have a school district income tax in effect.

### *District Five-Year Forecast*

This worksheet is a reproduction of forecasts filed with the Ohio Department of Education. Figures may be adjusted to reflect up-to-date (yet unfilled) district projections.

### *Comparison of Actual Revenues and Expenses to District Estimates*

Three years of “actuals” and “estimates” are compared. Negative differences for revenues and ending balance indicates the district underestimated those items. Positive differences for expenses means the district overestimated those items.

### *Revenue and Expense Items as a Percent of Total Revenues and Expenses*

The portion that each revenue and expense category is of total revenues and expenses is shown.

### *Annual Change*

This worksheet uses district forecast information to report actual and projected annual percentage changes for each category of revenues and expenses.

### *Ending Balance as a Percent of Total Expenses Graph*

This graph shows historical and district-projected amounts of total expenses and ending balances and ending balances as a percentage of total expenses.

### *Salaries & Benefits as a Percent of Total Expenses Graph*

This graph shows historical and district-projected amounts of total salary and benefit costs and total expenses and salaries and benefits as a percentage of total expenses.

### *Revenues less Expenses Graph*

This graph shows historical and district-projected differences between total revenues and total expenses. Positive amounts indicate revenues exceeded expenses.

### *Difference Between Actual and Projected Revenues, Expenditures and Ending Balances Graph*

This graph compares three years of actual and estimated revenues, expenses and cash balances. A negative amount for revenues and ending balance indicates the district underestimated those items. A positive amount for expenses means the district overestimated that item.

Typically a labor relations consultant will contact OEA research staff and request a GFA be developed for a particular district at the onset of negotiations. OEA research consultants then generate the GFA and will on an as-needed basis participate in the bargaining process when the negotiations reach the point where economic proposals are exchanged. The research consultants are also available to provide their expertise at mediation, fact finding, interest arbitration and grievance arbitration.

## **HEALTH INSURANCE BARGAINING**

The general legal framework for public school health insurance in Ohio is embedded within three

major laws:

- (1) O.R.C. § 3313.202
- (2) O.R.C. § 9.833
- (3) O.R.C. § 4117.08

These laws advance the proposition that the right and responsibility for providing health insurance rests with the board of education in consultation with its employees in the context of collective bargaining.

According to O.R.C. § 3313.202, a board of education may procure and pay all or part of the cost of group term life, hospitalization, surgical care, or major medical insurance, disability, dental care, vision care, medical care, hearing aids, prescription drugs, sickness and accident insurance, group legal services or any combination of the foregoing for its employees *provided that the majority of those so covered consent to the plan* (italics added).

Further, the law states that a board of education may procure such coverage through a number of vehicles. Boards may purchase insurance from an insurance company or health insurance corporation, or can fund the insurance plan(s) themselves. Boards can provide such plans through the board in conjunction with employees through a jointly-administered trust fund or with other boards of education.

O.R.C. § 9.833 states that political subdivisions may establish and maintain self-insurance programs with public monies individually or with other political subdivisions to provide health care for their officers or employees; that every self-insured plan must establish a reserve which is sufficient to meet the potential costs of the health care program under prevailing actuarial standards; and that the plan must be certified annually as to actuarial soundness by a member of the American Academy of Actuaries, who must prepare a report including such certification within ninety days after the close of the plan year.

According to O.R.C. § 4117.08 (A), all matters pertaining to wages, hours or terms and other conditions of employment and the continuation, modification or deletion of an existing provision of a collective bargaining agreement are subject to collective bargaining between the public employer and the exclusive representative.

These three strands of law are woven into the essential requirements of the insurance section of a collective bargaining agreement. To be complete, each agreement must have a health insurance committee that operates year-round; a complete schedule of benefits; a provision stating that if employees contribute to premium, the dollar figure should be stated and a flexible spending account should be available to all; and a section that states that the union must receive copies of all insurance contracts and any changes to those contracts.

Health insurance committees are created in order to establish an information conduit between bargaining unit members, the administration and the health insurance company year-round. Equal members should be appointed from every bargaining unit and the administration, with one member from each party appointed by its bargaining team. The team's work begins before the union files its Notice to Negotiate with the State Employment Relations Board (SERB). Health insurance education and procurement training sessions are given annually through OEA Research; local association presidents should contact their labor relations consultant to schedule attendance. The Committee should begin by comparing the current health plan(s) to the negotiated plan(s) in the district's collective bargaining agreements, then surveying all health plan participants as to the strengths and weaknesses of the health plan(s). Once the data has been captured on both sides of the table, the committee should meet and plan for a competitive proposal of health consulting services and a request for proposal well in advance of the expiration of each successor collective

bargaining agreement.

This process can be augmented by a health insurance agent. The services of a health insurance agent can be engaged as a consultant or a broker. Consultants typically charge a one-time set fee for services provided; brokers typically are paid as a percent of the premium. To find a superior agent, identify the answers to the following questions:

1. Is the agent licensed in your state?
2. Do people knowledgeable about insurance recommend the agent?
3. What services does the agent render to clients?
4. Does the agent have sufficient freedom to place your business? This refers to the number of companies with whom the agent or agency has registered. The Ohio Department of Insurance maintains this information at their website through the agent locator; this site and many others are available through the OEA's web site, <http://www.ohea.org>.

O.R.C. § 3319.33 states that Boards of Education are specifically authorized to expend funds for consulting services for any purpose related to the business administration of the school district. The Ohio Education Association (OEA) does not recommend health insurance companies, plans or agents. The OEA advocates a process of procuring health insurance, and agents are sometimes helpful to that process.

Once a list of agents who are ready, willing and able (RWA) to act as the district's health insurance consultant or broker is composed, the Committee should invite the RWA to send the Committee a written response to questions regarding services and prices to the Committee. Those who respond should receive an invitation to make a 30-minute presentation to the Committee. If the RWA is chosen to work as a *consultant*, have the district arrange for compensation and plan a meeting to review options to produce a request for proposal (RFP). If chosen to work as a fee-basis *broker*, have the district offer the broker an information-only agent of record letter and plan a meeting to review RFP options.

The consultant/broker should return to the Committee and work through health plan options that were generated from respondents' wishes on the surveys. The RFP package that is sent by the district should contain the current plan and 3 – 4 options (American Bar Association, 1998, National Association of State Procurement Officials, 2001). It may take six weeks for an answer, but when each package is received from the insurance company, health insuring corporation or third party administrator, the Committee should choose its program of choice to each parties' bargaining teams for a TA determination. If an agreement can be reached, the consultant can be retained for a time to organize the transition and quarterly data flow from the health insurance company to the Committee; if the broker option was selected and a TA was reached, that broker would now become the agent of record at the district. In any case, the Committee should meet on a quarterly basis to collect anonymous participant comments and questions to forward to the health insurance company for a resolution. OEA Research remains committed to working with labor relations consultants and members to create the procurement through committee process discussed above.

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**GLOSSARY  
OF  
COLLECTIVE BARGAINING TERMS**

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Lexicon of Learning online at  
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# A

**Ability to Pay** - A contention made by an employer during collective bargaining negotiations that it is not possible to bear the cost of the wage increase demanded by the union. The union may demand proof of the employer's financial ability or inability to pay. It is also a common criteria considered by fact finders and arbitrators in making their awards.

**Accountability** - Accountability is a term used to characterize the movement to make schools and teachers totally responsible for student outcomes. It is primarily dependent upon comparisons of the results of standardized student achievement and proficiency tests. Proponents believe that these comparisons will make schools more responsible and efficient. The oversimplification of accountability models fail to include or even consider vital factors such as district resources (funding, curricula, staffing, etc.) and student backgrounds (socioeconomic status, cultural differences, parental support/involvement, etc.).

**Accretion** - The addition to an established bargaining unit of employees who have not previously been a part of that unit. An accretion exists where it can be shown that the employees sought to be included really are a part of the existing unit rather than a distinct group that should belong to a separate unit or be given the choice of joining or not joining the unit.

**Across the Board Increase** - A raise in wages, in terms of dollars or a percentage, given at one time to all workers in a bargaining unit. This is to be distinguished from a raise that gives different rates of increase to different groups of employees (such as an indexed raise).

**Advocate** - One who supports or defends a cause or pleads on behalf of another person.

**Agency Shop** - A union security provision that calls for non-union members in the bargaining unit to pay the union a sum equal to union fees and dues as a condition of their continued employment. Workers are not required to join the union, however. The agency shop was designed as a compromise between the union's desire to eliminate the free rider through compulsory membership and management's desire to make membership in a union voluntary. Synonymous with fair-share agreement, as set forth in Ohio Revised Code 4117.09.

**Agent** - A person who acts on behalf of either an employer or a union. Any illegal actions the agent commits, such as unfair labor practices or conduct subject to court litigation, implicate the employer or union being represented, even if the illegal act was not authorized or approved.

**Agent of Record** - The person designated by a local association as the person to whom and from whom all correspondence with SERB regarding all collective bargaining activities will be conducted.

**Agreement, Collective Bargaining** - A written agreement or contract that results from negotiations between an employer or a group of employers and a union. It sets out the conditions of employment (wages, hours, fringe benefits, etc.) and ways to settle disputes arising during the term of the contract. Collective bargaining agreements run for a definite period—usually one, two, or three years.

**Allowed Time** - Term used to describe that part of the workday before or at the end of the work shift, which lets an employee clean his person, clothing, or workplace, so that it will be in

good condition for the start of the next shift.

**American Arbitration Association (AAA)** - A private, nonprofit organization established to promote arbitration as a method of settling labor disputes. The AAA is one of several services which provide lists of qualified arbitrators to employee organizations and employers on request as well as rules of procedure for the conduct of arbitration.

**American Federation of Labor—Congress of Industrial Organizations (AFL-CIO)** - A federation of craft and industrial unions, as well as unions of a mixed structure, created by a merger in 1955. Not in itself a bargaining agent, its primary functions are education, lobbying, and helping constituent unions in their organizing.

**Americans With Disabilities Act (ADA)** - Federal law protecting individuals with disabilities from discrimination in employment (Title I), in the use of public services and transportation (Title II), and in the use of goods and services provided by privately-owned places of public accommodation and commercial facilities (Title III).

**Amnesty** - The agreement between the negotiating parties that management will withdraw charges against striking employees and re-employ them without discrimination.

**Arbitrary and Capricious** - Characterization of a decision or action taken by an employer that was a willful and unreasonable action without consideration of or in disregard of facts or without determining justification.

**Arbitration** - A method of settling a labor-management dispute by having a neutral third party or panel hold a formal hearing, take testimony, and render an award. The decision may or may not be binding upon the parties. When a collective bargaining agreement contains a binding arbitration provision, the parties have agreed in advance to abide by the terms of the arbitrator's award. The two major types of labor arbitration are grievance arbitration (process for settling disputes over contract interpretation) and interest arbitration (process for settling negotiation disputes).

**Arbitration Clause** - A provision in the collective bargaining agreement requiring the parties to submit unresolved grievances to arbitration. It may be broad enough to include "any dispute," or it may be confined by the parties to specific areas or issues.

**Arbitration, Grievance** - A method of resolving disputes that arise over the interpretation or application of the existing collective bargaining agreement. It is sometimes referred to as rights arbitration. The parties present their cases to an arbitrator who, acting like a judge, interprets and applies the contract. The award, which is usually final and binding, is based on this presentation.

**Arbitration, Interest** - A method of resolving disputes that arise during the course of contract negotiations where the arbitrator makes a decision on what will be contained in the agreement. It is usually employed after mediation and/or fact finding have failed to resolve the conflict. Some forms of interest arbitration require the arbitrator to accept the final offer of one party on an issue-by-issue or total package basis. This procedure is similar to fact-finding but is usually final and binding.

**Arbitration, Voluntary** - An agreement between two parties to submit unresolved disputes to a neutral third party for final and binding decision, without any legal mandate to do so.

**Arbitrator** - A neutral third party to whom disputing parties submit their differences for a decision.

An ad hoc arbitrator is one selected to act in a specific case or a limited group of cases. A permanent arbitrator is one selected to serve for the life of the agreement or for a stipulated term, hearing all cases that arise during this period.

**Article XX Dispute** - A jurisdictional dispute between two unions affiliated with the AFL-CIO. Such disputes are adjudicated based upon the provision of Article XX of the AFL-CIO constitution; thus, the term "Article XX Dispute".

**Association** – A group who has voluntarily joined together to conduct business which is to benefit its membership. An example is the local education association.

**Association Initial Proposal** – The Association's initial proposal to the District should reflect all goal areas which have been identified for the round of bargaining. The initial proposal is stated in contractual language and usually reflects the Association's "Best Case Scenario" proposal. Usually, the proposal anticipates District reluctance and counter-proposals which are less than the Association's "Best Case Scenario". The Association should, therefore, develop its first proposal with a specific or general pattern of possible concessions which will lead to an eventual agreement which is between the District's initial proposals or counter-proposal and the Association's initial proposal.

**Association Rights** – Rights granted to the union in general and not specifically to individual members thereof. Use of buildings for meetings would be an example of such a right.

**Attrition** - A term used to describe the elimination of a position when an employee resigns, retires, or otherwise permanently leaves the position.

**Authorization Card** - A card signed by an employee during an organizing campaign which stipulates the signing employee's desire to be represented by a specified union.

**Automatic Wage Adjustment** - An increase or decrease in wage rates triggered by agreed upon economic events such as the increase or decrease of the Consumer Price Index (CPI), the price of a product, profits, or other pre-determined factors, such as the passage of a tax levy.

## B

**Balloon** - A salary settlement which provides for a large salary payment after a period of time where no salary increases could be funded which recoups the wages lost during the no raise period.

**Bargaining Agent** - An organization that is the exclusive representative of all workers in a bargaining unit, both union members and nonunion members. An employer may voluntarily recognize a particular union as a bargaining agent for the workers, or the question of representation may be settled by a secret ballot election conducted by a State or Federal administrative agency.

**Bargaining Council or Committee** – A group of Association members whose task it is to conduct any appropriate survey or research necessary to identify the issues for bargaining and/or to develop the Association/Union's initial positions for bargaining.

**Bargaining, In-Term** - Bargaining which takes place during the term of a contract, either by virtue of a specific reopener provision in the contract, or by obligation under 4117 to bargain

mandatory subjects which were neither discussed during the previous round of bargaining nor embodied in any of the terms and conditions of the contract. Parties may mutually agree to bargain permissive subjects though no statutory obligation exists to do so.

**Bargaining Strength** - The relative positions of power that management and labor hold during the negotiating process. The nature of the settlement is often the outcome of the relative bargaining power of the two parties.

**Bargaining Team** – Those Association members who have been chosen to conduct the bargaining process on behalf of all members of the bargaining unit. Generally, these persons are volunteers or are appointed because of their interest or expertise and who are empowered by the appropriate Association governance to bargain and reach tentative agreement.

**Bargaining Unit** - A group of employees which the employer has recognized and/or a State or Federal administrative agency has certified as appropriate to be represented by a union for the purpose of collective bargaining. One way of judging the appropriateness of a bargaining unit is to determine a community of interest among the employees. Other typical criteria are bargaining history, employee desires, and employer structure. All members of the bargaining unit are not necessarily union members.

**Bargaining Unit, Certified** - A group of employees for whom SERB has appointed a Union as the sole and exclusive representative as a result of an election or the employer's granting voluntary recognition.

**Bargaining Unit, Deemed Certified** - A group of employees which had a sole and exclusive bargaining representative that was recognized by the employer prior to the passage of ORC 4117 and which was automatically recognized by SERB under the grandfather provisions of the Act.

**Bargaining Unit Work** - Work or service which is performed (or, arguably should be performed) by members of a bargaining unit.

**Bidding** - A procedure for enabling employees of an agency or company to make known their interest in a vacant position. After notice of the vacancy has been posted on bulletin boards and in other public places, persons may bid for the position by applying for the opening. The filling of the position may depend on seniority and other factors that the employer and bargaining agent have agreed upon.

**Brinkmanship** - The practice of pushing a bargaining situation to the point of crisis.

**Bubble** - See balloon.

**Bumping** - The procedure used during a reduction in force or company or department reorganization giving an employee with greater seniority the right to displace an employee of lesser seniority.

**Bureau of Labor Statistics (BLS)** - A Bureau within the U. S. Department of Labor which collects, analyzes, and publishes information on cost of living changes, labor force participation rates, unemployment rates, industrial disputes, and other economic data relevant to labor relations.

**Business Agent** - A full-time elected or appointed officer of a local union who may negotiate agreements, handle grievances, help enforce agreements, and perform other tasks in the

day-to-day operation of a union. Also known as a business manager. The Labor Relations Consultant functions much like a business agent for locals that are OEA affiliates.

## C

**Cafeteria Benefit Plans** - Programs that allow employees to pick and choose between various benefit or insurance plans within a certain dollar amount set by the employer or to tax shelter any premiums paid by the employee.

**Call Differential** - As applied to SSP's added pay when called in early or required to report to work after completing regular hours of work.

**Call-Back Pay** - Compensation for workers called back on the job after completing their regular shifts, usually for a minimum number of hours at the appropriate premium rate regardless of the number of hours they actually work.

**Call-In Pay** - Compensation (ranging from two to eight hours pay) that is guaranteed to employees who report for work and find there is not a full day's work available. Provisions for call-in pay are usually spelled out in collective bargaining agreements.

**Captive Audience** - Term applied to a group of employees assembled by an employer on company time and required to listen to the employer's anti-union point of view during an organizing campaign.

**Career Ladder** - A career ladder delineates several stages in teaching careers, with each step usually bringing a substantial increase in pay beyond the salaries set by schedules based on credentials and tenure. Merit pay and differentiated staffing models are examples of career ladders.

**Casual Employee** - Under the Ohio Collective Bargaining Act, an employee who is hired at various times throughout the year for a specific task and whose employment does not exceed thirty days.

**Caucus** - A meeting of a small group of members of an organization to plan strategy or policy prior to a general meeting. It may also apply to collective bargaining negotiations when the union or employer team recesses to discuss a proposal or offer.

**Cease and Desist Order** - An order issued by a court, the National Labor Relations Board or the State Employment Relations Board to an individual employee, a labor organization, or an employer to stop an action or practice held to be in violation of the law.

**Central Labor Union** - A geographical association of local unions established for political, legislative, and other purposes. The local unions are affiliated with different national and international unions of the same federation. May also be known as a central body or council, State or local, and is the focal point for the common efforts of unions within its area.

**Certification** - The formal determination by an appropriate administrative agency that a particular union has been selected by a majority of employees in a bargaining unit to be the exclusive bargaining agent of all employees in that unit. The determination usually follows a secret ballot election. Certification usually carries with it an election bar for a set period of time.

**Charter** - The grant of jurisdiction by a federation to a national or international union or by the national or international to a local union. American unions, unlike European unions, are given a special grant of jurisdiction which gives them authority to organize employees within the special job, craft, or occupational category, or in a specific geographic territory.

**Checkoff (Dues Checkoff)** - A union security provision, usually stipulated in the collective bargaining agreement, that allows union dues, assessments, and initiation fees to be deducted from the pay of union members. The employer makes the payments to the union on a scheduled basis.

**Civil Service Laws** - Laws which substantially are codified in Chapter 124 of the Ohio Revised Code and which govern the wages, hours, terms, and other conditions of employment for employees in the classified service.

**Classification Seniority** - Usual method of defining seniority for school support employees. Seniority for lay off and promotion based on time worked in a given job as opposed to total seniority with the employer.

**Clear and Present Danger Doctrine** - The doctrine that the right of freedom of speech or concerted activity is constitutionally protected unless there is a "clear-and-present danger" sufficient to deny that freedom for the protection of the public interest.

**Closed Shop** - A union security arrangement whereby the employer is required to hire union members only. Membership in the union is also a condition of continued employment. The closed shop is illegal under Federal and State labor statutes.

**Collective Bargaining** - The continuing institutional relationship between an employer entity and a labor organization representing exclusively a defined group of employees of said employer (appropriate bargaining unit) concerned with the negotiation, administration, interpretation, and enforcement of written agreements covering joint understandings as to wages, salaries, rates of pay, hours of work, and other conditions of employment.

**Collective Negotiations** - Another term for collective bargaining.

**Community of Interest** - A criterion often used by an administrative agency to decide whether a group of employees who want to be represented by an employee organization constitute an appropriate bargaining unit.

Considerations are similarity of skills and duties, common supervision, and similar hours, wages, and working conditions.

**Company Union** - An employee organization, usually of a single company or agency, that is dominated by management. Company unions were widespread in the private sector in the 1920's and early 1930's. The National Labor Relations Act (Wagner Act) of 1935 and nearly all public sector collective bargaining statutes declare that such employer domination is an unfair labor practice.

**Comparable Worth** - The concept of establishing pay parity by evaluating the job skills, training, and duties of unrelated positions. Traditionally applies to jobs held by different sexes or classes of employees.

**Compensatory Time (Comp Time)** - Time off from work in lieu of monetary remuneration for overtime work. A recent U. S. Supreme Court case (Garcia vs San Antonio Metropolitan

Transit Authority) restricts the use of compensatory time for non-professional public employees, to the same pay period in which the overtime is performed. Under current U.S. Department of Labor regulations, overtime for non-professional public employees must be paid at least one and one-half times the regular rate if the compensatory time isn't granted within the same pay period as earned.

**Competency Based Education** - Education Curriculum designed to prepare students for standardized testing of knowledge and ability.

**Competency Testing** - Competency testing of students and teachers is the measurement of knowledge and ability according to the scores achieved on standardized tests. Decisions concerning promotion, employment, entry into school programs or into the profession may be determined by test scores.

**Concerted Activities** - Term used to describe actions by employees to better their wages, hours, and working conditions. Covers strike, bargaining, and contract enforcement activities, which are protected by the Ohio Public Employees Collective Bargaining Law.

**Concession Bargaining** - Collective bargaining in which a union agrees to modify or forego improvements in pay, benefits, or working conditions, in return for job security or other employment protection. It may also involve employee "give-backs" in which employees agree to cuts in wages and/or other benefits.

**Conciliation** - Attempts by a neutral party to reconcile opposing viewpoints in a labor dispute in order to help the negotiating parties come to a voluntary settlement. Under the Ohio Collective Bargaining Act conciliation is distinguished from other types of dispute settlement in that the term refers solely to the binding interest arbitration process, which must be utilized to resolve labor disputes involving employees that are prohibited by law from striking.

**Confidential Employee** - Under the Ohio Collective Bargaining Act, any employee who works in the personnel offices of a public employer and deals with information to be used by the public employer in collective bargaining; or any employee who works in a close continuing relationship with public officers or representatives directly participating in collective bargaining on behalf of the employer.

**Conflict of Interest** - As defined under 4117.20, no person who is a member of the same local, state, national, or international organization as the employee organization with which the public employer is bargaining or who has an interest in the outcome of the bargaining, which interest is in conflict with the interest of the public employer, shall participate on behalf of the employer in the bargaining process except that the person may, where entitled, vote on the ratification of an agreement.

**Consent Election** - A procedure for holding bargaining agent determination elections without the necessity of formal hearings before SERB.

**Consolidation** - Term used to describe the merger of two or more school districts or the assignment of a part of a school district to another school district. The new entity may retain the name of one of the merging districts or assume a new name.

**Consulting Teacher** - A Consulting Teacher is a teacher who provides formative assistance to a client (entry-level) teacher. The consulting teacher serves as a mentor to assist in the professional development of the client.

**Consumer Price Index (CPI) (Cost of Living Index)** - Statistics issued monthly by the Bureau of Labor Statistics measuring the average change in prices of goods and services purchased by moderate income families and describing shifts in the purchasing power of the consumer's dollar. The index is widely used in collective bargaining agreements to write "escalator" clauses which specify adjustments in wages based on fluctuations of the CPI.

**Contract** - See Agreement, Collective Bargaining.

**Contract Bar** - The provision of a collective bargaining statute which protects the exclusive representative from challenge to that status during the life of an existing collective bargaining agreement, usually not to exceed three years.

**Contracting Out** - The use by employers of outside contractors whose employees are not covered by the same collective bargaining agreement to do work which has been or could be performed by bargaining unit members.

**Cost of Living Adjustment** - See Escalator Clause.

**Cost of Living Allowance or Float** - The periodic cents-per-hour or percentage adjustments to pay through the operation of an escalator clause. A float is a cost of living allowance not incorporated into base rates.

**Cost of Living Index** - See Consumer Price Index.

**Costing Out** - The process of determining the actual cost of a contract proposal or agreement.

**Counter Proposal** - An offer made by one party in collective bargaining negotiations in response to a proposal by the other party. Agreement is usually reached after a series of proposals and counter proposals have reduced the range of disagreement.

**County Financing District** - A county school district board acting as a taxing authority for one or more of the school districts within the county district. It may levy taxes for permanent improvements or specified educational programs and services.

**Crisis Bargaining** - Collective negotiations taking place under the shadow of an imminent strike or lockout deadline.

## D

**Daily Rate** - As applied to school support personnel, the amount of pay received for a standard or fixed number of hours per day, exclusive of overtime or premium pay.

**Day Shift** - As applied to school support personnel, when a company or school district operates on more than one shift, the day shift is the first shift working during daylight hours. It generally starts early in the morning and ends during the afternoon.

**Dead Time** - As applied to school support personnel, it usually refers to that time between arrival and departure on school bus field trips where driver is sitting and not driving.

**Decertification** - The withdrawal by the administrative agency of an employee organization's official designation as exclusive representative. A decertification election may result from a petition

filed by the employer or by unit employees.

**Deferred Wage Increase** - Negotiated wage increases which become effective later in the contract period. This reduces the cost to the employer while establishing a higher base rate. Contracts are said to be “front-end loaded” or “rear-end loaded” depending on the distribution of deferred increases.

**Detailing** - Term used to refer to how temporary assignments of regular hourly employees are to be handled in the absence of other regular hourly employees.

**Disaffiliation** - The procedure whereby a local union separates from the state, national, or international union of which it is a member. It is also the procedure which may be followed by a national or international union when it seeks to withdraw from a federation to which it belongs. The federation or national union may also initiate disaffiliation, in which case it usually takes the form of suspension or expulsion.

**Discharge** - Dismissal of an employee, usually for breaking the work rules or policies of management, incompetence, or other good cause. Collective bargaining agreements usually protect employees from arbitrary or discriminatory discharge. A discharge means loss of seniority and other rights and affects the employee's chances for employment elsewhere.

**Discipline** - The imposition of a penalty for an improper action by an employee. The discipline may range from a verbal warning, “not to do it again” to termination, depending on the nature of the offense and the disciplinary policy of the employer.

**Discriminatory Discharge** - Discharge for union activity or because of race, color, religion, sex, or national origin.

**Disparate Treatment** - The most easily understood type of discrimination, it involves the treatment of some people less favorably than others because of their race, color, religion, sex, or national origin. The classic example of disparate treatment is segregated facilities.

**Doubletime** - As applied to school support personnel, premium pay for work performed at double the standard or regular rate for the job. Sunday or holiday overtime is usually at doubletime.

**Drug-Free Workplace Act** - An act that requires all recipients of federal grants, including any school district applying for impact aid, must provide a certification that it will maintain a drug-free workplace.

The Act requires:

That all employees receive a copy of the Board's adopted resolution regarding a drug-free workplace.

That any employee convicted of a criminal drug statute conviction report said conviction within the statutory five-day period.

That the employer take some action once the employee notifies the employer of the conviction. Please note that the employer is not obligated to impose disciplinary actions in order to retain federal funding

**Dues Deduction** - See Checkoff.

**Dues, Union** - The monthly or yearly sum paid by union members to their local unions. Dues money is used to finance the labor relations and political functions of the union. A pre-determined portion of the dues is distributed to other state, national, and international organizations to which the local union belongs.

**Duty of Fair Representation** - The obligation of the union to fairly represent all members of the Bargaining Unit regardless of their union membership status and to refrain from discrimination on the basis of sex, race, color, religion, or national origin.

**Duty to Bargain** - The mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours and other terms and conditions of employment. Such obligation does not compel either party to agree to a proposal or require the making of a concession.

## E

**Educator Standards Board (ESB)** – The ESB was established by Senate Bill 2 (March 2004; amended Revised Code Sec. 3319.60), with members to be appointed in July and ESB work to commence in October 2004. Among the ESB's responsibilities are the recommendation to the State Board of Education of standards for entering and continuing in the teaching and principalship professions and standards for educator professional development. Standards for teachers and principals must reflect what teachers and principals are expected to know and be able to do at all stages of their careers; must be aligned with the statewide academic content standards for students adopted pursuant to section 3301.079 of the Revised Code; and must be primarily based on educator performance instead of years of experience or certain courses completed. The ESB will also be developing state guidelines for evaluation.

**Effects Bargaining** - Refers to negotiations over the impact of management decisions on wages, hours, and working conditions. The requirement to bargain under O.R.C. 4117 does not include the obligation to reach an agreement.

**Election Bar** - The provision of a collective bargaining statute which provides that a petition for election shall not be considered for a period, generally one year, from the completion of a valid election.

**Employee Assistance Program** - An employer-supported program which provides the resources for identification and treatment of employees who are affected by substance abuse.

**Employee Organization** - Connoting "labor organization" but without the flavor of "unionism". In the public sector there are many organizations which do not consider themselves "labor" organizations, although they may perform many of the functions of a labor organization.

**End Running** - Occurs when an unauthorized person or a group of persons circumvent the established bargaining procedures in an effort to influence the outcome of bargaining.

**Entry-level Qualifications** - The training, experience, licensing or certification and/or combination thereof required as a minimum to perform a specific job.

**Equal Pay for Equal Work** - The principle which seeks to establish pay rates that depend only on quantity or quality of work, not on such unrelated factors as race, sex, or religion.

**ERIP** (Early Retirement Incentive Program) - An optional program under the state retirement systems that may be negotiated and that permits eligible employees to retire prior to their normal retirement date.

**Escalator Clause** - A clause in a labor agreement which ties wage rates to changes in the cost of living during the period of the agreement, thus allowing wages to fluctuate with changes in the cost of living. Escalator clauses are designed to keep real wages reasonably stable during the term of the contract.

**Escape Period** - A period of time, normally 15 days, during which employees may resign from union membership and not be obliged to pay continued membership dues under a maintenance of membership clause.

**Excelsior List** - Official list of eligible voters in a representation election provided to the parties by SERB.

**Exclusive Recognition** - The type of recognition which provides that the recognized labor organization is the sole representative for all employees in the bargaining unit without regard to membership in that labor organization and which prohibits the employer from dealing with any other labor organization.

**Exclusive Representative** - The employee organization which has been accorded exclusive recognition.

**Extended Service Pay** - Pay for work performed beyond a regularly contracted period during which time the same or similar duties are performed as required under the original contract. Compensation for extended service is usually paid at a per diem rate for professional employees and at an hourly rate for employees covered by wage and hour laws.

## F

**Fact Finding** - A method of resolving contract negotiation disputes where an individual neutral or tripartite panel hears the parties' arguments supporting their positions and issues findings of fact and recommendations to resolve the dispute. The report is generally made public after a period of time if the parties have not yet reached agreement. Fact finding generally follows mediation.

**Fair Labor Standards Act** - Federal law enacted in 1938 that established the hourly minimum wage. The Fair Labor Standards Act is administered by the U. S. Department of Labor, Wage and Hour Division.

**Fair Share** - See Agency Shop.

**Featherbedding** - Work practices which tend to limit productivity and create an artificial demand for workers, such as demanding payment for work not performed, refusing to allow adoption of labor-saving equipment, and creating or maintaining nonessential jobs. Such practices are often motivated by fear of job loss (through automation, for example) and are justified by

claims of enhanced safety and work quality. Section 8(b)(6) of the Labor-Management Relations Act forbids a labor organization “to cause or attempt to cause an employer to pay...for services which are not performed...”

**Federal Mediation and Conciliation Service (FMCS)** - An independent federal agency created in 1947 under the Taft-Hartley Act to provide mediators for labor-management disputes in which interstate commerce is involved. In August 1973, the FMCS extended its jurisdiction to public sector disputes.

**Flex-time** - Concept of scheduling work for employees in such a way as to meet the daily or weekly production needs of an employer while providing employees with options to the standard 9 to 5 work day and 40 hour work week.

**Free Rider** - A person in the bargaining unit who does not join the labor organization but whom the labor organization must represent.

**Fringe Benefits** - Compensation in addition to direct wages such as paid vacations and holidays, overtime premiums, medical insurance, and pensions.

**Front-End Load** - Increasing the cost of a multi-stage wage increase by putting the greater increases early in the contract. Example: Increases of 15%-10%-5% instead of 10%-10%-10%.

**Full-time** - A term used to describe the maximum number of hours worked by an employee in a given job classification or position.

**Full-Time Equivalent (FTE)** – In bargaining terms, the concept of Full-time Equivalent refers to the number of employees within the bargaining unit or some subset of the bargaining unit. This concept could include full and part time employees, temporary or substitute personnel depending on the terms of the recognized unit, who when combined, make up full time employment. Example: 7 full-time employees plus 4 ½ time employees = 9 FTE's.

## G

**Good Cause** - Substantial reason, one that affords a legal excuse. The finding of “good cause” lies largely with the employer representative making the decision.

**Good Faith Bargaining** - The requirement that the two parties to negotiations meet and confer at reasonable times with a willingness to reach an agreement on new contract terms. Good faith bargaining does not require that either party make a concession or agree to any proposal.

**Grandfathered** - A term referring to unions which were sole and exclusive bargaining representatives prior to the passage of 4117. These unions were automatically recognized by the State Employment Relations Board for collective bargaining purposes upon providing evidence of their status.

**Grievance** - An employee complaint; an allegation by an employee union that a collective bargaining agreement has been violated.

**Grievance Committee** - The group of union representatives which reviews grievances which

remain unresolved at the lower levels of the grievance procedure.

**Grievance Procedure** - A method of dealing with a complaint made by an individual or the union which allows the work place to continue operating without interruption. The procedure generally provides for efforts to resolve the grievance at progressively higher levels of management authority, with binding arbitration typically being the last step.

## H

**Hazard Pay** - As applied to school support personnel, a premium rate or compensation paid for work under uncomfortable or unpleasant conditions or for work which endangers the life or health of the worker.

**Health Maintenance Organization (HMO)** - HMO's provide health care to members under a prepaid, fixed-fee plan instead of the traditional health care delivery system that provides care on a fee-for-service basis.

**High Quality Professional Development (HQPD)** – As the Ohio Department of Education has applied the ESEA definition, HQPD is a sustained and ongoing learning activity that is focused on skills and knowledge needed to support higher levels of student achievement and is aligned with the goals of the district's Comprehensive Continuous Improvement Plan as developed by district stakeholders. School districts are required to annually report the percentage of its teachers who have engaged in "high quality professional development."

**Holiday Pay** - As applied to school support personnel, a provision in a contract which requires the employer to pay workers for time not worked on a holiday. Where work is required, a premium rate is set, including double time and a half or triple time.

## I

**Impasse** - The point in collective bargaining negotiations at which either party determines that no further progress can be made toward reaching an agreement.

**Impasse, Ultimate** - SERB defines as occurring for both strike permissive and strike prohibited employees at the end of the publication period following rejection of a fact-finding recommendation under 4117.14. For strike permissive employees, signals the point for a legal strike; for strike prohibited employees, signals point in procedure just prior to conciliation.

**Independent Union** - A union not affiliated with the AFL-CIO. The United Mine Workers and the Teamsters are examples of large independent unions in the private sector. There are also smaller independent unions confined to a single employer or plant. In the public sector, there are a great number of civil service employee associations of state, county, and municipal employees that are not affiliated with the AFL-CIO. The NEA is an independent public sector union, as is the OEA.

**Indexed Salary Schedule** - A salary schedule in which each step is expressed as a ratio based on

the BA minimum salary.

**Informational Picketing** - Picketing for the purpose of advising the public, including other union members, that the picketed employer does not have a union contract or is selling goods produced by a struck or nonunion employer. The purpose of such picketing is to induce the public to boycott the employer or a particular item the employer deals in. The 1959 amendments to the Taft-Hartley Act placed restrictions on such picketing.

**Initiation Fee** - A fee required by unions of all new members or of employees who have left the union and wish to return. Initiation fees serve several purposes for the union besides being a source of revenue. New members pay for the benefits accrued through past struggles of the union. When initiation fees are very high, they serve to restrict membership in those unions wishing to remain small in order to protect job opportunities.

**Injunction** - A court order that restrains individuals or groups from committing acts determined by the court to cause irreparable harm. There are two types of injunctions: temporary restraining orders, issued for a limited period of time and prior to a complete hearing and permanent injunctions, issued after a full hearing and enforced until the conditions which gave rise to their issuance are changed. (See Ohio Revised Code, Section 4117.16).

**Insubordination** - A worker's refusal or failure to obey a management directive or to comply with an established work procedure. Under certain circumstances, use of objectionable language or abusive behavior toward supervisors may be deemed to be insubordination because it reveals disrespect of management's authority. Insubordination is considered a cardinal work place offense since it violates management's traditional right and authority to direct the work force.

**Inter-District Enrollment Option** - See Open Enrollment.

**Intangible Issue (in bargaining)** – Issues which have effect on the process – usually unrelated to contract issues, but which impede and delay settlement (i.e., hostile personal relationship between chief spokespersons).

**Interim Agreement** - A collective bargaining agreement that is designed to maintain a temporary truce or to maintain conditions of employment pending the settlement of a dispute or pending the signing of a final contract. It is a contract designed to tide the parties over a difficult period or until contract negotiations are completed.

**International (or National) Representative** - Staff employee of an international (or national) union who usually comes up through the ranks of union members. The duties include aiding the negotiation of contracts, assisting local unions in the handling of grievances and other matters, and organizing any unorganized employees within the union's jurisdiction, or within a geographic region.

**International (or National) Union** - The "national" or "international" organization of a labor union. (The term "international" is used because many unions have affiliates in Canada or, in rare cases, in other countries). It is financially supported by a per capita tax on all its members. Its functions include: extending union organization; chartering local unions; setting jurisdictional boundaries; conducting education and research; political lobbying; assisting in local collective bargaining efforts; and, if there are many employers or an association to deal with, it works directly with management representatives.

**Intervention** - In a legal context, the procedure by which a third person not originally a party to legal

suit, but claiming an interest in the subject matter, comes into the case in order to protect his right or interpose his claim. Intervention may exist either as a matter of right or at the discretion of the agency or court.

**Intra-District Enrollment Option** - See Open Enrollment.

## J

**Job Action** - Any concerted effort by employees to exert pressure on management during negotiations by using tactics which affect the quality and/or the quantity of their work performance; used where strikes are prohibited.

**Job Audit** - An assessment of an employee's job description and the actual duties performed by the employee to determine whether the job has been placed in the proper pay classification.

**Job Classification** - Relative category into which an employee's job is placed based upon the job title, duties, hours, and compensation.

**Job Sharing** - An arrangement whereby two employees share one position, whether as a team jointly responsible for the whole or separately for each half. Usually these employees share the salary and insurance benefits for one position.

**Jurisdiction** - The jobs, skills, industries, or geographic area in which a union organizes and engages in collective bargaining. International unions often assert an exclusive claim on particular areas of employment. The OEA asserts a jurisdiction over all public sector educational employees (teaching and non-teaching).

**Just Cause** - A cause that exceeds good cause, which must be based on reasonable grounds; there must be a fair and honest cause or reason regulated by good faith.

## L

**Labor Management Reporting and Disclosure Act (Landrum-Griffin Act)** - The Federal statute, passed in 1959, amending the Wagner Act of 1935, which set minimum standards of democratic procedure, responsibility, and honesty in the conduct of the internal affairs of unions. The Act addresses three issues of inner-union democracy: (1) the rights of union members, (2) the responsibilities of union officers, and (3) safeguards on the use of union funds.

**Labor Relations Board** - State or Federal agencies which primarily administer labor relations statutes. These boards usually handle unfair labor practices and supervise representation elections. At the State level, these agencies are generally known as Public Employment Relations Boards (PERBs) and also provide mediation and fact-finding services.

**Labor-Management Relations Act (Taft-Hartley Act)** - The Federal statute, passed in 1947 amending the Wagner Act of 1935, which guarantees the right of workers to organize and to bargain collectively with their employees, or to refrain from all such activity. To enable employees to exercise these rights and to prevent labor disputes that may impede

interstate commerce, the Act places certain limits on activities of employers and labor organizations. The Act generally applies to all employers engaged in interstate commerce. It does not apply to railroads and airlines that are covered by the Railway Labor Act.

**Layoff (RIF – Reduction in Force)** – Involuntary separation from employment for a temporary or indefinite period. Without prejudice, that is, resulting from no fault of the workers. Although “layoff” usually implies eventual recall, or at least an intent to recall workers to their jobs, the term is occasionally used for separations plainly signifying permanent loss of jobs, as in plant shut downs.

**Landrum-Griffin Act** - See Labor-Management Reporting and Disclosure Act.

**Leave of Absence** - A grant of time off from the job to an employee with or without the loss of seniority and with the right to reinstatement.

**Local Union** - The local organization of union members who are part of a state, national, or international union.

**Lockout** - The shutting down of an operation or plant by an employer in order to withhold work and wages from a group of employees. The intent is to pressure the employees into accepting certain terms during negotiations. Lockouts are prohibited by the Ohio Collective Bargaining Act.

**Longevity Pay** - Salary or wage adjustments based on length of service or seniority. Not the recommended method for enhancing earnings of long-term educational employees. A compressed, uniform index is the recommended method.

## M

**MAD (Mutually Agreed to Dispute Settlement Procedure)** - This refers to any mutually negotiated impasse procedure which is different from the statutory procedure outlined in ORC 4117.14.

**Maintenance of Membership** - A union security provision which states that no worker has to join the union as a condition of continued employment, but that all workers who voluntarily join must maintain their membership for the duration of the contract. Most maintenance of membership clauses provide for an escape period either annually or at the expiration of the agreement, when employees may withdraw from the union without penalty.

**Management Prerogatives (Management Rights)** - Certain rights that management feels are intrinsic to its ability to manage and therefore are not subject to collective bargaining. These rights are often expressly reserved to management in the management rights clause of the agreement. They include the right to hire, promote, suspend, or discharge employees; to direct the work of employees; and to establish policy.

**Mandatory Subjects For Bargaining** - Items which are by agreement, law, court or administrative ruling subject to negotiations and required to be bargained in good faith by both parties.

**Mediation** - An attempt by an impartial third party called a mediator, to bring the parties in a labor dispute together. The mediator has no power to force a settlement but rather operates primarily through persuasion to help the negotiating parties reach an agreement.

**Mediator** - An individual who acts as an impartial third party to help settle collective bargaining disputes. May be appointed by an administrative agency or be chosen by both parties. The mediator's role is to meet with the parties, act as a go-between, and help the parties discover areas of agreement in order to reach a settlement in negotiations without a strike.

**Memorandum of Understanding** - A binding Agreement between the Union and the Employer. A Memorandum of Understanding is frequently used to address unforeseen circumstances which impact wages, hours, terms, and other conditions of employment. In other instances, they are utilized to clarify existing contracts in the Collective Bargaining Agreement.

**Merit Pay** - Compensation based on the subjective evaluation of work performance. Because of their cost, merit pay programs often do not provide equal opportunity for all bargaining unit members.

**Mill** - The basis for taxes levied against the value of property (\$.001 of every \$1,000.00 of appraised value generates \$1.00 in tax revenue).

**Millage** - The sum of all voted and unvoted mills used to determine tax collections on real and personal property.

**Minimum Reporting Pay** - As applied to SSP's a minimum amount of pay when reporting to work on a day that work is cancelled or on a day other than a regularly scheduled work day.

**Minimum Wage** - The term generally applies to the wage rate set under the Fair Labor Standards Act of 1938. It may also be the wage, under which no employee may be paid, that is negotiated.

**Modified Union Shop** - A variation of a union shop provision in which certain employees are exempted from joining the union, such as employees who at the time of signing the labor agreement were nonmembers. It requires all new employees to become union members.

**Moonlighting** - To work another job, often at night, in addition to a full-time job.

## N

**National Education Association** - The largest employee organization in the United States with 2 plus million members.

**National Labor Relations Act (NLRA) (Wagner Act)** - The Federal law, passed in 1935, which has served as a model for nearly every subsequent labor relations law in the United States, including many public sector labor laws.

The law guarantees private sector employees the right to form, join, and assist unions, to bargain collectively and to act together for the purpose of collective bargaining or other mutual aid. It provides for secret ballot elections to choose collective bargaining representatives, and gives the union the right to be exclusive bargaining agent for all workers in the bargaining unit. The law declares certain acts to be unfair labor practices. The law created the National Labor Relations Board to administer the Act. It was significantly amended by the Taft-Hartley Act in 1947.

**National Labor Relations Board (NLRB)** - A board created by the National Labor Relations Act (NLRA) in 1935 and continued by the Taft-Hartley Act. The Board is the administrative agency for the NLRA and its primary duties are to hold elections to determine union representation and to interpret and apply the law concerning unfair labor practices.

**Negotiation** - The process by which representatives of employees and management try to reach agreement on conditions of employment, such as wages, hours, fringe benefits, and the machinery for handling grievances.

**Negotiator** - The person who represents the employer or union in collective bargaining negotiations. Often committees or "teams" represent each party, and one of the committee's members acts as chief negotiator or spokesperson for the group.

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

**Night Premium** - As applied to SSP's, a wage differential or bonus paid to employees working on other than the regular day shift. So-called night shifts are those which have a substantial number of hours of work after sundown. These hours may be included in both the second and third shifts.

**No-Lockout Clause** - A provision in a collective bargaining contract in which the employer agrees that the operation will not be closed down in order to force the employees to accept certain terms for a collective bargaining agreement.

**No-Strike Clause** - A provision in a collective bargaining agreement in which the union promises that during the life of the contract the employees will not engage in strikes, slow-downs, or other job actions. A union often agrees to such a clause in exchange for a grievance arbitration clause.

**Non-Renewal** - The failure to renew the term of an existing employee contract or to issue a new employee contract when the term of an existing contract expires.

**Notice to Negotiate** - Form required by law that must be filed by the party to a labor relationship who wishes to commence bargaining. Under ORC 4117, the notice must be filed at least 60 days prior to the expiration of a contract or prior to initiation of bargaining on modifications of an existing contract.

## O

**Occupational Safety and Health Administration (OSHA)** - Federal agency which was established to inspect, monitor, and enforce minimum safety and health regulations in the workplace.

**Office of Collective Bargaining (OCB)** - Administrative agency which represents the State of Ohio in all labor relations matters involving State-employed public employees.

**Ohio Education Association (OEA)** - The largest public sector employee organization in the State of Ohio with over 700 plus affiliates and 115,000 plus members. The OEA is a state affiliate of the National Education Association.

**Ohio Industrial Commission** - An Ohio agency which has the responsibility of settling worker's

compensation insurance rates paid by employers and investigating and processing of worker's compensation claims based on work-related illnesses or injuries.

**Open Enrollment** - Term used to describe various options open to students, which allow them to "choose" the educational program that best meets the individual student's needs. Under Ohio law there are three open enrollment options:

Post-Secondary Enrollment Option - An option which allows junior and senior high school students to take advanced courses in the college setting instead of in their home school district and have the cost partially or totally offset by general fund monies from the home district.

Intra-district Enrollment Option - An option that allows students within the same district to attend the building of choice, subject to curriculum offerings, physical capacity, and maintenance of racial balance.

Inter-district Enrollment Option - An option that allows students to attend schools in districts adjoining their home districts. Under Ohio law, per pupil state funds for the home district follows students to the district of attendance.

**Open Shop** - An unorganized establishment or one where there is a union but where union membership is not a condition of employment or of continued employment.

**Organizers** - In union parlance, individuals active in signing up employees for union membership and getting employees in a work setting to inform fellow employees of the immediate and long-range benefits of union membership. The organizer is a specialist who often leaves the new organization to do its own bargaining, perhaps with help from a business agent or international representative.

**Organizing** - Actual efforts expended to create a power base from which a group of employees act collectively to achieve mutual goals and to obtain bargaining rights.

**Overtime** - As applied to SSP's, the hours worked by an employee in excess of the standard established by law, by the negotiated contract, or by company policy. Hours in excess of the standard are generally paid for in "penalty" or overtime rates. Frequently the rate is one and one-half times the actual rate.

## P

**Package Bargaining** - The combination of proposals on two or more unresolved issues into a "package offer" that must be accepted or rejected in entirety. Package bargaining is designed to induce mutual agreement on tough issues and normally is utilized after substantial agreement has been reached on all other issues.

**Package Settlement** - The total money value of a negotiated change in salaries or wages and fringe benefits. Usually quoted as cents per hour or a percentage.

**Parity** - The concept of creating or seeking equity using established measurable standards of comparison.

**Part-time** - A term used to describe the number of hours worked by an employee which is less than

the maximum number of hours worked by an employee in a given job classification or position.

**Past Practice** - A way of dealing with a grievance by considering the manner in which a similar issue was resolved before the present grievance was filed. Past practice is often used to resolve a grievance when contract language is ambiguous or contradictory, or when the contract doesn't address the matter in dispute.

**Past Practice Clause** - A clause in a contract stating that previous practices of the employer will continue except as modified by the contract. Also referred to as maintenance of standards clause. Such a clause is the opposite of a zipper clause.

**Pattern Bargaining** - The practice whereby employers and employee organizations reach collective bargaining agreements similar to those reached by the leading employers and employee organizations in the same geographic area or in the same product or service market.

**Pay Equity** - Generally concerns the issue of earnings differentials of men and women performing different jobs and attempts to obtain comparability for women workers on the basis of the value or worth of the jobs. The concept of pay equity may also be termed "comparable worth".

**Peer Assistance** - Peer assistance is a collegial form of assistance by peers for the purpose of, and limited to, skill enhancement directed to professional growth and development. Peer assistance may be provided through informal means or through formalized systems such as entry-year/mentor programs.

**Peer Review** - Employee performance evaluation conducted by personnel within the same bargaining unit which is used in determining employment status including retention, dismissal and promotion. Peer review procedures are contrary to OEA Policy in that they create a conflict of interest between members of the same bargaining unit.

**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, to discourage customers from patronizing the establishment, to publicize the existence of a dispute, or to prevent by force or persuasion the delivery of goods and services to the establishment. When large numbers of workers on strike assemble at an entrance to discourage nonstrikers from entering, this is called picketing.

**Picketing Notice** - Notice to the employer and the State Employment Relations Board of a union's intent to picket. Picketing engaged in by employees who are not on strike in support of striking employees must be conducted before or after the normal work day or may be determined to be unauthorized strike activity under ORC 4117. Any informational picketing that is work-related requires notice. A notice of intent to picket must be filed with the employer and the State Employment Relations Board 10 full days prior to the actual picketing date. See ORC 4117.11(B)(8).

**Post-Secondary Enrollment Option** - see Open Enrollment.

**Premium Pay** - Additional money that is paid to an employee for certain types of work, sometimes referred to as penalty pay. It is usually 10 to 50 percent of the base rate. Examples: night shifts, overtime, hazardous, or unpleasant work. Premium pay is paid in addition to the regular pay to compensate employees for the special effort required, the unpleasantness of

the work, or for the inconvenience of the time during which the work takes place. It is offered to induce them to volunteer for such work.

**Prevailing Rate** - Hourly pay rate established by industry practice or contract negotiations as the benchmark for a given job or for a given job classification.

**Privatization** - Privatization is a transfer of public assets and/or funds to private companies to perform public work. Examples are contracting with private companies for public transportation, hospital services, care of the mentally ill, or school services. It is the direct removal of employment from the auspices of the governmental agency to private management.

**Probationary Period** - A stipulated period of time, usually between 30 days and six months, during which a newly hired employee's work is monitored by the employer to see if the worker has the capacity to perform the job. During this probationary period an employee may be discharged without recourse to the grievance procedure, although there is still protection from being discharged because of union activity.

**Procedural Due Process** - Ensures that an affected party shall have the right to be notified prior to any adverse personnel action taken by the employer and be afforded a hearing with the opportunity to present evidence and witnesses and the right to cross-examine those persons making the charges prior to finalization of the personnel action.

**Progressive Discipline** - System of escalated penalties made known to employees in advance and imposed with increasing severity for repeated infractions. Such a system relies on the recognition that repetition of infractions with escalating penalties will ultimately lead to termination.

**Prohibited Practice** - See Unfair Labor Practice.

## Q

**Qualified Seniority** – Other factors, such as ability, education or training considered with length of service.

**Quid Pro Quo** - Something for something. When used in bargaining, the phrase expresses the trade made to achieve an acceptable compromise.

## R

**Rank and File** - Regular union members who are not union officers or officials.

**Ratification** - Formal approval of a newly negotiated agreement by vote of the union members.

**Real Wages** - Employees' earnings stated in terms of the purchasing power of those earnings.

**Recognition** - The employer's acceptance of an employee organization as the sole and exclusive collective bargaining representative of a group of employees for the purposes of collective

bargaining.

**Reduction In Force (RIF)** - The temporary or indefinite separation of employees from active employment status. Employees in layoff or RIF status usually retain certain seniority rights and other protections under contract or company policy. (see also Layoff)

**Refusal to Bargain** - Findings made by a labor relations board that either the employer or the union has failed to bargain "in good faith" according to the requirements of the statute. The refusal to bargain may be indicated by specific actions or by the overall behavior of the union or management during negotiations.

**Regional Professional Development Centers (RPDCs)** - Provide essential support for major state initiatives, some of which include: Venture Capital, SchoolNet, Competency-Based model, and Proficiency Testing. These centers were created by the Ohio Department of Education and the State Board of Education. Currently there are twelve (12) such centers located throughout Ohio. This basic purpose is to provide direct service through training and program orientation to teachers and other educators to enable school improvement.

**Remedy** - A legally enforceable way of preventing or correcting a wrong or ensuring a right.

**Renewal Clause** - The section of a collective bargaining agreement which provides for the automatic continuance of the agreement, usually on a year-to-year basis, until either side notifies the other of its intent to modify or terminate the agreement. Under the Ohio Collective Bargaining Act, a collective bargaining agreement that extends beyond three years in duration does not constitute a contract bar.

**Reopener Clause** - A provision in a collective bargaining agreement which states the times and circumstances under which certain parts of the agreement, usually wages, can be renegotiated before the agreement expires. A reopener clause usually provides for renegotiation either at the end of a time period, such as one year after signing a contract, or when the Consumer Price Index increases by a certain amount. Reopener clauses are to be avoided wherever possible, because under the Ohio Collective Bargaining Act, it has not been established that strikes are permissible prior to the expiration of the entire collective bargaining agreement.

**Representation Election** - A vote conducted among the employees of a bargaining unit to determine whether a majority wants to be represented by a given labor organization.

**Reprimand** - A form of disciplinary action, it is an oral or written notice served on an employee for corrective action. It is usually the first step in progressive discipline.

**Reprisal** - In general, any action taken by one person either in spite or as a retaliation for an assumed or real wrong by another.

**Resignation** - A formal renouncement or relinquishment of an employment position initiated by the employee.

**Retrenchment** - Applies to Higher Education Locals - See Reduction In Force.

**Right to Bargain** - The collective bargaining rights of a labor organization as provided for by Federal and State law. These rights result from recognition or certification as the collective bargaining agent for the employees in the bargaining unit. The right to bargain is retained by the organization as long as it is supported by a majority of employees in the unit.

**Right to Strike** - The right to refuse to work for the purpose of gaining concessions from the employer. It is available to employees in the private sector under Federal and State laws, except in some limited situations where certain procedural steps must be taken before a strike may occur. The right to strike in the public sector is usually governed by State statutes. In Ohio, most public employees have the limited right to strike.

Those employees who are prohibited from striking must subject labor disputes to binding interest arbitration.

**Right To Work Laws** - State laws which forbid collective bargaining agreements to contain union security clauses which require union membership. These laws are authorized by Section 14(b) of the Taft-Hartley Act. About 20 states, located mostly in the South and Southwest, have right to work laws.

## S

**Safety Clause** - A clause found in some contracts which provides for safety committees, either joint committees or union committees, working with management for the purposes of investigating, discussing, and recommending solutions to situations which are unsafe.

**Salary/Wage Schedule** – The contract provision which defines the compensation for the members of the collective bargaining unit. Salary/wage schedules may address different concepts: simple index or compound index, training experience, or hourly rate based upon classification and years of service.

**Scab** - A derisive term for a union member who refuses to strike or who returns to work before a strike has ended; a worker who accepts employment or replaces a union member during a strike. (See Strikebreaker).

**Scope of Bargaining** - The range of issues that is made bargain able by the labor relations statute or by the agreement of the parties. (See Ohio Revised Code, Section 4117.08).

**Seasonal Employee** - An employee who works a certain regular season or period of the year performing some work or activity limited to that season or period and whose employment does not exceed thirteen (13) weeks.

**Secondary Boycott** - Concerted pressure exerted by employees and a union against a neutral party, usually an uninvolved employer, in order to bring pressure indirectly upon the real adversary, the actual employer. It may involve the refusal to handle, purchase, or work on products of a company with whom the union has a dispute. This activity is prohibited by the Ohio Collective Bargaining Act.

**Seniority** - An employee's status in relation to other employees according to the years of employment. Seniority credit may be granted for continuous or noncontinuous employment. Employees with the greatest seniority are usually the last to be laid off and may be given preference for transfer for promotion.

**Seniority Clauses** - Provisions in collective bargaining agreements that relate seniority to an employee's job security and advancement. Seniority clauses make an individual's years of employment determine, for example, rights to layoffs, recalls, choice of vacation time,

overtime and work shifts, transfer and promotion, and other items.

**Severability Clause** - A clause in a collective bargaining agreement which allows that if any part of the agreement is determined to be illegal or unenforceable by a court of competent jurisdiction, the remainder of the contract is unaffected and remains in full force and effect.

**Severance Pay** - A sum of money usually based on length of employment that an employee is eligible for upon resignation, termination, or retirement.

**Sexual Harassment** - The Equal Employment Opportunity Commission (EEOC) has indicated that "sexual harassment" is an unlawful form of discrimination on the basis of sex under Title VII of the Civil Rights Act of 1964. The EEOC defines sexual harassment as:

Unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature constitute sexual harassment when: (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

**Shift Differential** - Added pay for second or third shift expressed as a percentage of base pay or as extra cents per hour.

**Side Bar Bargaining** - Private away-from-the-table dialogue which is engaged in by select representatives of the employer and the employee organization for the purpose of resolving a conflict which has arisen at the table.

**Side Letter** - Refers to Higher Education Local Associations - See Memorandum of Understanding.

**Site-Based Decision Making** – Site-based decision making is a true participatory program where key decisions are made jointly by management and bargaining unit employees at the worksite.

**Slowdown** - A deliberate reduction of output by employees in order to bring economic pressure upon the employer without incurring the cost.

**SSP (School Support Personnel)** - Term used to identify non-certificated educational employees.

**State Employment Relations Board (SERB)** - A 3-member Board appointed by the Governor which is charged with administering the Ohio Collective Bargaining Act.

**State Personnel Board of Review (SPBR)** – A 3-member Board appointed by the Governor whose jurisdiction is the supervision of municipal civil service commissions, review of rules proposed by the Ohio Department of Administrative Services and supervision of compliance with Ohio Revised Code, Chapter 124.

**Status Quo** - To maintain the existing state of things at any given time.

**Steward** - The union representative of a group of co-workers who carries out duties of the union within an operation, such as handling grievances, collecting dues, or recruiting new members. Is either elected by other union members or appointed by higher union officials. The Steward remains an employee and handles union business on a part-time basis,

usually on the employer's time.

**Strike** - An employee's refusal, in concerted action with others, to report for duty, willful absence from one's position, a stoppage of work, or an abstinence in whole or in part from the full, faithful, and proper performance of the duties of employment, for the purpose of inducing, influencing, or coercing a change in the conditions, rights, privileges, or obligations of employment. (See Ohio Revised Code 4117.01(H)).

**Strike Benefits** - The payment of money by the union to workers involved in a strike, usually a small portion of regular income.

**Strike Fund** - Funds held by international, national, or local unions to be allocated during a strike to cover costs of strike benefits, legal fees, publicity, etc. The strike fund may or may not be separate from the organization's general fund. The amount of the fund often determines the ability of the union to stay out on strike and, therefore, the success or failure of the strike.

**Strike Notice** - Notice to the employer and to the State Employment Relations Board of the union's intent to initiate a strike on a specific day and time. Under ORC 4117, this notice must be filed with the employer and the State Employment Relations Board 10 full days prior to the actual strike date. See ORC 4117.14.

**Strike Vote** - A vote taken among members of an employee organization to determine whether or not a strike should be authorized. Such a vote is usually taken during negotiations at or near the expiration of the old contract. Strike authorization may also be given to the union bargaining team at the outset of negotiations or at the time impasse is reached.

**Strikebreaker** - A person who accepts employment in place of a striker or who organizes a back-to-work movement in order to pressure strikers to give up the strike and return to work on the employer's terms (See Scab).

**Subcontracting** - See Contracting Out.

**Substance Abuse** - A term used in the work environment to describe the addictive use of drugs or alcohol.

**Substantive Due Process** - Combines the rights under procedural due process with the right of the employee to challenge the validity and/or fairness of the charges made prior to the finalization of an adverse personnel action. Substantive due process protects the property interest of an employee, i.e. employment, against arbitrary and capricious employer action.

**Successor Contract** - A contract negotiated to replace an expiring contract.

**Superminimum Salary** - A Superminimum salary is a beginning (entry-level) salary on the contractual salary schedule from which new employees may not be advanced until completion of a contractually specified service requirement that varies from the usual one-step advancement for each year of service.

**Superseniority** - A position on the seniority list ahead of where the employee would be placed solely on the basis of years of service. Such favorable treatment is usually reserved for union stewards, in order to retain proper union representation for those employees who remain on the job in the event of a layoff. Superseniority would be provided for in a collective bargaining agreement.

**Supervisor** - A person having the authority, in the interests of the employer, to hire, transfer, suspend, promote, layoff, recall, discharge, assign, reward, or discipline other employees, to effectively recommend such action, or to adjust employee grievances where such authority is not of a routine or clerical nature, but requires the use of independent judgment. (See Ohio Revised Code, Section 4117.01(F)).

Note: While the language in ORC 4117.01 (F) remains the same, SERB has ruled in case number 90-REP-01-0019, Ohio Council 8, AFSCME, AFL-CIO and Mahoning County Department of Human Services, June 5, 1992, that only one indicator suffices in establishing supervisory status, provided independent judgment is used in the exercise of that authority. SERB ruled that, "henceforth an individual will be excluded from a bargaining unit pursuant to O.R.C. 4117.02 (F) so long as the record contains substantial evidence that the employee has the authority to perform one or more of the functions listed in that section, actually exercises that authority and uses independent judgment in doing so." This standard is to be applied prospectively only.

**Supplemental Contract** - A limited contract which sets forth the hours, wages and other terms and conditions of employment for all duties that are in addition to an employee's regular duties whether the duties for such position are performed during or beyond the regular work day, work week, or work year.

**Supplemental Salary/Wage Schedule** – Supplements are one name for compensation paid to employees for duties which are above the standard salary/wage schedule and represent compensation for "extra" duty, duties, or responsibilities which are beyond those of the basic contract of employment.

**Suspension** - A form of disciplinary action by an employer that places an employee on inactive status for a designated time period. It is frequently used in a warning to an individual that a continuation of certain conduct will result in discharge.

## T

**Taft-Hartley Act** - See Labor-Management Relations Act.

**Tangible Issue (in bargaining)** – Substantive issue related to matters on the table being negotiated. Tangible issues can be placed in writing.

**Termination** - To end the employment status of an employee before the expiration of the employee's employment contract; a complete severance of the relationship between an employee and an employer.

**Title 7** - Federal legislation that prohibits discriminatory pay and personnel practices based on sex and establishes the axiom known as "equal pay for equal work".

**Title 9** - Federal legislation which prohibits discrimination on the basis of sex in employment, in education programs and activities in school districts or higher education institutions which receive or benefit from Federal financial assistance.

**Trade-off** - A term applied to the practice in bargaining of giving up a demand or current benefit in exchange for a benefit or policy of greater value to the party initiating the exchange. See

Quid Pro Quo.

**Training and Experience Grid (TEG)** – (Scattergram, Matrix) The TEG outlines the number of employees who are paid in each cell of the salary schedule. The TEG generally provides years of service and educational training information at a minimum and may include such items as “in-field” and “out-of-field” designations for advanced training or degrees.

**Transfer** - The shifting or movement of an employee from one job to another.

## U

**Unauthorized Strike** - A strike determined by the State Employment Relations Board to be in violation of ORC 4117.

**Unemployment Compensation** - Wage subsidy provided to displaced workers who are able to work and who are actively seeking employment but who have not been able to find employment.

**Unfair Labor Practice** - A practice on the part of either union or management that violates the provisions set forth by State or Federal labor relations statutes. Examples on the part of unions are: 1) causing an employer to discriminate against an employee on the basis of that employee's non-membership in a union; 2) refusing to bargain collectively with an employer; 3) interfering in an employer's exercise of rights under the statute. Examples on the part of management are: 1) controlling or interfering with unions; 2) discriminating against workers for their union support or activity; 3) retaliating against workers for complaining to the administrative agency; and 4) refusing to bargain collectively with the exclusive representative. (See Ohio Revised Code, Section 4117.11).

**Unilateral Action** - Action taken by one of the parties to a collective bargaining relationship independent of the desires, wishes, or prior knowledge of the other.

**Union Security** - Negotiated contract clauses requiring the establishment and continuance of a union shop, agency shop, maintenance of membership, dues checkoff, or similar provision which assures the union of its revenues during the life of a collective bargaining agreement.

**Union Shop** - A provision in which the employer may choose to hire anyone, but in which all workers must join the union within a specified period of time after being hired (typically 30 days) and must retain membership as a condition of continued employment. The courts have refined this obligation to mean paying only the normal dues and fees that a union member would pay.

**Unit Determination** - The process by which certain employees are grouped into a unit to select a single bargaining agent to represent them in collective bargaining negotiations. Such determination is based upon several criteria, such as community of interest, employee desires, collective bargaining history, and the administrative organization of the employer. (See Ohio Revised Code, Section 4117.06).

# V

**Vacation Pay** - Pay for specific periods during which employees are relieved of job obligations without loss of any benefit or privilege of employment. Rules for governing the length and amount of pay is usually covered by contract provisions or company policy.

# W

**Walkout** - Used interchangeably with a strike; usually synonymous with a wildcat or quickie strike.

**Whipsawing** - The union tactic of negotiating with one employer at a time, using each negotiated gain as a pattern or base from which to negotiate equal or better terms of settlement with the next employer.

**Wildcat Strike** - An unauthorized strike.

**Work Rules** - Rules regulating on-the-job standards and conditions of work often incorporated in the collective bargaining agreement when negotiations occur. Work rules are usually negotiated at the insistence of the union, to restrict management's ability to unilaterally set production standards and assign employees as management wants. The union's goals in establishing work rules are to maximize and protect the number of jobs available to its members, protect the health and safety of employees, and to promote stable work assignments for employees.

**Worker's Compensation** - Wage and/or medical benefits provided to an employee who has sustained a work-related injury or disease. The more disabling and irreversible the injury or the disease, the greater the compensation to which an employee may be entitled.

# Z

**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 the decision must be based only on the contents of the written agreement.

# GLOSSARY

## OF

### HEALTH CARE TERMS

Definitions include those taken in part or entirely from the following: Blue Cross & Blue Shield Online Glossary downloaded June 22, 2004 at <http://www.bcbsm.com/gloss.html>; Castro, J. *The American Way of Health*. Boston: Little, Brown and Company, 1994; Getzen, T.E. *Health Economics*. New York: John Wiley & Sons, Inc., 1997; IFEBP. *Employee Benefit Plans: A Glossary of Terms*, Ninth Edition, Brookfield, WI, 1997; NEA/AFT. *Health Plan Standards*. Washington, D.C., 1996; Mausner, J. S. and Kramer, S. *Epidemiology*. Philadelphia: W.B. Saunders Company, 1985; State Employment Relations Board. *Report on the Cost of Health Insurance in Ohio's Public Sector, 1996*, Columbus, Ohio, 1996; Rowell, J.A. *Understanding Medical Insurance*. Albany, NY: Delmar Publishers, 1996; and Thomas N, Larson, L.N., and Bell, N.N. *Pharmacy Benefits Management*. Brookfield, WI: IFEBP, 1996.

# A

**Acute Care** -- Medical treatment given to individuals with a short-term illness or condition.

**Acute Care Facility** -- A facility that offers a wide range of medical, surgical, obstetric and pediatric services. These facilities primarily treat patients with conditions that require a hospital stay of fewer than 30 days.

**Adjudication** -- The process of determining the allowable payments on a claim, accounting for such factors as eligibility, medical necessity, exclusions, etc.

**Adverse Selection** -- A situation in which a disproportionate share of bad risk is borne by a health plan due to some unique feature in the plan. This can occur when a choice between health plans clearly favors different choices for population subsets that vary widely in health status.

**Allowed Charge** - The maximum amount, according to the individual policy that insurance will pay for each procedure or service performed.

**Ambulatory Care** - Health care services delivered in a setting in which a 24-hour hospital stay is not required. These services can be delivered in a hospital setting, such as an outpatient clinic or emergency department, physician's office, or urgent care center. Services can range from a patient assessment to surgical procedures not requiring a hospital stay.

**Ambulatory Care Facility** - A health care facility that provides services to patients who are not hospitalized overnight. These facilities can provide a wide range of medical and health related services.

**Ancillary Services** -- Services other than room, board and nursing care that supplement the primary care the patient receives such as drugs, dressings, laboratory services or physical therapy.

# B

**Balance Billing** - Charging the patient for the difference between the physician's fee and the insurance carrier's allowed fee.

**Base Medical & Major Medical Plan** -- A traditional fee for service plan which covers 100% of certain basic health care services such as hospital, surgical and physician services up to established limits. Thereafter, the major medical portion of the plan goes into effect for those items or for benefits not covered under the base plan. Deductibles, co-insurance and co-payments typically apply only to the major medical portion of the plan.

**Birthday Rule** -- The process used to determine which parent's coverage pays first when a dependent child has health coverage through both parents. According to this coordination of benefits rule, the dependent child's primary coverage is that of the parent whose birthday falls earlier in the calendar year.

**Board Certified** -- A physician who has passed a written and oral examination given by a medical specialty board.

**Bundling** - An accounting procedure by which related medical services are reported to insurers as a single treatment rather than being billed separately.

## C

**Capitation** - A fixed pre-paid payment for a defined set of health care services for a defined population. Standard form is per member per month.

**Carrier** - The insurance company, insurer or health insuring corporation.

**Case Management** - A patient's health care is managed by a health care professional throughout the continuum of needed services to assure better continuity. Case management is generally applied to chronically ill or acute care patients to help assure optimal outcomes and cost effectiveness.

**Centers of Excellence** -- A network of select hospitals whose specialty programs and staffs have met certain quality criteria and also may provide added value to managed care customers by offering competitive prices on certain high-risk specialty procedures.

**Certificate of Creditable Coverage** -- A document that proves an individual previously had health care coverage. It can be applied to reduce or eliminate any preexisting exclusion period that might otherwise apply when someone changes jobs.

**Clinical Pathway** - Guidelines for specific diagnoses that include the sequence and timing of major interventions by physicians, nurses and staff members of ancillary departments such as laboratory, dietary and radiology. Clinical pathways are used to treat patients more efficiently in cost-effective health care environments and to improve the outcomes of that care.

**Clinical Trial** – A scientific study of the effect of a particular medical treatment or method on a patient.

**Comprehensive Major Medical Plan** – A type of traditional plan where all health benefits are subject to deductibles and co-payments.

**Continuity of Care** -- Continuation of care by a primary care physician or specialist even after the doctor's relationship with a carrier ends. Important to negotiate for members with an ongoing episode of illness when changing carriers.

**Contract Year** -- The 12-month period beginning on the effective date of a group's coverage.

**Coordination of Benefits** -- A program that coordinates the plan participant's health benefits when the person is covered under more than one group health plan.

**Co-payment** - A provision in an insurance policy requiring the policyholder or patient to pay either a specified dollar amount or percentage of the allowed fee for medical services they receive. The co-insurance amount of the bill is the amount paid not by the insurance company, but by the patient. A plan with a 15% co-insurance means that the insurance company pays 85% and the insured person pays 15%.

**Cost Shifting** - With respect to employers, these are policies designed to shift the relative burden of health care costs borne by the employer to the employee, e.g. coinsurance and higher percentages of premium paid. With respect to providers, it is the practice by some providers of redistributing the difference between normal charges and amounts received from certain payers by increasing charges made to other payers.

**CPT Main Number** - Five-digit medical procedure code in the Current Procedural Terminology coding system that identifies a specific medical service.

**Credentialing** - A process for reviewing provider credentials to determine whether they meet a health plan's standards and requirements for participating in the plan's network.

## D

**Deductible** – An amount that must be paid by a plan participant before the health insuring corporation begins to pay.

**Diagnostically Related Group (DRG)** - Patient illness categories that are most commonly associated with hospital reimbursement under the Medicare Prospective Payment System. Each patient released from a hospital can be classified into one of the 494 DRGs. Insurance carriers and health plans often use these groups to set their payment rates by the DRG case rather than per day or per charged item arrangements.

**Disease Management** – Comprehensive, integrated systems approach that targets costly, chronic diseases. Aims to control costs by using the most effective treatments as early as possible.

**Dispense as Written (DAW)** -- Physician's DAW instructions on a prescription specify a brand-name pharmaceutical or medical device.

**Drug Misadventures** – Errors in ordering, transcribing, dispensing and administering drugs.

**Durable Power of Attorney for Health Care** -- A legally binding document that appoints an advocate to make medical decisions for a member who becomes unable to make them.

## E

**Eligibility Date** -- The date on which an individual becomes entitled to benefits under an insurance plan. Some districts declare an employee to be eligible upon date of hire, whereas others declare them to be eligible on the first day of the month following their employment.

**Employee Retirement Income Security Act of 1974 (ERISA)** - This federal law provides a legal framework for the operation of private non-governmental self-funded health plans while exempting them from state regulation.

**Evidence-Based Medicine** -- A set of procedures, pre-appraised resources and information tools that help practitioners apply evidence from research to the care of individual

patients.

**Exclusive Providers Organization** - An arrangement under which people are allowed to use only a certain group of doctors or hospitals picked by their health plan or their employer.

**Experience Rating** - Setting premiums based on the established cost of caring for the insured group in question. Under experience rating, small groups can suffer catastrophic premium increases when one person becomes seriously ill, since one person's high costs can significantly expand the group's total bill.

**Explanation of Benefits Form** -- A statement to plan participants that details what services have been paid and what may be owed.

## F

**Fee Schedule** - A negotiated series of prices for various services that a doctor provides (medical price controls).

**Flexible Spending Account** – Under this program, employees can set up these personal accounts every year, which are funded by payroll deductions. The worker then draws upon the account, using pre-tax income to pay his or her share of the costs of health services. The more a worker spends, the less taxable income is reported.

**Formulary** - A list of drugs covered by a health plan. Formularies are used by health plans to manage and influence drug selection and to facilitate the appropriate and cost-effective use of pharmaceuticals. Closed formularies restrict plan participant reimbursement to a list of drugs, while partial formularies cover a portion of drug charges for non-formulary drugs if directed by a physician and given prior health plan approval.

## G

**Gatekeeper** - Primary physician or other health care professional assigned by the insurer to review the medical management of plan enrollees.

**Gender Rule** -- Infrequently used rule requiring that the father's insurance carrier be the primary insurer when a dependent child has two parents with health care coverage and the birthday rule is not in effect.

**Generic Drugs** – A bioequivalent, lower cost version of a brand name drug, available when patient protection expires on a brand-name drug.

**Group Conversion** -- Process by which members who are no longer enrolled through a group may obtain individual coverage, paying premiums directly to the plan.

# H

**HCFA-1500 Claim** -- The Centers for Medicare and Medicaid Services standard form for submitting professional services to third-party companies or insurance carriers.

**Health Maintenance Organization** - Prepaid health care plan that provides or arranges comprehensive health services for its enrolled members. HMOs may be organized differently as represented by the following four models (or a combination):

**Group HMO** - HMO that contracts with one or more independent group practices that exclusively provide health services to HMO patients.

**IPA HMO** - HMO that contracts directly with physicians in independent practice or with one or more associations of physicians in independent practice.

**Network HMO** - HMO that contracts with two or more independent group practices that provide health services to HMO patients and patients covered by other payers.

**Staff HMO** - HMO that delivers health services through a salaried physician group that is employed by the HMO unit.

**HEDIS** - Health Plan Employer Data and Information Set. HEDIS is a core set of performance measures developed to attempt to help employers understand what "value" the health care dollar is purchasing and how to hold a health plan accountable for its performance. HEDIS is the result of efforts made by representatives from a variety of health plans and employers.

**HIPAA** – Health Insurance Portability and Accountability Act of 1996. Federal legislation that improves access to health insurance when changing jobs by restricting certain pre-existing condition limitations, and guarantees availability and renewability of health insurance coverage for all employers regardless of claims experience or business size. The law also increases the health insurance deduction for the self-employed, provides tax incentives for purchase of long-term care insurance and establishes medical savings accounts (MSA's), which provide for tax-deductible contributions to accounts to cover medical expenses.

**Hold Harmless** – A contract provision in which one party to the contract promises to be responsible for liability incurred by the other party.

# I

**ICD-9-CM** -- An abbreviated reference to the American Medical Association guide to diagnosis codes, the *International Classification of Diseases, 9th edition, Clinical Modification* manual. Diagnosis codes are sometimes referred to as ICD-9-CM codes.

**IBNR** - Incurred But Not Reported. Term used to describe estimates for the amount of claims dollars outstanding (still owed) after the end of a plan year. This estimate is a result of the lapse of time between when a claim is incurred (e.g., doctor's office visit) and when that claim is paid by the health plan.

**Indemnity Insurance** – Coverage where the insurance carrier reimburses plan participants for medical expenses on a fee-for-service basis. Typically, the choice of physician and hospital is completely up to the patient; out-of-pocket costs, deductibles and limits to the dollar amount of coverage apply.

## J

**JCAHO** - Joint Commission on the Accreditation of Health Care Organizations. An independent standards-setting and accreditation entity that evaluates and accredits more than 14,000 health care organizations, including 5,200 hospitals. The Commission's accreditation acts as a seal of approval for health care providers. Providers seek the Commission's accreditation in order to assess and improve quality of care, to fulfill certain Medicare certification and state licensure requirements, to recruit staff, and to maintain the community's confidence.

## L

**Lag** – The period of time between the incurring and payment of a claim.

**Legend Drugs** – Drugs that must be obtained by doctor prescription, as opposed to those prescribed by a doctor but available over the counter (OTC).

**Length of Stay (LOS)** -- The number of days a patient is in the hospital.

**Lifetime Maximum** -- A specified dollar amount or a set number of services that the health plan will provide for each health plan participant on the contract.

**Long-Term Care** – Relates primarily to care given in nursing home settings, though it does include home care and visiting nurse services given to chronically ill or disabled persons.

## M

**Managed Care** - Any health delivery system in which someone in charge of paying the bills can second-guess decisions made by doctors or patients on the kinds of medical services provided. Managed-care organizations such as: HMOs, group practices, and insurance-managed health plans seek to control costs by curbing excessive use of tests, hospitalization, visits to specialists and other services.

**Maintenance Drug** -- A prescription medication that is dispensed in quantities exceeding a 34-day supply typically for the treatment of a chronic condition.

**Mandated Benefits** -- Benefits required by law to be offered or provided by some or all health plans. In most cases, fully-insured plans must comply with all mandated benefits of the

State.

**Medicaid** – Combined state and federal programs to insure people whose incomes are insufficient to pay for health care.

**Medical Loss Ratio** - The percentage of premium paid out in health care benefits. Underwriters will have target loss ratios established based on the plan design, retention needed and IBNR estimates (if not self-insured). This ratio is used by the health plan to determine if rates are adequate by comparing actual claims to premiums that are estimates of claims plus expenses.

**Medical Management** - A health plan's procedures for assuring the appropriate provision and utilization of health care services to enrollees in an environment that promotes continuous quality care. Medical management focuses on the core components of a health plan including how the plan identifies under/over utilization of services by enrollees and catastrophic cases requiring case management, provides access to cost-effective alternatives to hospitalization, conducts utilization review and monitors and tracks referrals and readmission rates.

**Medical Savings Accounts** - Financial vehicles that allow people to place money in tax-free savings accounts to be used for medical expenses, in conjunction with the purchase of a catastrophic stop-loss health insurance plan covering expenses in excess of a threshold.

**Medicare** – A federal government insurance program that provides hospital benefits (part A) and medical benefits (part B) to persons over age 65 and to some qualified widows and disabled persons.

**Morbidity Illness** - Measured by incidence or number of new cases of a disease in a population at risk over a period of time and prevalence, or the number of existing cases of a disease in a population at risk at a point in time.

**Mortality Death** - Can be expressed for a total population in adjusted or crude rates or for a population subgroup in specific rates.

## N

**NAIC** - National Association of Insurance Commissioners. Non-profit membership association of state insurance commissioners which acts as a standards-setting body for the development of state model legislation and regulations pertaining to life, health, property and casualty insurance.

**NCQA** - National Committee for Quality Assurance. A non-profit institution that reviews and accredits managed care organizations. The NCQA works collaboratively with other organizations to develop the HEDIS specifications

## O

**Open Enrollment** -- A period during which subscribers in a health plan can change their health coverage; a period when uninsured individuals can obtain coverage without presenting health statements.

**Opportunity Cost** – The highest-valued alternative that must be given up in order to obtain something else.

**Outcome Measures** - Assess the quality and cost effectiveness of health care interventions on a patient. The most common outcome measures include mortality, morbidity, readmission rates and patient satisfaction.

## P

**Per-Diem Rate** -- Negotiated daily payment for facility inpatient services.

**Physician Bonus** – A payment, in addition to normal salary/reimbursement, made by a managed care plan to a physician whose patients' utilization of health care services is below a set rate during a specified time frame. Physicians above the threshold amount do not qualify for bonus payments and thus have an incentive to reduce the utilization of health care services by their patients. These payment arrangements have been criticized by managed care opponents who argue that they promote the under utilization of needed health care services. Managed care proponents believe that these payment arrangements ensure cost-effective use of health care resources, including specialty services.

**Point of Service** - A type of managed care plan where the enrollee has the choice of using a health care provider that is not part of the managed care plan's provider network at the point in time that service is rendered. Higher out-of-pocket costs are usually incurred than if the enrollee used a network provider. Under a POS plan, enrollees have incentives to use network providers.

**Practice Guidelines** -- A document that used algorithms (if/then statements or questions) to guide evaluation or management of a clinical condition or to review the appropriateness of clinical interventions.

**Preferred Provider Organization** - A contractual arrangement between independent or institutionally based providers and another entity (often an employer or insurance company) to deliver health services to a defined population at established fees. The PPO contains a panel of physicians and health care institutions that constitute the preferred providers. Health care services are delivered on a fee-for-service basis at established rates, usually discounted from the physician's usual and customary rates. Economic incentives encourage PPO members to use the preferred panel.

**Premiums** - Payments made in advance to provide medical services or reimbursement in the future.

**Preventive Care** – Comprehensive care emphasizing priorities for prevention, early detection and early treatment of conditions generally including routine physical examinations, immunization and well person care.

**Primary Payer** -- The carrier responsible for providing benefits before any other insurer makes payment.

**Profit Margin** - An amount over and above administrative expenses that is included in the retention charges to add to the health plan's corporate profits/revenue.

## Q

**Quality Assurance** - A specific process within health plans that examines the services the patient has received to see that they were of high standard, and reviews and fixes problems in patient care or other parts of the health care system.

## R

**Rebate** – Program in which drug manufacturers pay a pharmacy benefits management firm a certain amount of money based on the quantity of their product(s) sold.

**Reinsurance** - Acceptance by a second insurer (the re-insurer) of all or part of the risk undertaken by the first insurer; usually used to cover very large losses and protect against bankruptcy.

**Request for Proposal** – The process whereby plan trustees prepare a list of specifications based on their goals, identify appropriate guidelines, solicit bids and proposals from candidates, conduct interviews, discuss fees and choose a provider accordingly.

**Retention Rate** - Part of the medical plan expense that is neither claims nor insurance costs. Retention includes administrative expenses and profit/reserve contribution. Some fully insured products may also include other fees such as those for utilization reviews.

**Rider** -- A legal document that amends a certificate by increasing, limiting, deleting or clarifying the scope of coverage.

**Risk** – The probability that a given event will occur.

**Risk Management** -- A program to identify and take action against risks that might lead to injury or loss.

**Risk Pooling** - Decreasing risk by spreading it across a larger group of people.

## S

**Self-Insurance** – Risk management programs whereby employers with sufficient capital insure their own employees against loss of medical expenses and/or wages without contracting with a commercial carrier for coverage. Self-funded and self-insured are terms that are used interchangeably.

**Standard of Care** -- A predefined process of care that the patient can expect from a health care encounter based on current scientific knowledge and clinical expertise.

**Standard of Practice** -- An acceptable level of performance or an expectation for professional intervention, formulated by professional organizations based upon current scientific knowledge and clinical expertise.

**Stop-Loss** – A limit on the maximum amount a person would ever have to pay. If a family has a \$1,000 stop-loss, then the insurance company will pay everything after the family's out-of-pocket expenses reach \$1,000.

**Subacute Care** -- A level of care for patients not requiring the intensity of services of a hospital.

## T

**Third Party Administrator** – The party to an employee benefit plan that collects premiums, pays claims and/or provides administrative services.

## U

**UB-92** -- A standard billing format for submitting hospital claims.

**UCR** - Usual, Customary and Reasonable charges. A method for setting the maximum allowed fee for each service based on usual charges by other physicians in the area, the customary charge by this particular doctor over the preceding year, and "reasonable" adjustments for severity or special conditions.

**Utilization Management** -- A process of integrating review and case management of services in a cooperative effort with members, groups and providers to optimize cost-effective patient care that doesn't minimize quality.

**Utilization Review** - Monitoring of medical records to determine if services are appropriate and should be paid for.

## V

**Visit** -- A face-to-face meeting between a professional provider and a member during which health care services or supplies are provided and a claim is generated.

# W

**Withholds** - A payment arrangement between a managed care plan and physician where a portion of the physician's salary/reimbursement is withheld as an incentive to meet the plan's recommended utilization rates for health care services. Physicians below the threshold utilization rate receive 100% reimbursement/salary. Physicians exceeding the threshold receive only a percentage of reimbursement/salary, which may be based on their patients' utilization rates in comparison to the plan's recommended utilization rates.