

DEFINITIONS

COMMONLY USED TERMS AND PHRASES USED IN LABOR-MANAGEMENT RELATIONS

Act — The term for legislation once it has passed both houses of Congress and has been signed by the president or passed over his veto, thus becoming law. (See also Pocket Veto.) Also used in parliamentary terminology for a bill that has been passed by one house and engrossed. (See Engrossed Bill.)

Abeyance — The condition of being undetermined. To hold in abeyance is to place a pending motion (e.g. grievance) outside the time limits until some future time when it may be taken up and processed.

Ad hoc — A Latin phrase meaning "for this," as in for this special purpose. An *ad hoc* committee, for instance, is not a permanent or standing committee but exists only as long as the committee's special job remains to be done.

Administrative law judge — Official who conducts hearings and makes recommendations to the NLRB or other government agency.

Affidavit — A written or printed declaration or statement of facts, made voluntarily and confirmed by the oath or affirmation of the person making it.

Alter ego — A Latin phrase meaning another self. An alter ego company may result when the same owner and manager of one company shuts down operations and reopens with a new name, when it is actually the same business.

Amicus curiae — A Latin phrase meaning a friend of the court. A person who has no right to appear in a suit but is allowed to introduce argument or evidence, usually in the form of a brief, to protect his interests.

Animus, Anti-union — Animus is a Latin term meaning mind, attitude, intention or disposition. Anti-union animus is the official term for anti-union sentiments that may affect various management actions and result in union organizers, members or representatives being harassed.

Arbitrary and capricious — A phrase describing an action or decision which is made without cause or without consideration of an objective standard, and is therefore totally subject to the whim or pleasure of the person or party in power.

Arbitration — The resolution of a dispute by a third and neutral party; one who is not personally involved in the dispute and may be expected to reach a fair and objective decision based on an informal hearing at which the disputants may argue their cases and present all relevant evidence. It is usually agreed in advance that such a decision will be binding on the parties and not subject to appeal.

Arraign — To bring a prisoner to court to answer the charge made against him or her in the indictment. See also Indictment.

At-will— Under common law, this phrase describes the relationship between employer and employee that exists without a written contract or other agreement guaranteeing job security. An at-will employee may be terminated at the will of the employer without reason or cause. See also Arbitrary and capricious and just cause.

Bargaining unit — Which employees are to be represented if the union wins a representation election and who may vote in the election are initially proposed by the union starting the campaign. If the employer disagrees, the Board (NLRB, NMB, FLRA or other State Labor Board as appropriate) may have to investigate and conduct a hearing to determine the coverage by job classifications of the unit in question.

Blacklist — A list of names or persons or firms to be discriminated against, either in employment or patronage.

Bona fide — A Latin phrase meaning "good faith." Normally it is used to mean real, actual or genuine; not feigned.

Boycott — The refusal to deal with, buy, supply or handle the products of a business as a means of exerting pressure in a labor dispute. See also Secondary boycott.

Bumping — A contractual right whereby employees scheduled for layoff are permitted to displace less senior employees in other jobs for which they are qualified.

Broadbanding — The replacement of a salary schedule or pay classification system that has numerous salary grades or levels with one that has only a few "bands" that each carry wider pay-range spreads.

Checkoff — An arrangement under which an employer deducts from the pay of employees the amount of union dues they owe and turns over the proceeds directly to the treasurer of the union.

Class action — A lawsuit in which the plaintiffs proceed not only on their own behalf, but on behalf of all others similarly situated or affected. Class action status can only be accorded by a

court after certain requirements have been met.

Coercion — Economic or other pressure exerted by an employer to prevent the free exercise by employees of their right to self-organization and collective bargaining; also, intimidation by a union or fellow workers to compel affiliation with the union.

Color of law — The appearance of semblance, without the substance, of legal right. Misuse of power, possessed by virtue of state law and made possible only because wrongdoer is clothed with authority of state, is action taken under "color of state law." See *Black's Law Dictionary*.

Common law — The body of laws and legal principles derived from English legal history that was accepted and, therefore, served as the framework for early American law. Different from any specific law enacted by the government, common law justice derives its authority from the usages and customs of immemorial antiquity. See *Black's Law Dictionary*.

Concerted activity — Action taken by an employee or employees (generally on behalf of fellow-workers) in order to improve their working conditions or benefits. Bargaining law considers this type of activity protected from retaliation or reprisal.

Consent agreement — In an organizing campaign, this is an agreement (NLRB Form 651) between the employer and the union that they will be bound by the decision of the NLRB's Regional Director and waive the right to appeal to the NLRB in Washington. See also Stipulation for Certification.

Consent decree — An agreement worked out under the guidance and with the help of the NLRB which, therefore, has the effect of a court order on both labor and management parties.

Conspiracy — An agreement between two or more people to commit a crime.

Constructive discharge — In some cases, a resignation provoked by management harassment so unbearable that the resignation may be construed by the court or an arbitrator as a form of discharge, restoring the employee's right to grieve or hold the employer liable for violating the employee's due process rights.

Contingency fee — An arrangement made with a lawyer who thereby agrees not to require any fees or retainer, but will take payment from the client only if and when a settlement or award is won.

Contract-bar rules — Rules applied by the labor board which prevent or bar a union representation election for the period of time during which an existing contract between a union and the employer is in effect, or for one year after a valid election has taken place.

Damages — Cash which may be recovered in the courts by any person who has suffered a loss or injury as a result of another's unlawful or negligent act or omission. See also Liquidated damages, Punitive damages, and Tort.

De minimis — Short for the Latin phrase, *de minimis non curat lex*, which means the law does not concern itself about trifles. This phrase may be used to describe a violation of law which is so small that it is not worth litigating.

De novo — Latin for anew or afresh. An appeal hearing is *de novo* when all evidence and proof considered at the prior hearing must be reintroduced and reconsidered.

Decertification — The withdrawal by the labor board of a union's designation as exclusive representative usually as a result of the loss of an election called for by employee petition.

Defamation — Injury to a person's character, fame or reputation, by false and malicious statements (may be libel and/or slander). In some cases an employer's blacklist or poor reference may be defamatory.

Double-breasted — An employer (most often a construction contractor) who runs two operations, only one of which is unionized.

Double jeopardy — A principle of constitutional justice that prohibits imposing two or more punishments for the same offense, and protects defendants from being tried twice for the same crime.

Due process — The constitutional guarantee that no person shall be deprived of his life, liberty or property without due process of law, meaning ordinarily the right to a fair and objective hearing, or trial by jury as provided by whatever rules or laws are governing.

Excelsior list — The list of current employees whose names and addresses the employer is obligated to provide the labor board after a representation election has been scheduled. [156 NLRB 1236, 61 LRRM 1217 (1966)]

Executive order — An order issued by the U.S. President which has the force and effect of law.

Featherbedding — Controversial practices which tend to limit productivity and create an increased demand for workers, such as demanding payment for work no longer performed by workers because of automation or robotification.

Fiduciary obligation — The obligation or trust imposed by law on officials of an organization making them liable for the proper use and disbursement of the organization's money, funds and property. As applied to a pension fund trustee or a union officer, the duty to act exclusively

for the benefit of the plan participants, or union members, respectively.

Front pay — A remedy sometimes awarded by the courts to victims of discrimination where it is impractical to order reinstatement. A front pay award leaves the incumbent in place and orders the employer to pay the discriminatee an amount equivalent to what it is reasonable to estimate he or she would otherwise have earned in future employment.

Garnishment — a procedure, usually resulting from court action, whereby a portion of an employee's wages is deducted and paid directly to a creditor.

Good faith bargaining — A legal requirement arising out of Section 8(d) of the National Labor Relations Act on both the Union and the Employer (where the Union is certified as the exclusive representative). Enforced by the National Labor Relations Board the parties are required: "To bargain collectively to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession..."

Grandfather — An exception provided in a contract article that either exempts or continues a prior benefit to those covered employees who were employed prior to the negotiation of that article.

Hot cargo — Goods or products that come from a plant or production facility where there is a labor dispute in progress.

Hostile environment — Continuous, low level discriminatory remarks or behaviors that cumulatively 'poison' the workplace for the aggrieved victim enough to alter the terms, conditions or privileges of the workplace, and are commonly considered by the courts and the EEOC as equivalently unlawful to more overt forms of discrimination.

Indictment — A document prepared by the District or Prosecuting Attorney and approved by the grand jury which charges a person with the commission of a crime.

Injunction — An order of a court or agency requiring a person to do or not do a certain act. Failure to abide by the terms of a court injunction may result in the court arresting and jailing the person for contempt of court.

Judicial review — A case brought before a court to determine if the decisions made by a labor board or other government agency are legal.

Jurisdiction — See meaning below;

1.) The boundaries or kuleana of a union's representation as determined usually by the type of work an employee performs. In construction organizing, for example, the question arises whether the work being done by a laborer more properly belongs to a carpenter or an electrician.

2.) The boundaries or authority of a given court of law which govern, for instance, where a suit or a claim should properly be filed. "Just Cause " A "due process" provision commonly negotiated into a collective bargaining agreement that requires the employer to demonstrate proof of an employee's guilt before taking disciplinary action like suspension, or termination. Without such a protection, common law generally allows employers to terminate employees "at-will" (without cause). [For more information, see Hawaii State AFL-CIO's "Just Cause" site]. See also Arbitrary and capricious, and At-will.

Liquidated damages — A court award available under some laws (Equal Pay Act) where the employer's violation was either willful or in reckless disregard of the law or the employee's rights thereunder. Such award generally provides for attorney fees and an amount equal to and in addition to the lost wages and benefits.

Lockout — The shutting down of an operation or workplace by the employer in order to pressure the workers into accepting the employer's terms.

Mediation — The attempt by an impartial third party, called a mediator, to bring the parties in a dispute together and assist them in reaching settlement. The mediator, however, has no power to force or award a settlement but works instead to persuade the parties to reach agreement.

Norris-Thermadore Rule — Where the union and the employer sign a written eligibility agreement, the agreement will control, and challenges will not be heard unless the challenges involve persons, such as supervisors, guards or other professional or confidential employees according to the Act or NLRB policy [119 NLRB 1301, 41 LRRM 1283 (1958)].

Open shop — A bargaining unit in a company or workplace at which the workers, though represented by a duly-elected union, are not required to pay the union dues or service fees for representation which the union is nevertheless legally required to provide. Past practice A particular working condition, benefit or custom that has been in existence and deeply ingrained over a period of time such that it is regarded as a part of the whole agreement and, therefore, enforceable by arbitrators.

Plaintiff — The one who sues. The moving party in a civil law suit who is bringing the complaint

against a defendant.

Precedent — An adjudged case or decision of a court of justice, considered as furnishing an example or authority for an identical or similar case arising later. A lower court is expected to follow the precedents set in the higher courts.

Preemption — The right of one law over another in circumstances where the rights or remedies of the one law conflict with the other. Generally, federal laws preempt state laws.

Preponderance — A greater weight of evidence, or evidence which is more believable and convincing in comparison to that which has been presented by the other party in a suit.

Presumption — An advantage of proof legally accorded to one side in a suit or trial that in the absence of any evidence or without convincing evidence to the contrary that party's argument or version of the facts shall be accepted as true, and the burden of proof rests with the opposite side.

Pretext — A legal excuse to do something which otherwise would be illegal. In discrimination cases, for instance, it may be shown that the apparently innocent motive behind an action may conceal a discriminatory intention. Prima facie evidence A Latin phrase meaning "at first sight." A set of facts which, if believed and are uncontested, will win a suit.

Pro bono — A Latin phrase meaning "for the good," short form of "for the public good." An arrangement whereby a lawyer will accept a client for representation without charging the client any fees or retainer at all.

Pro se — A Latin phrase meaning 'for oneself.' An arrangement in which a party to a law suit is represented by him or herself.

Protected Class — Anti-discrimination laws only regard unequal or unfair treatment as unlawful discrimination when the victim is a member of a defined group known as a protected class. The first civil rights laws protected only race and color. As the principle of discrimination evolved over the years more laws were passed and more groups were added. Federal protected classes now include race, color, national origin, religion, sex (or gender), age (over 40), and disability. State law (HEPA) further protects ancestry, marital status, sexual orientation, as well as arrest and court record (in most cases).

Punitive damages — A monetary award made by the court that goes beyond simple reimbursement for losses suffered (actual or compensatory damages) and, in the manner of a fine, assesses the defendant an amount of cash designed to punish the defendant for his evil behavior or to make an example of him/her.

Quid pro quo — A Latin phrase meaning literally, "this for that." The phrase describes an implied or expressed expectation that one party will get something for something else given up. *Quid pro quo* sexual harassment, for example, is the most overt form of harassment in which the harasser makes it clear that failure to submit to sexual demands will result in loss of employment or some other right, opportunity or benefit.

Racketeering — Formerly an organized conspiracy to commit the crimes of extortion or coercion. Under the provisions of RICO, two or more crimes (including illegal use of the phone or mail) related to one criminal purpose and committed within the same (ten year) period.

Recognition — The employer's acknowledgment of a union as the exclusive bargaining agent for the employees, given either voluntarily upon evidence of an employee petition, or by legal requirement after an election conducted by the government. Retrenchment Adoption of a smaller scale of operations in an organization, often resulting in layoffs as part of the effort to reduce the work force.

Secondary boycott — A boycott or the picketing by employees and/or a union of a business not directly involved in a labor dispute for the purposes of bringing pressure to bear on the business of an employer who is. See also Boycott and Hot cargo.

Solicitation — Asking; selling. An employer may have a "no solicitation" rule to prohibit employees from union organizing at work, but the rule may not be valid if the employer allows other forms of solicitation such as fund-raising ticket sales, etc.

Statute of limitations — The provisions in any law or laws that limit the time when a plaintiff may bring suit or the time before which the defendant may be liable for losses or damages.

Stipulation — An agreement between the parties to mutually accept some facts or evidence as true and undisputed.

Stipulation for Certification — In an organizing campaign, this is an agreement (NLRB Form 652) between the union and the employer that the NLRB's Regional Director merely investigates challenges or objections and makes recommendations to the Board in Washington D.C., but the NLRB then makes the final decision. See also Consent agreement.

Subpoena — A process document issued out of court requiring a witness to attend. A subpoena duces tecum further requires the witness to bring relevant books or records.

Tort — A wrongful act that violates a person's private or civil rights and creates a liability under which the victim of the violation may sue the person or persons responsible in civil court.

Twenty-Four Hour Rule — Employers and unions are prohibited from making election speeches

on company time to massed assemblies of employees within 24 hours before the scheduled time for conducting an election [Peerless Plywood Co. 107 NLRB 427, 33 LRRM 1151 (1953)].

Union Shop — A bargaining unit in a company or workplace in which all the workers whom the union is legally required to represent must either pay the union dues or a service fee for its representation.

Vesting — A contractual right by which an employee, after a designated period of employment, is entitled to the pension benefits earned once his/her service is terminated.

Waiver — The intentional (knowing) and voluntary relinquishment of a known right.

Weingarten rights — So called after a 1974 U.S. Supreme Court decision (420 US 251) which ruled that an employee has the right to a co-worker or union representative in any interview the employer might hold that is intended to investigate a possible discipline charge against the employee.

Wildcat strike — A spontaneously organized strike triggered by an incident on the job, usually unauthorized by the union leadership and of short duration.

Without prejudice — Used when a case or grievance is being dismissed this phrase means that the right or privilege of the complainant to sue again on the same cause of action is not thereby lost or waived. The phrase is used expressly to prevent the dismissal from operating as a bar to a subsequent suit or grievance.

Writ — A process (document) of a court ordering a public officer or a private person to do a certain act.