Subjects of Bargaining

There are three categories of subjects that are established under the National Labor Relations Act. They are: mandatory; permissive or voluntary; and, illegal subjects.

MANDATORY SUBJECTS

Mandatory subjects are those that directly impact – wages, hours or working conditions (or terms and conditions of employment). These are subjects over which the parties must bargain if a proposal is made by either party. This does not mean that the parties have to reach agreement on such proposals, but rather that they have to engage in the process of bargaining in good faith over the subject. Mandatory subjects may be bargained to impasse. It is also legal to strike (or to lock-out) to obtain a mandatory subject of bargaining.

Examples of mandatory subjects are:

- Wages
- Shift premiums
- Overtime
- Premium pay
- Longevity
- Pay for training
- Holidays
- Sick days
- Hours of work
- Work schedules
- Grievance procedure
- Workloads
- Vacancies
- Promotions
- Transfers
- Layoff and recall
- Discipline and discharge
- Waiver/zipper clause
- Mandatory meetings
- In-service trainings
- Parking
- Bonuses
- Incentive pay
- Equity pay adjustments
- Legal services
- Bulletin boards

- Jury duty pay
- Bereavement pay
- On-call pay
- Severance pay
- Pensions
- Health insurance
- Leave of absence
- Tuition reimbursement
- Seniority
- Job duties
- Probationary period
- Testing of employees
- Rest and lunch periods
- Bargaining unit work
- Subcontracting
- No strike clause
- Non-discrimination
- Dues check off
- Mileage and stipends
- Evaluation procedures
- Health and safety
- Clothing and tool allowance
- Management rights clauses
- Dental and vision plans
- Work rules
- Meals provided by the employer
PERMISSIVE OR VOLUNTARY SUBJECTS

Permissive, voluntary or non-mandatory subjects of bargaining are subjects not directly related to the work. That is, these subjects fall outside of wages, hours and working conditions and generally are matters that relate to the nature and direction of the business/industry or relate to the internal union affairs. The list can be infinitely long. The parties may agree to bargain over these but are not required to by law and can refuse to discuss them without fear of an unfair labor practice charge. They also cannot be bargained to impasse. Furthermore, it would also be a violation to strike over a permissive subject. Subjects that have a minimal impact on the employment relationship most likely are permissive, but it is not always clear. There could be considerable grey areas in determining whether a proposal is mandatory or permissive and these might have to be litigated for resolution.

Examples of permissive/voluntary subjects are:

- Negotiation ground rules
- Supervisor’s conditions of employment
- Interest arbitration
- Settlement of a ULP charge
- Pensions for retire members
- Use of the Union label/flag
- Internal Union matters
  (how stewards and officers are elected, Union dues, officer structure, Union by-laws, etc.)
- Recognition clause defining the bargaining unit
- Either party’s bargaining team make-up
- Make-up of the employer’s board of directors or trustees
- Demanding that a Union settle arbitrable grievances filed under the previous contract

ILLEGAL SUBJECTS

Illegal subjects are those that cannot be legally bargained over by either party. They are subjects that would violate a law and cannot be entered into legally into a collective bargaining agreement even if both parties agree to do so.

Examples of illegal subjects are:

- Closed shop provisions
- Discrimination against a group of employees based on race, sex, disability, age, veteran’s status, religion, sexual orientation, marital status, etc.
- Hot cargo clauses (language that prohibits an employer from dealing with any other employer, usually involved in a labor dispute)