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How well do you know your

CBA?

COLLECTIVE BARGAINING agreements are a very specialized form of contract. As a result, the general rules that apply to commercial contracts do not apply. For instance, when a commercial contract's term expires, unless it specifically provides otherwise, the rights and obligations it establishes expire as well. On the other hand, when a collective bargaining agreement's term expires, its provisions continue (with limited exceptions) until a new contract is negotiated or the parties reach impasse or the bargaining relationship is legally terminated. Thus, the parties to a collective bargaining agreement must abide by the status quo terms even after the agreement expires, while a new agreement is being negotiated.

Similarly, the rules pertaining to writing and interpreting collective bargaining provisions are distinct from the rules that apply to general contracts. Established precepts of contract construction have been developed by labor arbitrators who have been called upon to resolve contractual disputes over the meaning of a collective bargaining agreement's language. These tenets of contract construction and interpretation must be fully understood by any union advocate who is involved in grievance adjustment, collective bargaining negotiation and agreement drafting. In this article I outline some of the more common rules of contract construction that I have encountered both during negotiations and contract interpretation arbitration.

One of the most significant principles of collective bargaining interpretation is the "plain meaning rule." The rule provides that where language in the agreement is clear and unequivocal, arbitrators will look no further than the content of the language to reach their decision in a dispute over its application. For example, if a collective bargaining term stated that "overtime shall be computed at the rate of one and a half times the employees' hourly pay rate and overtime shall accrue after the fortieth hour worked," that term would be considered clear and no interpretation of the language would be required. If an employee were paid straight time for the 41st hour worked, her employer will have breached the agreement and the union would have a valid grievance.

It is fair to say that parties to a collective bargaining negotiation try to craft clear language so that future disputes are averted. However, despite best intentions, clear language often cannot be formulated. Sometimes vague language is written into the CBA that may be susceptible to more than one interpretation. (This may be the result of trying to reach a deal that both sides can agree on.) In that event, an arbitrator may be called upon to interpret those terms at some future point.

To determine whether contract language is ambiguous and in need of interpretation, the language must be deemed to be subject to more than one plausible meaning. If cogent arguments

can be supplied to support two different interpretations of contract language, it will be deemed ambiguous.

Ambiguity can be either *patent* – such as where the ambiguity is clear from the fact of the contract – or it can be *latent*, such as where clear language is applied differently in different situations. For instance, patent ambiguity would be found in a provision that stated that "overtime will be paid at the customary rate." Here the determination of what the customary rate is leaves much to interpretation. Whose custom applies? What if there are multiple rates to choose from? These questions and others may be raised with respect to this provision that create an obvious ambiguity. A latent ambiguity would exist if the language cited previously as clear and unequivocal were applied differently to different categories of employees. For instance, if line workers received time and a half of their base salary but clerical workers received time and a half of a pay rate that included premium pay, this would create an ambiguity that was not at first blush obvious from the language itself.

When interpreting ambiguous contract language arbitrators would look to both the bargaining history and the past practice of the parties. During the course of negotiations, the parties to the contract may have discussed the ambiguous terms and through a review of their contemporaneous bargaining notes, an arbitrator may be able to divine what the ambiguous term's meaning was in-

tended to be. Thus, it is essential that clear and comprehensive notes always be taken during negotiations. Likewise, the parties may have developed a particular course of conduct that informs how the contractual term is supposed to be applied. This concept is known as "past application."

Sometimes a contract may be entirely silent on an issue, but the parties have over the course of time developed a long-standing past practice, such as giving employees bonuses on Thanksgiving. If that practice is **consistent, clear, consensual and continuous** (known as the "four C's"), then a binding past practice has been created that can be enforced as though it were a written term of the agreement. If the employer were to cease providing Thanksgiving bonuses and a binding past practice was proven, the union can insist that the practice be continued despite the absence of language in the collective bargaining agreement.

There are many other rules that apply to interpretation of collective bargaining agreements. However, at the very least, the basic rules outlined here should be understood by anyone involved in the application and negotiation of collective bargaining agreements. Failure to gain an understanding of these rules can result in unnecessary friction between labor and management. With labor/management strife prevalent in our political climate, a definite advantage can be gained simply by a few hours of study of these rules.