

## Lesson Plan

for Handout (HO) and PowerPoint (PP) entitled

### **“Let’s Talk About It”: You May be Eligible and Don’t Know It**

#### I. HO pages 1-2, PP slide 2: The Basics of Bargaining

- CSU has to bargain with APC on “all matters within the scope of representation.”
- The “scope of representation” includes “wages, hours of employment, and other terms and conditions of employment” but excludes, e.g., the “necessity or organization of any service.”
- The obligation to meet and confer requires CSU to “endeavor to reach agreement,” but it does *not* “compel [it] to agree to any proposal.”
- If bargaining results in “impasse,” then APC can strike and CSU can impose its “last, best, and final offer” once the parties have exhausted the statutory impasse procedure.

#### II. HO p. 2-7, PP s. 4-21: Decision Bargaining

- HO p. 2 (italicized text), PP s. 4: definition of obligation
- HO p. 2, PP s. 6: test for “other terms and conditions of employment” that are “within the scope of representation”
  - “[The subject] involves the employment relationship”;
  - “the subject is of such concern to management and employees that conflict is likely to occur, and the mediatory influence of collective negotiations is the appropriate means of resolving the conflict; and”
  - “the employer's obligation to negotiate would not significantly abridge its freedom to exercise those managerial prerogatives (including matters of fundamental policy) essential to the achievement of the employer's mission.”
- HO p. 4-5, PP s. 16: Layoffs are not, reductions in hours are, and contracting out and transfers of bargaining unit work may be within the scope of representation.
- HO p. 5, PP s. 18: Employer must give union official with “authority to act” on behalf of the union notice “sufficiently in advance of a firm decision to make a change to allow the exclusive representative a reasonable amount of time to decide whether to make a demand to negotiate.”
- HO p. 6: Union can waive right to bargain through failure to request or refusal to bargain.
- HO p. 7, PP s. 19: elements of unlawful “unilateral change”
  - “[T]he employer breached or altered the parties' written agreement or its own established past practice”;

- “such action was taken without giving the other party notice or an opportunity to bargain over the change”;
- “such action was taken without giving the other party notice or an opportunity to bargain over the change”;
- “the change in policy concerns a matter within the scope of representation.”
- HO p. 7, PP s. 21: Union must file charge alleging unlawful unilateral change within six months of when it knew or should have known of the employer’s intent to implement the unilateral change.

### III. HO p. 8-10, PP s. 22-27: Effects Bargaining

- HO p. 8 (italicized text), PP s. 22-23: definition of obligation
- HO p. 8, PP s. 24: Employer must give union official with “authority to act” on behalf of the union “notice of the decision and implementation date . . . sufficiently in advance of the implementation date to allow for meaningful negotiations prior to implementation.”
- HO p. 9: Union can waive right to bargain through failure to request or refusal to bargain.
- HO p. 10, PP s. 25: elements of violation of duty to bargain over effects
  - Employer implemented a non-negotiable decision that had reasonably foreseeable effects on terms and conditions of employment *and*
  - Employer
    - failed to give notice and an opportunity to bargain over these effects to the union before implementation *or*
    - failed to honor a request by the union that identified these effects and requested to bargain over them before implementation.
- HO p. 10: Union must file charge alleging violation of duty to bargain over effects within six months of when it knew or should have known of the employer’s intent to implement the unilateral change.

### IV. HO p. 10-11, PP s. 28: After Bargaining

- HO p. 10-11, PP. s. 28: If Legislature or Governor fails “fully to fund” a collective bargaining agreement, the agreement must be renegotiated.
- HO p. 11: After the parties have exhausted the statutory impasse procedure, which takes a minimum of seventy days, the union can strike and the employer can impose its “last, best, and final offer”.

V. Summary: Decision Bargaining vs. Effects Bargaining

	<b>Decision Bargaining</b>	<b>Effects Bargaining</b>
<b>What does the employer have to bargain about?</b>	The <i>decision</i> to implement a change regarding a subject that is within the scope of representation	The <i>reasonably foreseeable effects</i> of a non-negotiable decision to implement a decision on terms and conditions of employment
<b>When does the employer have to give the union notice and opportunity to bargain?</b>	<ul style="list-style-type: none"> <li>• Sufficiently in advance of a <i>firm decision</i> to make a change to allow the exclusive representative a reasonable amount of time to decide whether to make a demand to negotiate.</li> <li>• Decision <i>cannot</i> be implemented before impasse procedure has been exhausted</li> </ul>	<ul style="list-style-type: none"> <li>• Sufficiently in advance of the <i>implementation date</i> to allow for meaningful negotiations prior to implementation.</li> <li>• Decision <i>can</i> be implemented before impasse procedure has been exhausted under the circumstances.</li> </ul>
<b>To whom in the union does the employer have to give notice of the change?</b>	<ul style="list-style-type: none"> <li>• An official of the union who has the authority to act on behalf of the organization.</li> <li>• In APC’s case, the statewide union office.</li> </ul>	<ul style="list-style-type: none"> <li>• An official of the union who has the authority to act on behalf of the organization.</li> <li>• In APC’s case, the statewide union office.</li> </ul>
<b>What happens if the union has notice of but fails to demand to bargain?</b>	<ul style="list-style-type: none"> <li>• If <i>formal notice prior to decision</i>, failure to demand bargaining results in <i>waiver</i>, <i>unless</i> decision is covered by “zipper clause.”</li> <li>• Formal notice <i>after decision or actual</i> notice does <i>not</i> result in <i>waiver</i>.</li> </ul>	<ul style="list-style-type: none"> <li>• If <i>formal notice prior to implementation</i>, failure to demand bargaining results in <i>waiver</i>, <i>even if</i> effects are covered by “zipper clause.”</li> <li>• Formal notice <i>after implementation or actual</i> notice does <i>not</i> result in <i>waiver</i>.</li> </ul>
<b>What are the elements of an unfair practice charge for violation of the duty in question?</b>	<ol style="list-style-type: none"> <li>1. The employer breached or altered the parties' written agreement or its own established past practice;</li> <li>2. Such action was taken without giving the union notice or an opportunity to bargain over the change;</li> <li>3. The change . . . has a generalized effect or continuing impact upon bargaining unit members' terms and conditions of employment); <i>and</i></li> <li>4. The change in policy concerns a matter within the scope of representation.</li> </ol>	<p>The employer</p> <ol style="list-style-type: none"> <li>1. implemented a non-negotiable decision that had reasonably foreseeable effects on terms and conditions of employment; <i>and</i></li> <li>2. <i>either</i> <ol style="list-style-type: none"> <li>a. failed to give notice and an opportunity to bargain over these effects to the union before implementation, <i>or</i></li> <li>b. failed to honor a request by the union that identified these effects and requested to bargain over them before implementation, subject to III.B.2 above.</li> </ol> </li> </ol>
<b>When does an unfair practice charge have to be filed?</b>	Within six months of the union’s actual or constructive knowledge of the decision.	Within six months of the union’s actual or constructive knowledge of the decision.