

# WRITING GOOD CONTRACT LANGUAGE

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# Knowledge Challenge

- What is a collective bargaining agreement (CBA)?

“A collective bargaining agreement is an employment contract that dictates the wages, hours, and other working conditions of the employees in the bargaining unit or that are represented at the work site.”

In other words... “for our labor, to complete the mission set out by management, we (the employees) will benefit in this manner”.

# Knowledge Challenge


- Savings Clause
  - Union Business
  - Zipper Clause
  - Discipline
  - Lay-off and Recall
  - “When Practicable”
- This article prevents the Union and mngmt from bargaining during the life of the agreement. It stipulates that the contract supersedes all past practices.
  - This article is usually determined by seniority.
  - Allows one party to decide when something is workable (favors mngmt).
  - Ensures that the remainder of the contract stays in effect if a provision is declared invalid due to court action or legislation.
  - This article designates time off for affiliate leaders to perform their duties.
  - This article should include a “just cause” provision to protect members.

# Knowledge Challenge

- Management Rights
- Grievance Procedure
- Union Activities
- “When Appropriate”
- Prevailing Rights
- Union Recognition
- Provides union members the right to engage in union duties without penalty.
- This article outlines the parameters within which mngmt can operate.
- This article is essential for all CBA’s.
- Gives full discretion to one of the patties in the CBA (favors mngmt).
- A clause that provides for the continuation of all past practices that are not detailed in the CBA.
- This article sets guidelines for settling disputes.



# Structure & Scope of a Contract

- What do contract contain?
  - How are contracts organized?
  - How are contracts laid out?
- 

# What do Contracts Contain?

- Contract Articles
- A table of contents
- Signature page
- Appendix
- MOU's
- They don't contain SOP's, city ordinances, city charters, civil service rules, state law, or PERC decisions.

# How are Contracts Organized



- Cover Page
- Table of Contents
- Articles with a numbering system for easy reference
- Signature page
- Appendix's
- MOU's

# How do Contracts Flow

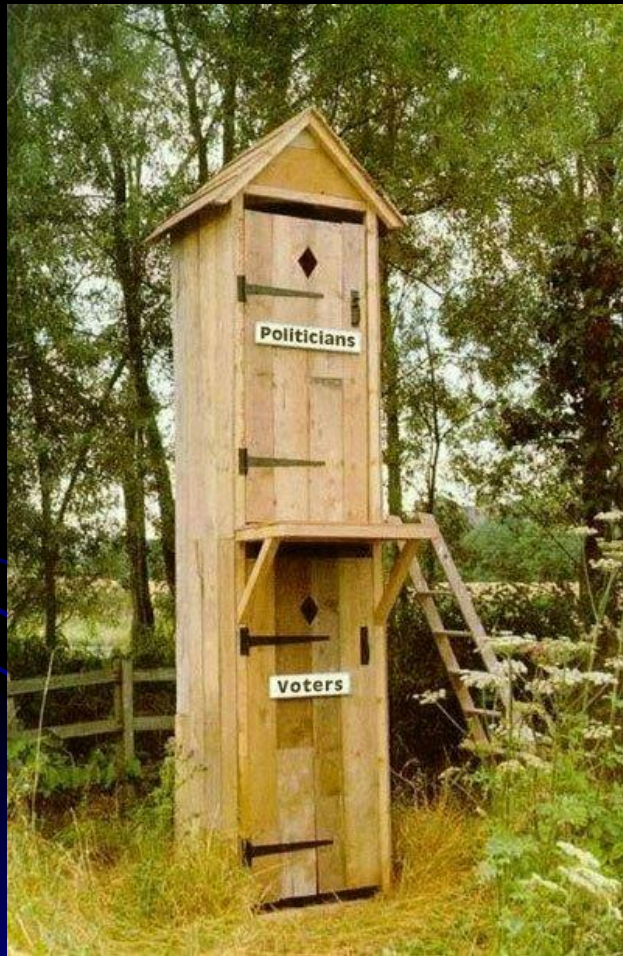
- **The Front**--preamble, union recognition, union business, dues check off, prevailing rights, management rights and other significant housekeeping items.
- **The Middle**--promotions, seniority, probation, leaves, layoff & recall, grievance procedures, etc.
- **The End**--savings clause, duration, signature page, appendix, mou's.

# Guidelines for Writing Good Contract Language

- Written in plain language with the intent of solving problems and/or providing benefits to the Union and its members.



# Guidelines for Writing Good Contract Language



- Understand the full impact of the language that we write and propose!



# What does that Mean?

- All language should get a scrubbing with a few questions.
  - Does the article provide enough time, tools, and resources to solve the problem or accomplish the task.
  - Does the article benefit all the members of the BU? If not, is there negative impact on some members?
  - Does the language present any logistical problems or points of confusion?
  - Does the article have an economic impact on the employer or the BU? If so, does it have a compound effect on other economic issues?



- And.....DOES IT COVER ALL SCENARIOS TO THE BEST YOU CAN WRITE IT OR DOES IT LEAVE OPPORTUNITY FOR DIFFERENT INTERPRETATION!



# Language and Word Impact

- The CBA will be interpreted as a whole.
  - Therefore there should be no contradictions in article vs. article or article vs. past practice

“Past Practice is Under Attack”.....rjw

IAFF Local 2296 vs. City of Pendleton, Oregon

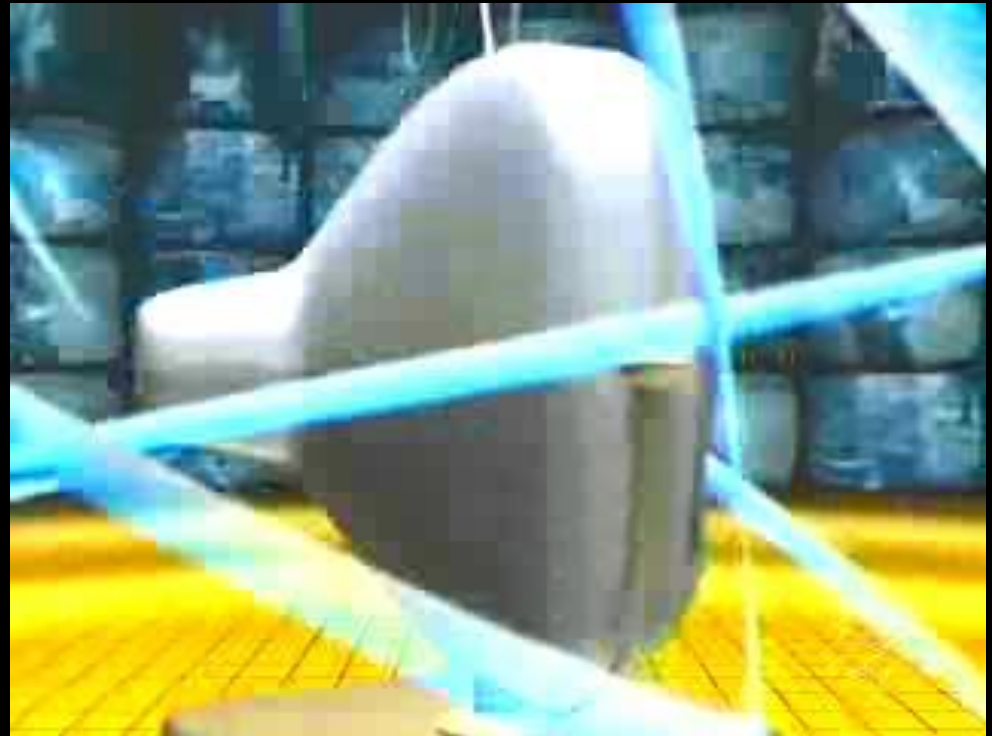
IAFF Local 3542 vs. City of Sunnyside, WA

# Language and Word Impact

- Limit cross references
  - Confusing and difficult to follow.
- Be consistent with terms and definitions
  - When using a word to describe management
    - \_\_\_\_\_', \_\_\_\_\_', \_\_\_\_\_'
  - When using a word to describe the Union
    - The Local
    - The Union
    - Bargaining Unit
- Words Count, every one of them

# Language and Word Impact

- Sometimes one word can change the meaning of an entire article or contract clause.



# Language and Word Impact

- Use Clear and Unambiguous Language
  - If ambiguous, disagreement may occur
    - Arbitrator will try and sort out: What was the mutual intent of both parties during the negotiation process, which version is more consistent with the current practice, and which version is more consistent with the rest of the contract.
- Be Cautious when Borrowing Language from Another Labor Agreement
  - Scrub it well to fit your work site.

# Weasel Words and Phrases

- Buyer Beware

- may
- usually
- generally
- “when practical”
- “when appropriate”
- “for example”

- Are there times when it may be ok?

- With vision or looking down the road, in places such as prevailing rights or management rights.

# In The Other Category

- To express one thing is to exclude another

“Leave can be taken to care for the illness or injury of an immediate family member. An immediate family member is defined as a spouse, parent, child or step child”.



# To express one thing is to exclude another

“Leave can be taken to care for the illness or injury of an immediate family member. An immediate family member is defined as a spouse, parent, child or step child”.

“An immediate family member includes but is not limited to a spouse , child, or step-child”.

# In The Other Catagory

- Be Precise in the Use of Numbers and Units of Time
  - “Longevity will be paid at 2% of TSFF from 5 years to 10 years”. Good or Bad?
- Articles Must Comply with State and Federal Laws
  - FLSA, FMLA, etc.

# Bad Contract Language

- 17.1 In compliance with the provisions of the Fair Labor Standards Act, the Employer claims and the Union agrees that the Section 7(k) exemption with a twenty-seven (27) day work period (204-hour threshold) is applicable to the bargaining unit employees represented by the Union. The hours of work and overtime for the Fire Fighters and the Floor Captains shall be determined from time to time by the Fire Chief. An example of the schedule of hours of work is contained In Appendix B attached to this agreement, but this schedule is subject to change by the Fire Chief. If the Fire Chief determines a change is necessary, then thirty (30) days notification will be provided to the affected employees, except in the case of an emergency. In the case of an emergency, as much notice as is practicable will be provided.
- Work Schedule1:
- Work Schedule 1 is a twenty-four (24) hour on, forty-eight (48) hours off schedule. Work Schedule 1 has "A" "B" "C" shifts within the twenty-seven (27) day work period. There are thirteen and one-third (13 1/3) work periods in a fifty-two (52) week period. There are thirteen (13) scheduled Kelly Days per year. These Kelly Days are scheduled on a master calendar. The average workweek is 49.37 hours per week. This work Schedule shall be determined by the Fire Chief and administered in accordance with the provisions of Article 17.

# THIS IS WHAT MADE IT BAD

- Work Schedule 2:
- Work Schedule 2 is a twenty-four (24) hour work period designed to cover the Kelly Day work Schedule from Work Schedule 1. Work Schedule 2 typically works Tuesdays and Thursdays weekly on a twenty-four hour basis with an occasional Saturday or Sunday shift. There are thirteen and one third (13 1/3) work periods in a fifty-two (52) week period. There are thirteen (13) scheduled Kelly Days per year. These Kelly Days are scheduled on the master calendar. The average workweek is 49.37 hours per week. This Work Schedule shall be determined by the Fire Chief and administered in accordance with the provisions of Article 17. The Saturday or Sunday shift to be worked, under this schedule, will be designated by the employer at least thirty (30) days prior to the shift to be worked.
- Work Schedule 3:
- Work Schedule 3 is forty (40) hours worked in a seven-day work period, generally scheduled to commence at 08:30 hours through 16:30 hours five days per week, with two consecutive days off; provided that the employer reserves the right to assign the scheduled employee to any 24-hour shift within the seven day work period, so long as the total hours worked in the seven day period will not exceed 40 hours. Hours worked in excess of eight hours per day, or 24 hours per shift, as applicable, shall be paid at the applicable overtime rate.

# Summary

- Assure that Language is clear and reflects the intent of the bargaining.
- Language is consistent and not contradictory.
- Minimize the number of “weasel words or phrases”.
- Use plain language whenever possible.
- Consistent terms or definitions.
- Be precise in the use of numbers and units of time.

# ITS ABOUT THE WORDS

