

# Glossary of Terms



## **arbitrary and capricious**

A decision based on random or biased selection rather than on reason.

## **arbitration**

A hearing on a dispute between the parties regarding the interpretation, application, or alleged violation of the collective bargaining agreement, which is held before a neutral third party

## **arbitrator**

The neutral third party who hears the evidence in an arbitration hearing. The context in which the arbitrator makes the decision is described in 25.03, 25.05, 25.10 and 25.11 of the contract. The union and the state mutually agree to three panels of arbitrators – main, expedited and abuse. The union and state share equally the expenses of the arbitration.

## **burden of proof**

The amount of proof which a party must demonstrate in order to successfully convince the arbitrator that a grievance is meritorious. Types of burdens of proof include 1) by a preponderance of the evidence, 2) by clear and convincing evidence, and 3) beyond a reasonable doubt.

## **collective bargaining**

To negotiate in good faith at reasonable times with respect to wages, hours and terms of employment.

## **confidential employee**

An exempt employee who deals with information to be used by the Employer in the collective bargaining process or who works in a close continuing relationship with persons directly participating in collective bargaining on behalf of the employer. Confidential employees are excluded from belonging to a union.

## **disparate treatment**

Two individuals who are in the same situation, with a similar history, are treated unequally.

## **double jeopardy**

In arbitration this is the prohibition against being disciplined twice for the same infraction, misconduct or transaction. The prohibition against double jeopardy means that the arbitrator may rule for the grievant where he/she determines that the employer has disciplined an employee more than once for the same offense. This principle stems from the reference to double jeopardy included in the constitution of the United States. (For example, where an employee is charged with excessive absenteeism, the employer may not give a one-day suspension and then after serving suspension remove the employee for the same occurrence of absenteeism that was the basis for the suspension.) This does not conflict with progressive discipline.

## **exclusive representative**

The employee organization certified or recognized by SERB as representing a particular group of employees.

## **expedited arbitration**

An arbitration in which the procedure of the hearing is shorter than a regular arbitration. Under the OCSEA state contract, each side is allowed only three witnesses. This procedure is primarily used for patient/client cases although the union and management may mutually agree to hear other matters in this fashion.

## **fiduciary employee**

An exempt employee in a position of trust -- who usually handles financial matters on behalf of the employer.

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**final and binding**

Refers to a decision from which there is no further appeal and which the parties are required to follow unless application is made by any party to vacate the award pursuant to Ohio Revised Code 2711.10.

**just cause**

A standard used in discipline which requires the employer to not only prove guilt but also show that due process has been followed.

**mediation**

Intervention by a neutral third party in an attempt to resolve a dispute between two conflicting parties. The settlement reached is voluntary. Under the state contract's grievance mediation procedure, if a voluntary settlement is not reached, the grievance can proceed to arbitration.

**National Labor Relations Board (NLRB)**

Federal government body which administers the National Labor Relations Act for the private sector, not public. It has two principal functions: prevent and remedy unfair labor practices by the union or the employer and to conduct secret ballot elections to determine whether employees want to be represented by a union for collective bargaining.

**non-traditional arbitration**

An arbitration in which the procedure of the hearing is shorter than a regular arbitration. Under the OCSEA state contract, each side is allowed only one witness. This procedure is primarily used for suspensions, although the union and management may mutually agree to hear other matters in this fashion.

**past practice**

A repeated action by the parties that by its repeated use becomes an implied part of the collective bargaining agreement. To be binding, a practice must 1) exist for a reasonably long time, 2) occur repeatedly, 3) be clear and consistent, 4) be known to both management and the union, and 5) be accepted by both management and the union.

**precedent**

An action or decision that can be used as

rule for future determinations in similar situations.

**procedural defect**

Not properly processing the grievance by not following the guidelines set forth in the collective bargaining agreement. Either management or labor can create procedural defects in processing grievances. Generally, management makes procedural errors by not dealing with discipline in a timely fashion or by not providing information, and labor, by filing grievances improperly or processing grievances in an untimely manner.

**promotion**

A movement to a position in a higher pay range. Employees under the State Contract who are promoted shall be placed in a step that guarantees them at least an increase of approximately four percent.

**rebuttable presumption**

An assumption (or belief) made by the employer that can be refuted (or challenged) by the employee with evidence to prove the assumption to be incorrect.

**State Employment Relations Board (SERB)**

A body that oversees the implementation and application of the Ohio public employee collective bargaining law. The Board has three members appointed by the governor. It is responsible for conducting representation elections and ruling on unfair labor practices.

**stipulation**

In arbitration, typically refers to agreement between the parties not to contest certain facts.

**substantive arbitrability**

An arbitration dealing with merits or facts involved in a dispute.

**supervisor**

Any individual who has the authority, in the interest of the public employer, to discipline, promote, transfer, lay off, to responsibly direct, to adjust grievances for employees.

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**timeliness**

Usually refers to the question of whether a grievance was filed or a duty required by the contract was acted upon within the appropriate time limits.



Revised 04/09

# OCSEA

AFSCME Local 11 - AFL-CIO