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Negotiating Contract Language on Health & Safety: A Union Guide to Planning, with Sample Clauses

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Abstract
[Excerpt] Rather than representing the final word on the subject, we hope this manual will represent the first step in an evolutionary process of increasingly effective and comprehensive health and safety contract language guidance. This can only succeed if labor leaders communicate with us concerning critical failures and successes in utilizing or obtaining contract language related to the work environment. We look forward to hearing about your experiences.

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ILR, Cornell University, chemical hazard information program, work environment, working conditions, employee, health, safe, contract, union, collective bargaining, work, member, labor, human resources

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Negotiating Contract Language on Health & Safety

A Union Guide to Planning, with Sample Clauses

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Negotiating Contract Language on Health & Safety

Union Guide to Planning With Sample Clauses

Introduction

Collective action remains the most effective means of initiating improvements in the work environment. The collective bargaining agreement must address central issues such as working conditions, the work environment, and work practices in a manner which empowers employees to actively participate in the identification, evaluation, and abatement of occupational hazards which they encounter. The expectation that OSHA protects us is unrealistic when approximately a thousand inspectors are responsible for enforcement in nearly 6 million work places. The great achievement of the system of laws and regulations in the United States is not the creation of government agencies which protect us (this is typically less effective than we would like), but the provision of citizens and workers with legal protections and processes which are valuable tools in individual and collective fights to achieve goals such as a safe and healthful places to work and a reasonable quality of life. This guide is intended to share some of the tools labor unions have developed to assist them in improving the work environment. We hope to encourage the further development and broader usage of these tools.

Rather than representing the final word on the subject, we hope this manual will represent the first step in an evolutionary process of increasingly effective and comprehensive health and safety contract language guidance. This can only succeed if labor leaders communicate with us concerning critical failures and successes in utilizing or obtaining contract language related to the work environment. We look forward to hearing about your experiences.

Acknowledgements

We would like to thank all the locals and international unions which made this guide possible by sharing information on their collective bargaining agreements. Please note that the negotiation process, in which each party may have numerous issues -- each with associated priorities, may not always result in ideal language from either perspective. Any criticism of specific contractual clauses is no criticism of union negotiators, in fact we commend all those negotiators who place work environment issues on the table to improve the quality of work life for their members.

We would also like to thank Cornell ILR Labor Educators across the state of New York for their comments and suggestions.

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Cornell CHIP

Scientific and technical expertise applied to the work environment problems of business and labor.

The New York State School of Industrial and Labor Relations at Cornell University has provided education and technical assistance for organized labor and human resources management across New York State and the nation for more than 45 years. Resident and extension faculty constitute the largest single body of industrial and labor relations scholars in the world.

Technical resources in toxicology, industrial hygiene, and health education supplement our nationally recognized resources in labor education and human resources management. Serving New York are occupational health education resource centers in Buffalo and Albany.

Your comments, suggestions, or submissions of your own model contract language are welcome. Please write:

Attn: H&S Contract Language Guide
Cornell University
Chemical Hazard Information Program
146 State Street, 4th Floor
Albany, New York 12207-1605

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1 Why Negotiate Health & Safety Language?

[illustrate w/ photo of "model" workplace & appropriate cutline]

Contract language alone will not make a workplace safe and healthful. However, bargaining for health and safety language can be an important part of a comprehensive program to eliminate hazards on the job. Here are a few of the reasons that more and more public and private-sector unions industrial, service, and clerical are negotiating contract language to protect the health and safety of their members:

Obligation to Bargain
In 1966 the National Labor Relations Board (NLRB) ruled that health and safety is a "mandatory" subject of collective bargaining. This means employers must at least "bargain in good faith" on any health and safety proposals unions present.

Hazards are Present in Almost Every Work Setting.

Employees should not have to count on a benevolent employer or the government protecting their safety and health. Through their union, collective action should provide assurances and functional procedures which enable them to identify hazards and initiate action to eliminate.or control those hazards.

Local leaders and staff must plan ahead and lay the groundwork to assure the ability to react promptly, if necessary, to assure members will not suffer in the short and the long-run.

Laws are Inadequate in Coverage & Enforcement

State and federal laws designed to protect workers' health and safety are inadequate in many instances and often difficult, even for a well-intentioned but overburdened OSHA, to enforce. These legal protections and their limitations are summarized briefly on the following page.

Protection written into a union contract can be particular to members' jobs, stricter than legal requirements, guard against weakening of the law, and provide a grievance process which is typically a faster and more effective method of enforcement.

Health & Safety Provides Key Organizing Issues

New members and new activists are more likely to be drawn by new issues. Workers committed to "traditional bread and butter" issues are already involved in the union. To appeal to and involve other workers many locals are taking on broader quality of life issues such as child and elder care, health and safety, housing, and literacy.

Provides a Key Basis for Community Coalitions

Campaigns for health and safety can link the union to the larger community. Health and safety issues in a workplace often affect the health and environment of the community resulting in natural coalitions. Politically, it is often easier for community groups, politicians, and citizens to support demands for health and safety than pay raises.

Health and safety proposals are newsworthy. Like it or not, unions in many communities are viewed as only being interested in money. Reports that a local union is starting negotiations or is at impasse over raises is not as interesting as efforts to protect workers from hazardous chemicals or repetitive motion disorders.

What Protection does the Government Provide?

Understanding regulations and statutes is important NOT for defining where no contract language is necessary, but for defining areas where negotiation may be facilitated. Language which parallels existing legal obligations of the employer can provide an additional right of action through grievance procedures, and may greatly increase the impact of legislation in your workplace by increasing stewards and leaders awareness of rights and reducing the vagaries and delays often associated with enforcement.

Regulation of the work environment falls under several pieces of federal legislation and is supplemented to varying degrees by state legislation and regulation.

Concerted Activity

The **National Labor Relations Act** (NLRA) (29 USC §157) provides two limited options in responding to hazardous situations. The right to strike permits employees to walk off the job as a "concerted activity" under §7 of the Act. However, almost all collective bargaining agreements include "no strike clauses" which limit this right. (see the section on Conflict Resolution)

Access to Information

The National Labor Relations Board has determined in several cases that the union has the right to information which is necessary for it to adequately represent its members. This may include information on everything from environmental monitoring to absenteeism and injury rates. It may also guarantee access into the work place for union experts as is necessary to evaluate conditions. Should employers deny this right of access to information complaints may be initiated with the NLRB. Critical information should be pursued far in advance of negotiations as such proceedings may involve significant delays. Information access may be far broader than that required by OSHA's Hazard Communication Standard.

Abnormally Dangerous Work

Even with a no-strike clause §502 of the NLRA guarantees the right to refuse "abnormally dangerous" work. This is not a strike; in which labor is withheld for the purpose of placing economic pressure on the employer. The purpose here is to avoid personal injury. In practice this rarely proves useful; as the burden of evidence is completely on the employee to provide OBJECTIVE evidence that in fact the work was not only dangerous, but more dangerous than usual. Employees rarely have such evidence, nor adequate access to work sites, monitoring equipment, or expertise to collect such evidence in a timely manner.

Government Contractors

Under the **Walsh-Healy Public Contract Act** of 1936 and acts which expanded coverage in 1965, contracts where U. S. government funds are involved must include standard language which prohibits the contractor or sub-contractor from requiring an employee to work in surroundings which are "unsanitary, hazardous, or dangerous to his health and safety". This assures OSHA and other federal inspectors free access to work sites where federal money is involved in order to assure contract compliance, while at private sites they can be refused entry until they obtain a court order.

General Industry and Construction

The federal **Occupational Safety and Health Act** of 1970 empowered the U.S. Department of Labor, Occupational Safety and Health Administration (OSHA) to establish and enforce a broad range of regulations (29CFR §1910) intended to prevent occupational injury and disease in general industry. This authority extends to the construction industry under the **Construction Safety Act of 1962** (29CFR §1926), and the workers on navigable waterways under the **Longshore and Harbor Workers' Act**.

While OSHA provides an important tool for improving the work environment, inadequate enforcement and standards are ongoing problems. Approximately 1800 state and federal inspectors (1989), each conducting an average of 72 inspections per year (1988), enforce these regulations in 6 million work places. Inspections respond to written complaints from an employee or representative, and target "high risk" industries. Delays and obstacles in standard setting result in many unregulated areas and standards which reflect outdated, information, equipment and practices. Of approximately 12,000 chemicals in U.S. commerce over one million pounds per year, approximately 630 are regulated, 30 in detailed standards. The Hazard Communication Standard does require

employers to provide information and training to all employees regarding the hazardous materials they work with.

Employees have the right to file a complaint and are protected from discrimination. However, labor laws protect employee representatives conducting union business more effectively, so consider having representatives or stewards file complaints. Internal dispute resolution procedures such as grievances and joint committees should be considered prior to an OSHA complaint.

OSHA issues citations for violations, with higher penalties for willful, repeated, or egregious violations. Virtually automatic reductions built into the appeals process result in minimal penalties (e.g., average $261 per serious violation in 1988) such that public image, insurance, liability, and workmens' compensation provide greater economic incentives in most work settings. Following a citation, OSHA depends primarily on employer self-verification that a hazard has been abated. The program remains primarily a means of making employers aware of hazards and encouraging voluntary adoption of appropriate practices.

OSHA State Plans

States may choose to develop and enforce their own occupational health and safety regulations, called a state plan, only after certification by the U.S. Department of Labor that they are as protective as federal OSHA regulations. Despite evidence that enforcement in some of the 21 states and 2 territories with approved plans is less vigorous than provided by federal inspectors, OSHA has limited means of decertifying approved plans.

Mining

Sister legislation in 1966 and 1977 created a parallel set of regulations and inspectors with somewhat greater authority in the Labor Department's, **Mine Safety and Health Administration** (MSHA) for mines, gravel pits, ore processing, cement plants, etc.

Small Private Employers

Riders on the OSHA appropriations bills prevent federal OSHA from actively enforcing OSHA regulations with employers having less than 11 employees and most agricultural employers with less than 11 employees excluding seasonal employees.

Local Public Employees

The OSH Act excludes public employers. However, some state plans approved by OSHA extend coverage to these employees.

Federal Employees

Executive Order # 12196 directs heads of federal agencies to comply with OSHA regulations. However, OSHA inspectors have no authority to levy fines on federal agencies which develop and enforce their own programs. In and work areas where national security is an issue, even the right to complain may be limited.

Workmens' Compensation

Workmens' compensation laws in each state provide varying levels of compensation for occupational injury and disease.

Federal legislation provides rights of action in the federal courts for seamen injured on U.S. flag ships (Jones Act) and through federal workmens' compensation systems for workers injured in jobs on navigable waterways (e.g., longshoremen and harbor workers), in interstate commerce (e.g., airlines, railroads), federal employees, and coal miners (Black Lung Compensation Act).

Compensation is typically below the level of lost wages and medical costs with no compensation for pain and suffering or punitive damages. Although occupational disease is covered in most states, statutes of limitations, the definition of occupational disease, and difficulty in obtaining definitive diagnoses limit compensation. These laws provide no guarantee of return to work.

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Defining Health and Safety Goals

A CRITICAL first is to win member support and make the employer aware of that support. Some union members are unaware of the hazards they work around. Others assume not much can be done about hazards. As a result, many employers assume union members are not very concerned about health and safety problems. Particularly in economic hard times, some employers actively encourage workers and communities to believe that health and safety is an unaffordable luxury. This is often the result of focusing on short-term costs rather than long-term gains.

[Illustrate with collage of headlines from Gloversville]

A bargaining team that decides to propose language on health and safety has to convince members of the local that improvements are necessary and possible. A committed membership that begins to ask for and expect better conditions will go a long way toward convincing the employer that the bargaining team is serious. If the bargaining team fails to get members to change their assumptions, employers are unlikely to change theirs. Instead they may treat health and safety proposals as throwaways or try to use them as tradeoffs. Here are some ways local leaders, union staff, and bargaining teams can make sure members are behind them on health and safety proposals:

- **Base proposals on member concerns.** Gather information from past grievances. Survey members. Invite stewards to a brainstorming session. Get copies of the employer's accident records and other materials. Inspect the workplace carefully.
- **Hold sessions on hazards workers may not know about.** Members need information on hazards and how they can be reduced. International unions, university labor education programs, and local committees on occupational safety and health (COSH groups) are good resources.
- **Take action on hazards while preparing to negotiate.** Involve members in gathering information, proposing solutions, and taking direct action on hazards. Use any contract language you already have, state and federal OSHA, and other avenues.
- **Start or revitalize a local union health & safety committee.** Make sure committee members and interested stewards are trained and available to help members. International unions, COSH groups, and university labor studies programs can help.
- **Publicize health and safety efforts.** Spreading the word is a big part of any campaign to change ideas about workplace health and safety. Publicize survey results, OSHA inspections, grievances (successful and not-so-successful), and other actions. Publicize proposals and how they will make jobs better.
- **Have a plan for enforcing any language you win.** Many workers are cynical about the ability to implement new contract clauses. Explain how proposals will work to diffuse critics and perhaps win over some skeptics.
- **Pro-actively address economic concerns.** Members may hesitate to act on safety, health or environmental issues if convinced that the expenses will result in lost jobs, shutdowns, or force relocation to states or countries where regulations or enforcement are weaker.

Member Surveys

[illustrate with photo of worker giving co-worker a survey]

Especially if health and safety is a new bargaining topic for the local, a survey can help gather information, develop language and priorities, and educate members. Some locals include health and safety questions in surveys on overall bargaining goals. Others conduct separate health and safety surveys long before bargaining begins. Either way, here are some basic principles:

- **Involve members in development, testing, & distribution.** The best surveys are written in straight-forward language and are easy to fill out. Scientific terms are best avoided. Most local leaders, activists, and union staff can write appropriate surveys based on their own knowledge of the workplace. You'll get a higher return rate if surveys are distributed personally by stewards or

other activists. Distributors should be trained; their primary task is to listen and report back both negative and positive comments about health and safety and other union concerns.

- **Consider getting expert help** if the local is large, the hazards are very technical, or results need to be compiled by computer. International unions and COSH groups can provide advice.
- **Make questions specific**, otherwise the answers will be of little use. Answers to questions like, "Do you want the local to negotiate safer conditions?," will provide little information. However, asking, "How is the air quality in your area?" may provide concrete details.
- **Ask for priorities, not wish-lists**. Asking "Would you like..." causes most people to say they want everything. Asking members to choose top priorities from a list or to number several items based on importance will suggest what matters most.
- **Ask for experiences, as well as opinions**. For example, ask members about symptoms such as headaches, accidents and near accidents, and how existing contract language or employer policies are actually carried out.
- **Leave space for comments, suggestions, and questions.**

Gathering Evidence

[Illustrate w/ photo of worker(s) going through files]

In addition to convincing employers that members care about health and safety, successful bargaining teams document hazards and show there are feasible ways to eliminate or reduce them. When the employer denies a significant hazard exists, the team must be ready to prove otherwise. For example, if the local wants the right to make regular work place inspections, it would help to give examples of accidents or illness that might have been avoided by an inspection and reporting system.

Survey results are a good start but look through the local's files and gather information from the employer as well. Here is a summary of the information locals should have before making final decisions on contract proposals:

Information you need.

A. From the Local's Files

- Grievances from the last few years related to hazards,accidents, stress, and similar topics. Pay particular attention to whether and how they show the need for new contract language.
- Reports and investigations of accidents and near-accidents.
- Letters or records of phone calls,hazards, accidents, symptoms, diseases, and so on.
- Past surveys or informal questionnaires on health and safety.
- Information from the international union or other sources on hazards in your industry.
- Complaints filed with OSHA and other state or federal agencies, by the local or members, and the results of any investigations.
- Reports and inspection results from any union health and safety committee or joint labor\management committee.
- Records from past negotiations.

B. From the Employer's Files

OSHA CFR29 §1910.20, "Access to Employee Exposure and Medical Records," §1910.1200, "Hazard Communication Standard", and equivalent regulations for most state and local government employees under state OSHA plans, guarantee access to the employer's written hazard communication plan (inventory, MSDSs, plan), medical monitoring records, workplace monitoring records such as air samples or noise levels, and accident and injury logs.

Information should be requested in writing several months before negotiations begin. OSHA 1910.20 allows the employer 15 work days to provide requested information. Allow time before negotiations to see this deadline stretched. Failure to provide the information is an OSHA violation and can be the subject

of a written complaint to your local OSHA office. Be sure to attach documentation that information was requested more than 15 work days before.

Decisions by the National Labor Relations Board (NLRB) also give local unions in the private sector broad rights to information on health and safety. Failure by the employer to provide requested records which are necessary for the union to conduct negotiations on working conditions may be pursued not only with OSHA , but also with the NLRB, in court, through workplace actions, or through public pressure.

Here is a list of materials locals should consider asking for:

Accident & Injury Reports

■ **Reports on accidents, near-accidents, work-related illness**

Comparing these to union reports often suggests problem areas. Employers with more than 11 employees are required to keep track of injuries or illness that result in death, lost time, job transfer or restrictions, medical treatment, or loss of consciousness. This information is usually recorded in OSHA Log 200 (private sector) or the DOSH 200 (New York public sector).

Medical and Environmental Monitoring

■ **Results of monitoring of hazards and aggregate results from medical testing of employees.** Also, explanations of why the tests were done and how results were analyzed. If the information is hard to understand, ask for clarification or get help from the international union or nearest COSH group.

MSDSs

■ **The employer's written hazard communication plan including Material Safety Data Sheets (MSDS)** The OSHA Hazard Communication Standard requires employers to develop and make available a written compliance plan which includes an inventory list of hazardous substances with their MSDSs.

Work Rules & Policies

■ **Copies of all health and safety rules, guidelines, procedures, training materials, job safety analyses, accident prevention programs, and other employer policies.**

Workers Compensation Insurance Costs
Absentee & Sick Rates

■ **Information on workers compensation and insurance costs** and details of claims filed, turnover and absentee rates, and sick leave records.

Minutes of Meetings

■ **Minutes from management meetings on health and safety** This might be an informal group, a management health and safety committee, an infection control committee, and so on.

Info on Other Operations

■ **Contract language and accident and illness records from the employer's other operations (if possible).** Be sure to include other countries in your request; Western European, Scandinavian, Canadian, and Japanese contracts may have stronger language. It may be easier and quicker to get contracts directly from the unions involved, or check with the research department of your international union.

Gathering concrete information on health and safety is critical, but successful locals also look for information that will help negotiators understand the employer. For example, what is the employer's position in the industry? How does your operation compare to others? Much of this information will be gathered as part of overall preparation for bargaining, but negotiators responsible for health and safety clauses may look at it from a different angle.

Pulling it all Together

Once the survey and research are complete, locals generally select a small number of priorities and develop proposals and supporting arguments for each.

[Illustrate with photo of workers at meeting; perhaps making list on chalk board or butcher paper]

Consider the following step in completing this process:

■ **Check how any existing contract clauses are working.** Stewards and relevant committees can go through each provision to see if there have been enforcement problems. Have grievances been lost? Did situations arise that the language couldn't adequately cover? How could the language be improved?

■ **Discuss any changes in workload, scheduling, materials used, assignments, technology, quotas, and other working conditions.** Have new

hazards resulted? Are workers being properly advised and trained? Is maintenance adequate?

- **Review any new management practices or techniques.** Are workers being discouraged from reporting accidents? Do health and safety talks consist mostly of telling workers to be careful? Are workers rather than unsafe conditions being blamed for accidents?
- **Discuss management's priorities, concerns, and strategies.** Consider likely responses to each of your proposals and develop a counter argument. Look for places where your needs and the employer's might overlap and work on incorporating both views.
- **Consider hazards that may exist only in particular departments, among certain job titles, or on one shift.** Putting an end to policies, conditions, staff shortages, or other problems that affect one group of members may protect everyone in the long run.
- **Choose issues that are "hot."** Hazards that are in the news, that affect the community as well as workers, or that exist in jobs where there have recently been accidents or evidence of disease are good candidates. Hazards that the employer, its insurer, or OSHA are already concerned about are also safe bets.
- **Hold a meeting** of members interested in health and safety to gather additional information and to get feedback on the plan.

3 Crafting Contract Language & Supporting Arguments

A. Guidelines for preparing negotiating proposals.

The following are overall guidelines for preparing negotiating proposals. Model language from various sources and sample language from actual contracts begin on page x.

- **Be as specific as possible** so the purpose is clear. In most cases avoid leaving room for interpretation by the employer or an arbitrator. "The employer shall..." or "...must..." is stronger than, "The employer will consider...," "...will provide reasonable opportunity...," or "...may..."
- **Avoid proposing specifics that rule out broader rights.** If something is left out of a list or the work place changes there is flexibility to request additional items. For instance, instead of:
  "...Employer shall provide at no cost to employees respirators, and gloves necessary for handling hazardous materials"
  consider less limiting and therefore better language such as;
  "...Employer shall provide at no cost to employees all necessary equipment, including but not limited to respirators and gloves".
- **Be careful including specifics the employer will not accept.** For instance, if the current contract provides "reasonable breaks" for VDT operators in order to minimize eye and muscle strain a local may want to specify breaks of a certain duration every so many hours. There is nothing to lose by proposing specifics in negotiations IF an arbitrator has already ruled against the local in a grievance filed citing government, academic, or union studies showing the need for such breaks. However, if the issue has never been arbitrated, the local fails to obtain specifics in bargaining, and later tries to arbitrate, the employer may say: "The union is trying to win in arbitration what it could not win in negotiations." This should bring home that everything is not won at the bargaining table. Especially with difficult issues, pursue grievances FIRST based on general language. THEN pursue detailed contract language to cover the specific situation. Whether the initial grievances are successful or not, they allow the union to respond; "This was a grievable issue before the negotiations, therefore it is still grievable."
- **Have contract proposals reviewed by a number of people** before they are presented: stewards, members of any health and safety committee, union staff or lawyers. Sometimes it is also useful to get common sense input from people who have no connection to your workplace or union. If the hazard affects the community, locals might ask local environmental or neighborhood organizations to review language.
- **Make sure contract clauses don't contradict each other.** When language is contradictory or mutually exclusive, it may fall to an arbitrator to decide which clause deserves more weight.
- **Consider whether proposals will harm any members.** For example, something that makes one group's job safer could make more work for another group. In such cases locals may need to change or broaden the proposal, educate both groups of workers, or take other action.
- **Use the simplest words and sentences possible.** Even if lawyers are involved in drafting language, members should be able to read and understand every clause.

B. Developing supporting arguments

Developing supporting arguments for each health and safety proposal makes it easier to present and defend the demand. At a minimum supporting arguments should include:

- **Evidence that a hazard exists.** For example, accident and illness records, absentee and sick leave rates, statements from workers, photographs, or written or oral expert opinion.
- **Evidence that current approaches don't work.** Show that the local has brought the problem to management's attention and no action has been taken. Provide copies of requests to remedy problems, safety committee meeting minutes, etc.. Show that existing contract language doesn't work, that the employer's health and safety committee or staff are unresponsive, and so on. Consider lining up workers who are directly affected to speak at the negotiating table. The union has the right to bring anyone they choose to the negotiating table, and stories reflecting actual experiences can be difficult for management to refute.
- **Evidence that the proposal will eliminate or reduce the problem.** For instance, records from workplaces that have instituted similar measures (possibly from NIOSH, union internationals, or university labor education programs), written or oral expert opinion, manufacturer's specifications for equipment, or Material Safety Data Sheets.
- **Indications that members are really concerned.** Petitions, letters, or phone calls, for example.

The goal is to show that this is a serious proposal and that members expect to see progress. Depending on the proposals, locals may also want to show that:

- Productivity will improve.
- Stockholders, community members, environmental groups, politicians, or others are concerned.
- The employer will save money on insurance, workers compensation, sick leave, absenteeism, and so on.
- The employer could risk lawsuits or regulatory action if improvements are not made.
- Improvements have already been made at the employer's other locations in the U.S. or elsewhere. This may be a particularly effective argument if the workforce compositions in the plants are such that discrimination can be implied.

C. The Cost Issue

Evidence that controlling hazards will save money or boost efficiency may be a persuasive component of an argument for health and safety language. Considering overall costs in evaluating products or processes may tilt the balance in favor of less hazardous operations or products (i.e., insurance, workers compensation, absenteeism, sick leave, productivity, replacement labor costs, hazardous waste disposal, personal protective equipment, ability to recycle materials, etc.). However, making economics the key argument sets a dangerous precedent for future talks.

By accepting the idea that health and safety measures need only be instituted if they improve the bottom line, unions are also agreeing that if health and safety is too costly it can be ignored. That is not a position most unions find comfortable.

A stronger position would be to commit the union to the principle that monetary value cannot be placed on the health of members, while mentioning possible savings as an extra benefit.

4 Types of Contract Clauses

General Employer Responsibilities

A. General Duty

A general duty clause is the most basic health and safety contract language. A good general duty clause will establish in clear and broad language the employer's obligation to provide a safe and healthful workplace.

Employers may seek to limit the coverage of a broad general duty clause claiming that such language infringes on their "management rights" to control the production process. Employers may seek language stating that either the employee or both parties are responsible for maintaining workplace health and safety. Unions should not agree to this language.

The OSH Act clearly states that it is the employer's sole responsibility to provide a healthful work environment. While the Union should be an active participant and vigilant member advocate, it is ill-advised to take on SOLE responsibility for any aspect of health and safety on the work site. As discussed in the section on union liability, unions should press for contract language that states they will not be held liable for any work-related injuries or illness.

Note: *Recommended wording from various sources is indicated by the words "model" or "model language" in the reference.*

The absence of this notation in the reference indicates a quote from an actual negotiated collective bargaining agreement

The employer agrees to provide a safe and healthful work environment for all employees, and further agrees to make every effort to ensure optimum working conditions and to provide for the highest standards of workplace sanitation, ventilation, cleanliness, light, noise control, adequate heating and air conditioning, and health and safety in general... [SEIU model]

The Employer shall provide a safe and healthful workplace for all employees and correct all hazards. Nothing shall imply that the union has undertaken or assumed any portion of that responsibility. [AFSCME model]

The Company is responsible for and shall make all reasonable provisions to assure the health and safety of all employees during their hours of work. The Company recognizes the importance and value of employee contributions toward maintaining and improving a safe working environment. [ACTWU #615, Gloversville, NY]

The State remains committed to providing and maintaining healthy and safe working conditions, and to initiating and maintaining operating practices that will safeguard employee health and safety in an effort to eliminate the potential of on-the-job injury/illness and resulting workers' compensation claims. [PEF and the State of NY]

Teachers shall at all times have safe and healthful conditions in school buildings, parking lots, and exterior school premises, under which to carry out their professional duties. [NYSUT, AFT]

B. Promise to Obey the Law

It is important to include a statement in the contract that the employer promises to obey any state, federal, and local health and safety regulations. Making this part of your contract means that any violation of law and/or regulation is also a contract violation subject to the grievance procedure.

The employer agrees to comply with occupational safety and health standards and regulations as adopted by the Occupational Safety and Health Administration, U.S.Department of Labor, as well as all state and local agencies. [AFSCME model]

The Employer shall ensure that the Employer's premises are in conformity with federal, state and local health and safety regulations. [TNG model]

The Company recognizes its obligation to provide a safe and healthful working environment for employees. The Company also recognizes its obligation to cooperate with the Union in maintaining and improving a safe and healthful working environment. The parties agree to use their best efforts to achieve these objectives. [United Auto Workers, 1979]

C. Training and Access to Information

Under the OSHA Hazard Communication Standard, employers must provide workers with training about chemical hazards and the law. Training must include information on labels and Material Safety Data Sheets (MSDS), specific hazards, controlling exposure, safe handling, appropriate clean-up, and emergency first aid procedures.

Workers and union representatives have a right to see the employer's plans for fulfilling these training obligations. By negotiating contract language on training, local unions can expand the areas covered, guarantee input regarding materials and trainers to be used, and ensure that the employer takes into account the needs of different groups of workers.

Training is one area in which an employer can often be convinced with an economic argument. Virtually all studies show that well-trained workers experience fewer accidents, injuries, and illness. These reductions result in lower workers' compensation and insurance premiums as well as other health-related costs.

Time and Content

The health and safety committee will conduct health and safety training for new employees, those changing duties, and all employees at least yearly. [SEIU]

The committee shall develop and implement programs to enhance skills and knowledge pertaining to general and job-specific safety and health... [CSEA and State of NY Operational Services Unit]

Training programs shall recognize the different needs... of newly-hired employees, those transferred or assigned new jobs, and those who require periodic retraining. The safety and health committee may make recommendations on safety education. [USWA and Crucible Materials]

New assignments

No employee shall be required to work on an unfamiliar job or machine until adequate instruction and training in the performance of the job and/or the operation of the machine have been provided. This shall include training in health and safety, first aid, and any emergency procedures needed to protect health and safety. [SEIU]

No employee shall be allowed or required to work on any job with which they are unfamiliar until they have had adequate training, safety and other, in the performance of that operation. [ACTWU, Gloversville, NY]

Access to information

OSHA and the NLRB give workers and unions rights to information related to health and safety. However, the procedures for getting material from reluctant employers can be cumbersome. By negotiating a clause defining their rights to information locals can expand what they have access to and make it easier to get.

Information provided free

The employer will provide affected workers and the union, free of charge, with all information available to the employer which could relate to workers' health and safety... [SEIU]

Information will be provided promptly and completely

When the union requests information related to health and safety, the employer will provide the information within five working days. Include all information you expect to need but leave room for getting additional materials that may be needed later. The employer will provide... all information... which could relate to workers' health and safety including but not limited to: Reports on accidents, near-accidents, and work-related illness. Results of medical tests and monitoring for exposure to hazards. Complete Material Safety Data Sheets (MSDS) for all toxic substances used or stored in the workplace. [SEIU]

The company will provide the local union...copies of all written reports and injury incident reports ..., all joint union/management accident investigation reports, and joint team inspection reports... ...copies of any subsequent written reports describing corrective action that may have resulted from any...accident investigation ... [IBEW 503, West Nyack, NY]

Input on rules, regulations, and policies

Proposed changes in safety rules and regulations shall be submitted to the union for full discussion before becoming effective. [IBEW 503, West Nyack, NY]

When the company introduces new personal protective apparel or extends its use to new areas or issues new rules relating to its use, the matter will be discussed with members of the joint safety and health committee in advance with the objective of increasing cooperation. [USWA and LTV Steel]

Monitoring equipment

The company will provide and maintain in-plant apparatus for detecting and recording... hazards from exposure to chemical and physical agents as recommended by the health and safety committee. The company will provide a periodic training program to insure that members of the h&s committee and employees assigned to operate the apparatus are proficient in using, handling, and maintaining such facilities. The company will provide necessary apparatus, when so requested by the h&s committee, to continuously monitor levels of specific agent... Where excessive exposure creates an immediate life-threatening hazard. Apparatus shall include appropriate mechanisms to warn employees of the hazard. [ACTWU]

Employer will] *permit the union member of the local committee to participate in and observe management measurement or sampling of the occupational environment.* [UAW and Chrysler, National Master Contract]

D. Personal Protective Equipment and Clothing

Employers are responsible for maintaining a workplace free from recognized hazards. To that end, the employer must provide employees with all necessary protective equipment and clothing. In addition to initial equipment purchase key issues include procedures and options for selection and fitting of equipment, eye glasses for use in respirators, training on proper use, availability and use in the workplace, maintenance and cleaning, inspection, storage, and replacement.

Where workers use respiratory protection in order to meet an OSHA Permissible Exposure Limit (PEL), use respiratory protection more than 30 days per year, or work on a designated hazardous waste site, the employer must develop a Respiratory Protection Program which deals with some of these issues and provides medical testing to assure the capability of workers to wear the respiratory protection safely (29CFR §1910.134).

The Company agrees to provide and maintain at no cost to the employees such personal protective equipment and clothing as is either required by the Company or recommended by the Health and Safety Committee. Employees required to wear respiratory protection will be allowed adequate time, without loss in pay, to clean the equipment. Protective equipment shall be used on an interim basis only until the hazard is eliminated where feasible by the use of appropriate controls or work practices. Upon request, the Company shall inform the Union of its plans to implement such controls and work practices. [ACTWU model]

Safety equipment such as safety shoes, safety goggles, hard hats, vests, etc., which are officially required by departments and agencies for use by employees shall be supplied by the State. [PEF and State of New York]

The Company will continue to provide an initial eye examination for each employee who regularly works a substantial portion of each shift at a video display terminal and will make available a follow up examination every two years. If it is determined, that special glasses are needed as a result of having worked at a video display terminal, the Company will agree to purchase those special glasses if the cost of same is not covered by insurance. The

examinations will be made by a physician mutually agreed upon by the Company and the Guild. [TNG and The Albany, NY Times-Union]

Protective devices, wearing apparel, and other equipment necessary to properly protect Employees from injury shall be provided by the Company in accordance with practices now prevailing in each separate plant or as such practices may be improved from time to time by the Company. Goggles; hard hats; hearing protection; prescription safety glasses (one pair every twelve months); face shields; respirators; special purpose gloves; fire retardant, water resistant or acid resistant protective clothing when necessary and required shall be provided by the Company without cost, except that the Company may assess a fair charge to cover loss or willful destruction thereof by the Employees. Where any such equipment or clothing is now provided, the present practice concerning charge for loss or willful destruction by the Employee shall continue. When the Company introduces new personal protective apparel or extends the use of protective apparel to new areas or issues new rules relating to the use of protective apparel, the matter will be discussed with members of the Joint Safety and Health Committee in advance with the objective of increasing cooperation... [USWA and LTV Steel]

E. Medical and Emergency Care

Medical examinations and testing by or under contract with the employer deserve careful review. Employee privacy issues, access to medical records, screening practices and discrimination are all issues.

Emergency first aid provisions should always be available in the workplace. Contract clauses should cover systematic training needed to respond to injuries and other emergencies.

Diagnoses of Occupational Injuries & Disease

Medical examinations and testing for the purpose of diagnosing or preventing possible occupational injury or illness, establishing baseline responses prior to exposure, or establishing work capacity may be appropriate or even critical under certain circumstances. Medical examinations or testing may be mandated in certain situations such as where exposures exceed OSHA action levels, as part of a respiratory protection program, and for work on designated hazardous waste sites or in chemical spill response. Union issues of importance include privacy and confidentiality of medical records, reporting to the employer by the health care provider, appropriate selection and performance of testing protocols, accuracy and precision of tests (i.e., chance of false results), what happens when a member "fails", selection of physicians or facilities, opportunities for second opinions, member access to testing (are all appropriate groups included), and a range of associated issues. Some of these may be best dealt with through collective bargaining language, although the authors were unable to identify model language.

No Discrimination Based on Medical Findings

Continually advancing testing technologies and the prospect of genetic screening for high risk workers present growing concerns. Some of these issues may be dealt with under the Americans with Disabilities Act (ADA) depending on legal interpretations. Unions should consider the choice of and access to health care providers, the format and content of reports to the employer, and confidentiality precautions.

No medical testing or finding shall be used to discriminate against any employee or deny any pay or privileges to which an employee is entitled. ... An employee with a medical restriction is entitled to another job assignment which he/she can perform, in line with the employee's seniority. [model - Coalition for Reproductive Rights of Workers, 1917 I Street, NW Wash. DC]

First aid

First Aid Training

All employees covered by this agreement are required to possess a knowledge

of at least the fundamentals of first aid to the injured. The employer will conduct an annual review of the fundamentals of first aid for all employees covered by this agreement. Time required to be spent by an employee for first aid training shall be paid at the regular rate of pay. The employer agrees to train or employ persons possessing at least a Red Cross certificate of competence in first aid, who shall be on hand at all times when employees are working. [Model - LOHP UC Berkeley]

The Employer shall arrange formal first aid training,including instruction for cardiopulmonary resuscitation (CPR). As a minimum, the training should be sufficient to ensure at least one person at each location and on each crew is qualified to administer first aid and CPR. [MEBA and FAA]

First aid Equipment

The employer agrees to maintain on all shifts adequate first aid equipment to meet the needs of employees in case of minor accident.

Where necessary, first aid chests,adequately marked and stocked, shall be provided by the Employer in sufficient quantity for the number of employees likely to need them and such chests shall be reasonably accessible to all employees. [AFSCME District Council 37 and New York City]

First aid station and nurse

A first aid station and facilities, including the services of a competent nurse,shall be maintained in the plant and made available to all employees. [Model - LOHP UC Berkeley]

A qualified first aid person,visually identifiable,shall be present on all sets where hazardous work is planned. The Producer shall properly equip, this person, establish the capabilities of nearby medical facilities, and provide transportation and communication with these facilities. [SAG]

Transport to Treatment

The employer shall arrange to provide transportation at any time to any employee at no cost to the employee for medical treatment necessitated by an on-job accident or illness. [Model UC-Berkeley]

Physician in plant

The employer agrees to maintain a medical department properly equipped and staffed under the direction of a full-time licensed physician. First aid equipment and persons trained to render first aid shall be available in proximity to the workplace and provided by the Company. The Company shall provide prompt emergency transportation for Employees who are seriously injured on the job to an appropriate treatment facility and upon request shall provide return transportation to the Plant on the same day of injury for the Employee whose injury is determined to be occupationally related. [USWA & Bethlehem Steel Lackawanna, NY]

Identifying and Responding to Hazards

Organized workers acting collectively through their union provide the primary advocates and defenders of safe and healthful working conditions. A top bargaining priority for many locals is guaranteeing that shop stewards, health and safety committee members, or other union activists have the time, skills, and resources to identify and evaluate hazards.

Unions may appoint full-time safety officers, use their steward system, or have local health and safety committees, in addition to participating in joint labor-management health and safety committees. Most locals end up with some combination of systems for handling health and safety.

Regardless of the structures used union's are most successful when they are able to establish a health and safety agenda, set priorities and function independent from management health and safety initiatives. Cooperation between the union and the employer is useful, and health and safety issues provide more common ground than most areas of labor-management relations, but the language you negotiate should reflect the fact that your goals won't always be the same and you won't always agree on the best way to resolve

problems. The contract language in this section is designed to help locals create structures that foster cooperation and independence. It is divided, in part, into language on union committees and joint committees but there is substantial overlap and you can adapt the language for your situation and the structures best suited to it.

A. Union Committees

While a union health and safety committee may be established without contract language, it will be stronger and better able to carry out its responsibilities if its members are formally recognized by management, have the right to inspect the workplace and investigate accidents, and are paid for their time (especially for walk around with OSHA inspectors). Ensure members chosen by the union have real opportunity to check on hazards, investigate accidents, and look out for the well being of co-workers.

Selection Process

The union may pick health and safety committee members, stewards, officers, or representatives to cover each work area on each shift. [SEIU]

Access to the Workplace

Reps will have access to any part of the work area to perform their duties regarding identification,evaluation, and control of hazards. [SEIU]

Committee members shall have unlimited access in their area or department... and shall have the right to investigate and process safety and health complaints and problems. The committee chair shall have freedom to contact committee members throughout the workplace and aid them. [NY State AFL-CIO, model]

A member of the Local 301 safety committee shall be permitted to conduct safety inspections in the department in which he works where it is reasonably believed that there is a safety problem... [IUE 301 and General Electric, Schenectady, NY]

The union health and safety committee may exercise the right to investigate any worker complaints about potential health and safety hazards. [ICWU 227, Rensselaer, NY]

Right to inform members

The union health and safety committee may exercise the right to distribute health and safety information on site [ICWU 227, Rensselaer, NY]

Pay for H&S reps

Reps will be paid their regular rate while performing such duties. [SEIU]

The company will pay up to eight hours per week for up to eight members of the committee for time needed to investigate safety complaints... [IUE 301, Schenectady, NY]

Right to investigate accidents

Reps will be notified immediately of accidents, near-accidents, or work-related illness so they can conduct an investigation. [SEIU]

Training

Reps will be paid lost time for at least three days per year to attend health and safety training of the union's choice. [SEIU]

B. Joint committees

Joint committees can be an effective mechanism for getting action on hazards. They are usually more effective if the union and management function as equals and if access, representation, responsibilities, meeting schedules, and other issues are spelled out in the collective bargaining agreement.

Self-selection and equal representation

There shall be a joint labor-management health and safety committee composed of an equal number of management and union representatives... The union will select its own representatives. [SEIU]

Occupational health and safety committees shall be established at the sector level... These committees will be comprised of an equal number of members designated by the union and by management. [MEBA and the FAA]

No term limits

It is to the union's advantage to have experienced knowledgeable reps while employers may prefer to rotate union members... for the program to be effective it is desirable to provide for a continuity in committee work from year to year.

Therefore:

...committee members shall serve three-year terms and shall at the discretion of the union be eligible to succeed them-selves. [APWU and NALC with U.S. Postal Service]

Regular meetings

... the designated representatives of the union and the company shall meet once each month,immediately after the plant inspection [USWA]

A craft safety committee...will meet on the second Tuesday of every month... [UBC]

The committee will meet once a month at a mutually agreed time. [Nurses United - CWA, Buffalo, NY]

The committee will meet at least once per month on company time for a discussion session and plant/grounds tour. [ACTWU, Gloversville, NY]

Committee functions

The committee shall meet to consider, inspect, investigate, and review health and safety conditions and practices and investigate accidents, and to make constructive recommendations ... including but not limited to the formation of changes to eliminate unhealthy and unsafe conditions and practices and to improve existing health and safety conditions and practices. [ACTWU]

The committee shall: Inspect the work place at least monthly. Recommend correction of unsafe practices. Review and analyze reports of injury or illness, investigate the causes, and recommend rules and procedures for... promotion of h&s... Promote h&s education. Participate in all surveys conducted by government inspectors and employer consultants. Investigate any potential exposure ...including but not limited to fumes, chemicals,noise, and dust. Be notified by the employer of any proposed measurement of worker exposure to any potentially dangerous conditions... Receive written identification of any potentially toxic substances... [and] material safety data sheets (MSDS). [NY State AFL-CIO model]

Right to help set agenda

Either side may place any safety and health matter on the agenda. [SEIU]

Each co-chair [union and management] shall submit a proposed agenda to the other at least five days prior to the monthly meeting. [USWA & Bethlehem Steel]

Right to receive minutes

Accurate minutes of all safety and health meetings between the union and company shall be prepared by the company. Copies of the minutes shall be given to the union co-chair within 10 days after the day on which the meeting was held. [USWA]

The company will publish typed minutes of health and safety committee meetings and distribute copies to committee members within five working days of the meeting. [ACTWU, Gloversville, NY]

Right to correct minutes

If the union co-chair disagrees with the accuracy of the minutes as prepared by the company s/he shall put the reasons in a letter to the company and it shall become part of the record of the meeting. [USWA]

Shared chair

Meeting chairs will alternate between union and management representatives. [SEIU]

The union and the company shall designate co-chairs. [USWA and Crucible Materials]

Conduct Inspections

Committee members will conduct an inspection before each meeting of any areas of the workplace which either side identifies as necessary in order to discuss health and safety problems at the meeting or to check on progress made since previous meetings. the entire workplace will be inspected at least monthly. [SEIU]

Prior to monthly meetings the co-chairs or their designees shall engage in an inspection of mutually selected areas of the plant. At the conclusion of the inspection, a written report shall be prepared ... [USWA & Crucible Materials Corp.]

Outside experts

Receive advance notice and the opportunity to advise on proposed changes that could affect health and safety.The committee will review any and all proposed changes in the workplace and working conditions in sufficient time to make recommendations concerning possible impact on health and safety. [SEIU]

Advance Notice of Changes

H&S committee has the right to notice of any new or additional chemicals, procedures, products, and equipment... no less than 60 days before arrival or introduction. [ICWU 227, Rensselaer, NY]

Union input on training

The joint committee may review and participate in worker health and safety education and training programs. The union members of the joint committee shall receive lost time pay for a period deemed appropriate by the union for the purpose of receiving occupational safety and health training by the international union or other institutions acceptable to the union. [ICWU]

Committee members and alternates shall be entitled to up to 40 hours of released time with pay for attendance of h&s related training annually. The union shall determine which courses recommended by the committee best suit the training needs of the committee. [ACTWU, Gloversville, NY]

Pay for committee activities

The time consumed on committee work by committee members designated by the union shall be considered hours worked and be paid the appropriate rate by the company. [IBT]

The union designated health and safety representative shall receive 390 hours per year as an employer-paid excused absence for activities related to the joint committee. [Nurses United/CWA, Buffalo, NY]

Action on issues raised

One of the prime functions of local safety committees shall be to evaluate reports regarding hazardous conditions and to make corrective recommendations to the employer. These... may include but are not necessarily limited to: employee awareness of hazards and how to avoid them...; provision of needed safety equipment and protective devices; identification of hazardous, or potentially hazardous, conditions; number of employees required to perform... work in a safe manner. [MEBA and FAA]

The company will respond to the health and safety committee in writing on each item regarding health and safety conditions ... contained in the published minutes, with the intended disposition of that item... All items answered but undisposed of will be carried forward in all future published minutes until final disposition. [ACTWU, Gloversville, NY]

The committee...may...make recommendations... The installation head shall within a reasonable period ... advise the committee that... action has been taken or advise the safety and health committee and presidents of local unions why it has not. [APWU and NALC with U.S. Postal Service]

C. Access and Representation

NLRB has confirmed the union's right to have its own experts assess health and safety conditions in the work place, to provide information which is necessary in order for the union to knowledgeably negotiate on issues of working conditions. In addition, the union has a right to get second opinions on medical testing and medical surveillance. Incorporating these rights into the contract allows enforcement through the grievance procedure, avoiding the lengthy process of filing an unfair labor practice charge with the National Labor Relations Board.

The employer realizes that the union has a right to: Bring into the workplace any union staff or any expert who can assist the union in investigating health and safety conditions. Select a representative to accompany any government inspector who visits the workplace to discuss or investigate health and safety conditions. If the union representative is an employee,he or she shall receive

normal pay for the time. Select a representative to observe any monitoring or testing related to health and safety. [SEIU model]

Either party may, on its own or in cooperation with the Health and Safety Committee, arrange for an inspection of facilities by the appropriate inspectors of government, independent agencies or agents of the Union who shall be permitted to make such examinations, investigations and recommendations as shall be reasonably connected with the purposes of the Health and Safety Committee. All reports, advice, recommendations, opinions, findings and anything else of pertinence, whether verbal or documentary, shall be made available to the Health and Safety Committee. [ACTWU model]

The Committee has the right to call on Health and Safety experts to make investigations of Health and Safety problems and make recommendations as needed. [Communication Workers of America and Marist College, Poughkeepsie, NY].

Assuring Just Treatment

A. Refusal of Hazardous Assignments

Workers should not have to choose between their jobs and their lives. The power to refuse work which the worker believes in good faith to present unacceptable hazards is one of the most important rights a worker can have to protect him or herself. Contract language, well-trained stewards who take appropriate action when situations arise, and a strong union can limit the ability of employers to discharge such "insubordinate" workers at will. Even after OSHA has determined that an imminent danger exists, workers are not given a right to refuse continued work in that area. If the employer does not choose to clear the area, employees either continue to work until the OSHA inspector obtains a court order, or they risk their jobs. An individual right to refuse exists only when other actions provided by OSHA (like calling in an imminent danger complaint) are unavailable or perhaps inadequate, such as for an immediate danger which the employer refuses to correct occurring when OSHA offices are closed.

In a union setting, "right to refuse" cases may be heard by arbitrators who must decide if the employer had just cause to terminate or discipline the employee. In two-thirds of 154 published arbitration decisions studied by Gross and Greenfield (1986), arbitrators sustained some penalty against the employee who refused to work based on health and safety reasons. In most cases these were evaluated as insubordination cases with a heavy burden of proof placed on the union to demonstrate with objective evidence that health and safety issues should mitigate the penalty. As the union has limited access to objective evidence that a hazard was present in most cases, the union's opening statement must clearly state that this is NOT an insubordination case but an unjust discharge in a unique situation involving the life and health of an employee. Given that the employer has a legal obligation to provide a workplace free from recognized hazards, and that the employer has possession and control over the property, machines and processes involved, the burden of proof must be placed on the employer to demonstrate that this employee was not unjustly discharged for attempting to avoid what he or she believed to be a serious threat to their life or health. While the union should prepare for both eventualities, it is up to the union to persuade the arbitrator that the central issue is health and safety rather than insubordination.

Appropriate contract language can provide means for avoiding such disputes, or constrain the arbitrator in such a way that the odds of success are improved. Strong contract language coupled with member and steward training, and effective use of dispute resolution procedures can put workers in the best

position when they are forced to refuse dangerous work, but this remains a high risk action of last resort in most union workplaces.

Collective bargaining agreements should:

1. **Define circumstances where refusal is justified.** There should be clearly defined exceptions to the "work now, grieve later" rule. Standards should define the degree of hazard which is unacceptable. This is closely interrelated with the burden of proof discussed later.
   - **Immediate danger** This potentially requires proof not only of the severity of the hazard but also the immediacy of the hazard (how likely that someone would have been hurt in the next hour, next shift, etc.).
   - **Abnormally dangerous** This may require not only evidence relating to the severity of the hazard, but also the severity of typical workplace hazards and a demonstration that the situation in question was significantly more hazardous than normal.
   - **Imminent danger** This requires evidence that, more likely than not, a condition will result in injury or illness, usually within some time frame. It is often further limited by using imminent danger of death or serious physical injury.
   - **Serious hazard** A hazard which could possibly result in death or serious injury or illness, usually without the additional consideration of probability and without a definite time frame.
   - **Unsafe or Unhealthful conditions** Very broad and inclusive.

   Other issues include tasks which endanger other workers, the community or the environment, and tasks for which information on hazards is not available.

2. **Define Procedures for Unacceptable Hazards**
   - **Who should stop the job?** Giving the worker the right to refuse is one alternative, but it may be more effective and less threatening to have a union steward or health and safety representative given the authority to shut down an operation or delay work until the issue is resolved or the hazard controlled.
   - **Restarting the job?** Consider assignment of other workers to the same task. What evaluations and corrective actions are required prior to reassignment? Who restarts the job?
   - **What is the dispute resolution process?** (see the next section on Conflict Resolution)
   - **What protections are assured?** Reassignment without loss of pay, benefits, or seniority and return to the original job following abatement of the hazard should be guaranteed.
   - **What assurances are provided that the hazard is eliminated or controlled?** Ideally this should include a time schedule or priority handling, and follow-up to assure appropriate resolution.

3. **Reduce the Burden of Proof on the Employee** Exceptions are of little value unless they also assign an achievable burden of proof. This makes defense easier, while an ideal structure would make defense unnecessary as issues would be resolved on the shop floor without a grievance being filed.
   - **Objective Evidence** is the most stringent burden of proof (as required by NLRA and most arbitrators in the absence of appropriate contract language). This would include photographs, environmental monitoring data, eye witness to previous injury. Workers and unions typically do not have access to objective evidence.
   - **Reasonable Belief** is considerably less stringent. However, there must be a significant factual basis for the belief such that a reasonable person would reach the same conclusion as the worker. Workers might still face discrimination following refusal in the absence of adequate information, or refusal for a concern which an expert inspection concluded was unfounded.

A requirement that an actual hazard be present can place workers in jeopardy when they think there is a hazard but can't prove it.

- **Good-Faith Belief** does not require a factual basis. The arbitrator merely considers the motivation of the employee. This is clearly the strongest option.

An employee or group of employees who believe they are required to work under conditions that are unsafe or unhealthful shall notify the foreman of such belief. Thereafter, such employee(s) shall have the right to be relieved from the job or jobs,and to return when the condition complained of has been corrected. In no case shall said employee(s) suffer loss of earnings. Such employee or employees shall have the right to communicate the facts relating to the safety and health of the job or operation to any other employee asked to perform the work in question. If the existence of such alleged unsafe or unhealthful conditions is disputed, the Chairmen of the Grievance and Safety and Health Committees and the Plant Superintendent or his designee shall immediately investigate such alleged unsafe and unhealthful conditions and determine whether they exist. If the Union and the Company do not agree, and if the Chairmen of the Grievance and Safety and Health Committees are of the opinion that such alleged unsafe or unhealthful conditions exist, a grievance shall be filed in the proper step of the grievance procedure by the Chairman of the Grievance Committee for preferred handling..." [USWA model]

When Employees express reasonable concerns about their personal safety in connection with assignments in localities in which it is reasonable for them to believe that they may be victims of assault or other criminal activity, the employees will not be required to work alone. [CWA and AT&T]

An employee shall not be required to perform any hazardous work with which he is not familiar. [IBEW 503,West Nyack, NY]

An employee or group of employees who believe that they are being required to work under conditions which are unsafe or unhealthy beyond the normal hazards inherent in the operation and feel that they are in imminent danger of injury, he or they shall notify supervision of such danger and the facts relating thereto. If the issue is not resolved between the employee and the supervisor, the Company and the Union Co-Chairmen of the Joint Safety and Health Committee or their designees will be immediately notified. The Company and the Union Co-Chairmen or their designees will go to the department as soon as possible to review the problem to determine the validity of the complaint. If no agreement can be reached as to whether there are unsafe or unhealthy conditions beyond the normal hazard inherent in the operation in question, temporary measures will be taken by the Safety Department to insure that employees are not required to work in conditions of imminent danger of injury and the matter will be immediately referred to arbitration for resolution.

Should either Management or an Arbitrator conclude that an unsafe condition within the meaning of this Article XII existed and should the employee not have been assigned to other available equal or higher-rated work, he shall be paid for earnings he otherwise would have received. It is recognized that emergency circumstances may exist and the local parties are authorized to make mutually satisfactorily arrangements for immediate arbitration to handle such situations in an expeditious manner. [USWA and Crucible Materials Corporation]

Whatever the law or the contract says, a worker's case will be stronger if:

- **The worker has reasonable grounds** for belief that the work is unsafe and believes in good faith that performing the work would threaten life or health.
- **The worker immediately tells the employer** of the hazard and asks that it be fixed.
- If the employer continues to require performance of the dangerous task, **the worker requests the presence of a union representative immediately for consultation**, to collect facts and evidence for a possible grievance,

initiate an OSHA imminent danger inspection (if possible), and serve as a witness.

- **The worker believes in good faith that there is no time to remedy the problem** through normal OSHA or contractual procedures.
- **The worker does NOT actually refuse the assignment**, but "accepts conditionally." It is better for a worker to say; "I will do the work if it is made safe," or "I will do other assigned work", than to flatly refuse assigned work.
- **The worker should never leave the workplace** until the employer tells him or her to go home.

B. No Union Liability

The employer's legal obligation to provide a safe and healthful workplace is discussed under the General Duty language above. It is wise to secure contract language explicitly stating that the union will not be held liable for any work-related injuries, illness or disabilities. All parties -- employer, union, and workers -- need to be clear that the existence of a Joint Health and Safety Committee does not mean that the union and the employer share liability for any past, present, or future occupational safety and health problems.

It is agreed that the international union, the local union, safety and health committees, and their officers, employees, and agents shall not be liable for any work-related injuries, disabilities, or diseases which may be incurred by employees. If as a result of anything contained in this agreement any judgement of liability is entered against the union or any of its representatives or committee members, the employer agrees to indemnify and keep indemnified the union to the full extent of such liability including any costs and attorney fees awarded against or incurred by the union in such litigation. [UBC model]

In our Health and Safety initiative, nothing in our agreements, booklets, manuals,and joint programs is intended by the parties to make the International Union, Local Union, Union Health and Safety Committee and Union Officials,employees or agents responsible or any employee's job-related injury, illness or death. [UAW and Chrysler]

It is agreed that the Union's Safety and Health Committee acts hereunder exclusively in an advisory capacity and that the International Union, Local Unions, Union Safety and Health Committees, and their officers, Employees, and agents shall not be liable for any work-connected injuries, disabilities or diseases which may be incurred by Employees. [USWA and Bethlehem Steel,Lackawanna, NY]

C. No Discrimination

Regardless of a worker's commitment to improve the work environment, the risks and benefits of actions must be considered. A free labor market would assume that in the face of unacceptable hazards employees would merely quit and work elsewhere. The realities of family commitments, uncertainty, limited mobility, and scarcity of work opportunities can effectively coerce workers to continue to work and prevent actions to improve the work environment. No employee should suffer economic hardship or discrimination due to an occupational illness, injury/disability or pregnancy; or as a result of good faith efforts to control recognized hazards (e.g., filing an OSHA complaint). The threatened loss of a job, wages, benefits, seniority, promotion or assignment opportunities, can chill any action to prevent occupational injury or disease or improve the work environment. Shielding workers from such coercion is the key component in empowering them to act. Negotiators should note that while employee safety and health is a "mandatory" subject of collective bargaining, anything related to applicants rather than employees is a "permissive" subject of bargaining. This means that either side can legally throw it out and refuse to consider the issue without giving a reason.

OSHA Section 11(c) bans an employer from discriminating against an employee who exercises his or her rights under OSHA. However, that right is difficult to enforce. In 1987, The OSHA Watchdog Project of the Wisconsin Committee on Occupational Safety and Health issued a report entitled "Deadly Dilemma: When OSHA fails to Protect a Worker's Right to a Workplace Free of Health and Safety Hazards". In that report, WISCOSH examined 249 Section 11(c) cases filed at the Milwaukee area OSHA office over a five year period. Of those 249 cases where workers alleged employer retaliation, 15 cases -- six percent of all the cases filed -- were won by the employee. A 1990 survey of OSHA inspectors by the Government Accounting Office (GAO/HRD90-66BR) found that 26% thought workers have "little or no protection from employer reprisals" when they report violations, and only 15% said workers were well protected. Strong contract language, enforced through the grievance procedure, makes a strong statement that management has no right to punish workers who attempt to secure a safe and healthy workplace. This may complement or overlap with protections offered union stewards and officers conducting union business.

Employees and their unions may exercise all their legal rights to secure a safe and healthful workplace without threats, loss of pay, or other reprisals of any kind. [Model - AFSCME Health and Safety Manual]

General Discrimination Protections

Such general protections might be of value not only in blatant discrimination cases but also in situations involving sexual harassment, reproductive hazards, genetic screening, assignments to high risk tasks, training for non-English speakers, illiterate or handicapped members, etc.

There shall be no discrimination because of race, creed, color, national origin, sex, sexual preference or legitimate union activities against any employee or applicant for employment by the Union or by the County; and to the extent prohibited by applicable state and federal law, there shall be no discrimination against any handicap unless that handicap prevents the person from meeting the minimum standards established. [San Mateo County CA and SEIU Local # 715]

Disability and Return to Work

What happens when preventive measures fail? Regardless of how good the current protective measures are, the work environment is complex and constantly changing. The Union must consider how it can best assure just treatment for members who become injured, ill, or permanently handicapped.

The Americans with Disability Act (ADA) forbids an employer from discriminating against a disabled worker if that employee can do the essential functions of the job with "reasonable accommodation". The protections of the ADA apply to hiring, promotion, discipline, and all other terms and conditions of employment. Workers who become disabled during the course of employment, regardless of whether the disability is work related, are protected by the ADA. However, as this is a new statute experience with enforcement and interpretation are extremely limited.

Contract language should provide workers with more protection than they are offered under workers' compensation and federal ADA. The State of New York Workers' Compensation Board does not provide cash benefits for the first seven days of disability unless the disability continues for more than 14 days. Eligible workers receive 2/3 of their average weekly wage, but no more than the maximum benefit.

Any employee who is injured in the course on his/her employment shall be compensated by the company at his/her regular hourly rate for any lost time. In the event that such employee receives Workers' Compensation payments, such payments shall be deducted from the amounts to be paid by the company. [ACTWU model]

An employee who, as a result of an industrial accident, is unable to return to his assigned job for the balance of the shift on which he was injured will be paid for any wages lost on that shift. [USWA and Al Tech Specialty Steel Corp.]

A regular full-time employee who is injured on the job and who after treatment for the injury is directed by a licensed medical doctor or by a hospital not to continue to work shall be paid eight (8) hours straight-time pay for the day on which the injury occurred, which shall not be charged to his sick leave. The Employer agrees not to separate any employee from employment while said employee is on leave, under compensation, relating to an on-the-job accident, which leave is less than 18 months in duration. After 18 months of such leave, an employee may be separated from employment after two (2)weeks written notice to the employee and Union, subject to the grievance procedure. The Employer agrees to continue contributions to provide hospitalization benefits for said employee for the period of one (1)year. The employee while on compensation, after six (6) months will accrue no credit toward vacation, holidays, progression increases or any other benefits other than hospitalization, but subject to the provisions of paragraph (b) above, the employee's job will remain available until such time as he is determined by his physician to be fit to return to work, and resume his full duties at which time he must report to work the next scheduled work week or forfeit his right to employment. [UFCW Local 342-50, Mineola, NY]

Should any employee be taken sick or meet with an accident while at work, the Employer shall see that he is properly taken care for. The Shop Steward shall take care of his tools during his absence and notify the Business Representative. This is to be done on the Employer's time, but the Steward, however, shall do so at the least possible loss of time. Any employee who is hurt on the job and has to leave shall be paid for the full day. [UBC]

Medical and Pregnancy Leave

For model language on reproductive hazards see: Resource Guide, Coalition for the Reproductive Rights of Workers. ©1981 1917 I St., NW, Ste 201. Wash DC 20006

Serious safety and health concerns may result from pregnancy including: fetal toxicity, heat stress, appropriateness of protective clothing or equipment, ergonomic concerns, etc. In some cases such legitimate concerns can be used to justify discriminatory policies, as in Johnson Controls' fetal protection policy recently thrown out by the U. S. Supreme Court. Medically necessary reassignment or changes in duties during pregnancy or other temporary disability, necessary leave, and secure work opportunities following leave, are critical issues in assuring the health and safety of the mother and child or disabled worker. It may not be inherently necessary that every job be safe and healthy enough to allow uniform treatment of all workers, both pregnant and not pregnant, because of the short term and variable nature of the disability.

There are numerous potential conflicts surrounding return to work and "light duty" reassignments which should be dealt with in collective bargaining. While it may be of economic benefit to the employer to get employees back on the job ASAP to reduce workers compensation, and beneficial to the employee to return to work as soon as he/she is able, serious abuses occur. This is a particularly difficult issue when work teams are unable to achieve quotas or bonuses due to a temporarily disabled team member. This can pit members against each other and encourage medically inappropriate efforts which can slow or reverse the recovery of an injured worker or result in additional injuries. Consider the possible negative impacts on both disabled members and their co-workers when reassignment to "light duty" is considered.

This is independent of concerns regarding various reproductive hazards which can reduce fertility or increase risk of abnormal pregnancy outcomes as a result of exposure of either parent (e.g., lead exposure). Every job should be safe and healthy enough to allow uniform treatment of workers who are capable of reproduction (men and women) and workers who are sterile or post-menopausal.

A pregnant employee, upon her request, shall be permitted to transfer from a job or working conditions that the employee believes may be hazardous to

herself or the fetus during pregnancy without reduction in pay or impairment of benefits. The beginning and end of leave shall be at the discretion of the employee. [TNG model]

An Employee who is pregnant or planning pregnancy may apply for an assignment away from CRTs. The Publisher shall make every reasonable effort to find such assignment. The Publisher will also consider such an Employee's request for a Leave of Absence in keeping with the company's current leave policy. [TNG and Time, Inc.]

An employee who becomes ill, disabled, or pregnant and whose claimed illness, disability, or pregnancy is supported by satisfactory evidence shall automatically be granted a medical leave of absence for a period of not more than six (6) months. An extension of such medical leave shall be granted by the Company upon application by an employee who has at least one year seniority at the time the leave begins, for an additional period of up to six (6) months, provided that the total medical leave time may not exceed one (1) year. Seniority shall be accumulated during the medical leave ...

With regards to Medical Leaves-Of-Absences for reasons of pregnancy and childbirth: (1) A pregnant employee will be required to notify the Company as soon as she has knowledge of her pregnancy. As a safeguard to her health, the employee must submit a letter from her personal physician, no later than the end of the fourth month of pregnancy and each thirty (30) days thereafter, stating the probable date of confinement and whether the employee can safely continue to perform her assigned work. A pregnant employee may not initiate on her own volition, an approved Medical Leave-of-Absence without the concurrence of her personal physician or the Company doctor. Leave-of-Absence will start on the date agreed upon by the employee and the Company in accordance with the recommendation of the employee's physician. [1981, BASF Wyandotte and Chemical Workers Union Local # 227, Rensselaer, N.Y.]

Conflict Resolution

Language for resolving disputes is as varied as workplaces and unions. When drafting your language, consider borrowing from a range of contracts and proposed models.

The conflict resolution process determines the outcome in situations where there is disagreement. This process therefore determines how the contract language is interpreted and implemented. There are three primary reasons why you might want to consider a process for health and safety which differs from that used in resolving other differences:

(1) possible need for a quick response as members may be at risk of serious injury, or production may be stopped while the dispute is being resolved;

(2) the technical nature of some health and safety issues often means that labor, management, and neutrals involved in the dispute resolution process may be inadequately prepared to analyze critical technical information;

(3) the high stakes in some safety and health situations should call into question the standard "work now, grieve later" approach to disagreements.

To address concerns regarding the ability of arbitrators to resolve technical disputes involving industrial hygiene or toxicology, negotiators have two options: (1) choose as arbitrators individuals or groups with technical knowledge of the subject (e.g., state safety inspectors, outside consultants, an expert panel of arbitrators, or other neutral experts); (2) write the contract language in such a way that decisions are based on procedural or personal judgement issues rather than technical analysis. For example, any arbitrator could determine whether an employee acted according to procedures defined in the collective bargaining agreement and "believed in good faith that a serious hazard was present," while technical expertise may be required to determine whether a particular situation presented an "imminent danger of death or serious

physical injury." Given the strength of the existing arbitration system, avoiding language which a typical arbitrator could not resolve disputes over may be the preferred option.

Approaches such as joint health and safety committees may resolve many day-to-day problems. However, sometimes joint committee members fail to agree on what should be done or take too long to act. As a result, a growing number of locals are making sure health and safety hazards can be grieved: (a) through the regular process, (b) through an expedited version of the regular process, or (c) through a special health and safety procedure.

This section consider the ability of the grievance process to effectively handle health and safety issues. When negotiating language on resolving problems most locals want to guarantee:

- **Quick Action** - Ability to resolve disputes in a manner which results in prompt evaluation, and elimination or control of hazards which are identified, to assure a work environment free from recognized hazards.
- **An appeal process** or final step involving a neutral third party with knowledge of health and safety issues.
- **Employer responsibility** to show the job is safe, NOT employee responsibility to show that job is unsafe.
- **Protection from loss of pay** due to potentially serious hazards and while the dispute is resolved.
- **Protection from discrimination and discipline** for identifying potential hazards or initiating action.

Using this type of language effectively requires a strong network of stewards and/or health and safety committee members prepared to present strong evidence for eliminating a hazard. However, many locals have found that after a few well-presented cases, managers prefer using the joint committee and health and safety grievances become few and far between.

Strengthening or expanding grievance procedure

For many locals the first task is to eliminate language excluding health and safety issues from the grievance process. Next they add more stringent deadlines and/or the right to skip steps in cases involving health and safety as in the following language:

Any disagreement or dispute relating to safety and/or health which cannot be resolved by the committee may be treated as a grievance and processed through the regular grievance procedure. When written notice is given that a grievance based on an alleged health and safety violation is not satisfactorily settled in the first level, it shall be placed immediately in the last level of the grievance procedure. The union retains the right to strike when it determines that dangerous or unhealthy conditions of work exist. [Model - National Lawyers Guild's A Workers Guide to Contract Language]

All disputes and disagreements arising under the health and safety clauses of this contract, if not disposed of by the health and safety committee,shall proceed to the general manager with appropriate recommendations for resolution, who shall respond in writing to the safety committee and Buffalo Sewer Authority board within 30 calendar days from the date recommendation is submitted... [CWA and the Buffalo Sewer Authority]

When a camera person is called on to do work that he or she considers hazardous and a difference of opinion arises, then same shall be settled between Local 644 and the Producer... [IATSE Local 644, New York City]

If the supervisor [upon notification of a hazard] does not respond, or is not able to address and/or correct the condition within a reasonable period of time, the employee may direct this concern to the health and safety committee. The committee will investigate, study, and make recommendations concerning such problems and any additional findings, and will report its recommendations to the Safety Committee, who will respond within a reasonable period of time. [UBC]

Whenever any purported or actual violation [of applicable health and safety laws] is found, it shall be reported through the shop steward to the employer. Upon receiving the report... the employer will address itself to the matter within 48 working hours... starting corrective action if a violation exists. [Nurses United, CWA Local 1168, Buffalo, NY]

All matters relating to health and safety shall be considered appropriate matters for discussion and recommended resolution consistent with the agreement by campus and university level labor-management committees. A labor-management committee or the state UUP safety and health committee considering a safety issue may refer the matter in whole or in part to a labor-management committee at any level or the State-UUP safety and health committee for assistance in resolving the matter. [United University Professions (UUP)/NY State United Teachers, AFT and State University of NY]

An employee may raise a safety concern with his foreman, but if resolution to the employee's satisfaction does not result, such matters may be referred to the grievance procedure. If after a reasonable time Local 301 believes that the company has not resolved the safety concern... Local 301 may grieve pursuant to the National GE-IUE grievance procedure. [IUE Local 301, Schenectady, NY]

A. Special Grievance Process

Unionists disagree about the wisdom of adding a second grievance process for a particular issue such as health and safety. However some locals have found that employers who will not agree to hear health and safety issues within the regular grievance process will agree to a special procedure.

Grievances which cannot be settled by the immediate supervisor within one working day shall be reduced to writing and appealed within one working day to the department head. Department heads shall respond to the grievances, in writing, within two working days of receipt of grievance. The employee, if not satisfied with the Step 2 determination, may ask CSEA to arbitrate the grievance by sending copies of pertinent documentation and a copy of the grievance to the CSEA executive director or designee within two working days of receipt of the determination. The arbitrator must conduct a hearing and render a final and binding decision within 10 days of receipt of the appeal to arbitration. Occupational safety and health arbitrators must be familiar with occupational safety and health issues. All appeals, requests, and determinations will be either hand-delivered or sent certified or registered mail, return receipt requested. All fees and expenses of the arbitrator shall be shared equally by CSEA and the employer. [CSEA/AFSCME Local 1000]

Grievances alleging a violation of this article, or alleging the existence of any safety violation, or otherwise arising from a health and safety condition or dispute shall be subject to review through the procedure established in Article 34, Section 34.1(b) of the Agreement and shall not be arbitrable. [New York Public Employees' Federation (PEF), and State of New York]

B. Expedited Arbitration

Some contracts allow for informal efforts to resolve health and safety problems but call for accelerated arbitration if these efforts fail.

In the event the parties cannot resolve a difference arising over a safety and/or health question, the issue shall be discussed in an emergency meeting held on one day's notice at the final step of the grievance procedure. If it cannot be resolved in the meeting and there is no agreement to extend discussion, the union shall have the right to refer the matter for resolution by the special arbitration procedure described below. The special procedure provides for a panel of three arbitrators who shall be available to decide health and safety issues exclusively. The arbitrator shall be obliged to render a decision within five days from the date of the hearing, unless the parties mutually agree

to extend the time period for the decision. [Model language - Labor and Occupational Health Program at the University of California, Berkeley]

All grievances related to health and safety must be handled within 24 hours. If they are not resolved to the satisfaction of both parties at step one, the second step will be skipped. [Model language - SEIU's health and safety manual]

If an employee believes he/she is being required to work under unsafe conditions, such employees may: (a) notify such employee's supervisor who will immediately investigate... and take corrective action if necessary; (b) notify such employee's steward, if available, who may discuss the alleged unsafe condition with...employee's supervisor (c) file a grievance at Step 2 of the grievance procedure within 14 days of notifying such employee's supervisor if no corrective action is taken during the employee's tour; and/or (d) make a written report to the union representative from the local safety and health committee who may discuss the report with such employee's supervisor ... Any grievance... [on] safety or health... which is subsequently properly appealed to arbitration... may be placed at the head of the appropriate arbitration docket at the request of the union. [American Postal Workers Union and National Association of Letter Carriers with U.S. Postal Service]

C. Immediate Binding Arbitration.

Some unions decide to go directly to arbitration bypassing previous steps in the grievance process.

In the event that the health and safety committee cannot resolve a dispute regarding health and/or safety, then either side shall have the right to submit the question to immediate and binding arbitration in accordance with the arbitration provisions of this agreement, waiving all preceding steps in the grievance procedure. [Model - ACTWU]

Arbitration can be costly and time-consuming. Employers know most locals cannot arbitrate every hazard and may take advantage of that fact. In addition, few arbitrators have experience with workplace hazards and, therefore, may be inclined to rule for an employer who says; "There's no other way to get the job done."

D. Job Actions and Strikes

Some locals negotiate language allowing officers, health and safety reps, or others to shut down unsafe jobs or call strikes to protect members from unsafe work. Ideally the no strike clause should exclude situations where: (1) the union (steward, safety representative, business agent) believes in good faith that a serious hazard exists; (2) management has been made aware of the hazardous situation, the basis for the belief that a serious hazard exists, and recommended actions; and, (3) members remain at apparent risk.

Notwithstanding any other provisions of this agreement, the local union may strike when in good faith it determines that dangerous or unhealthful conditions of work exist. [Model language - Labor Occupational Health Program, University of California, Berkeley]

Right to Strike!

Any disagreement or dispute relating to safety and/or health which cannot be resolved by the committee may be treated as a grievance and processed through the regular grievance procedure. When written notice is given that a grievance based on an alleged health and safety violation is not satisfactorily settled in the first level, it shall be placed immediately in the last level of the grievance procedure. The union, retains the right to strike when it determines that dangerous or unhealthy conditions of work exist. [Model language - SEIU's health and safety manual]

...in instances where adequate safety and/or sanitary health conditions have not been provided and maintained, a job may be stopped immediately. [Plumbers Union and the Contracting Plumbers Association of Brooklyn and Queens]

Specific Hazards

Some locals avoid negotiating language on specific hazards believing a broad general duty clause offers more flexibility to change approaches as new information is collected. Other union activists believe specific language is easier to enforce. Depending on past history with the employer, either approach can be effective.

Before making a final decision, consider the government regulations covering the hazard about which you are concerned. These regulations are likely to be used by management and arbitrators as the measure of whether the general obligation or duty has been met. If government regulations are non-existent, vague, or inadequate the general duty clause may be of little help.

Before proposing language on a specific hazard, ask your international's health and safety department or experts at a local university or COSH group to review it. They can help make sure you've proposed the most effective solution to the problem and have the latest evidence to show why relief is needed.

In the case of complicated or controversial hazards it may be best to negotiate the establishment of a joint committee to develop guidelines related to the hazard.

On the following pages are some examples of language covering specific hazards. This list is not intended to be comprehensive but should give locals ideas about the types of protection that have been bargained around the nation.

Work Load and Heavy Lifting

The employer agrees that where boxes weigh over 100 pounds on a continuing basis, it will make every effort to work with suppliers to see that weights are reduced... [UFCW 342-50, Mineola, NY]

Workload

Longshoremen on cargo handling operations shall not be required to work when in good faith they believe that to do so would result in an onerous work load. The Union pledges in good faith that the onerous work load claim will not be used as a gimmick. The employer shall have the option of having the men claiming onerousness stand by until a decision is reached or 'working around' the situation until it can be resolved. [Pacific Coast Longshore Contract ILWU and Pacific Maritime Association, July 1979]

Temperature (see also, Air Quality)

The employer shall provide a heated waiting room in which drivers may wait, and/or inside men may change their clothes, in every garage where it is practically possible [NYC Taxi Drivers/SEIU]

The state agrees to restrict, insofar as possible, the scheduling of routine outdoor maintenance work where the ambient outdoor temperature is zero degrees or below... scheduling routine outdoor maintenance work during periods of extreme wind chill or extreme heat should be carefully evaluated to avoid exposure... to the possibility of frostbite or hypothermia, or... heat exhaustion... Where such work does occur,supervisors and employees should be made aware of the impact of working under such conditions and... informed as to how to protect themselves from the effects of such exposure. [CSEA & NY State Operational Services Unit]

Cleanup or Removal of Toxic Substances

Although the New York State Right to Know Law, OSHA §1910.120 and its equivalents in state plans require training for workers prior to clean-up or removing hazardous materials, adding language to your contract makes any infraction a contract violation as well as an illegal act. Contract violations are often easier to correct promptly.

Assessment

Prior to clean-up or removal of any known or unknown substances, the employer will determine what the substance is, what toxic properties it contains, proper and safe method of working with substance, and what personal protective equipment is necessary...

Timely Provision of Information, Training, and Equipment

The information, training, and personal protective equipment will be provided to the employee prior to clean-up or removal... Employees will not be required to clean up or remove substances unless the provisions of this section have been met. [CSEA/AFSCME 1000 model]

Radiation

... where devices which emit ionizing radiation are used,the company will continue to maintain safety standards ... not less rigid than those adopted by the Nuclear Regulatory Commission and will maintain procedures designed to safeguard employees and will instruct them as to safe working procedures involving such devices. [USWA and LTV]

Badge readings for all employees exposed to radiation will be done as required by law and the result will be made available to employees. If in the opinion of the doctor in charge of the x-ray department, time away from the job is necessary because of said reading, the hospital, at its' discretion, will either transfer the employee or grant appropriate time off with pay. [SEIU 585; Monsour Medical Center]

Lock-out and Tagging of Energy Sources

Wherever people must work within potentially dangerous areas during equipment maintenance or repair a system must be put in place for identifying and assuring that energy sources are not inadvertently activated. By negotiating contract language, local unions can clarify and expand on the current OSHA regulations, and assure a prompt response in the workplace.

All employees who may need to lock-out any machinery shall be provided with a good lock. The lock shall have the individual's name and other identification on it. Each employee shall have the only key to his/her lock.... All energy sources which could activate a machine must be locked out. All electrical circuits shall be tested to assure that no electrical failure will energize the equipment regardless of the position of the switch. Fully-interlocked safety blocks should be utilized whenever necessary. If it is impossible to lock out an operation, it will be tagged out. Each employee shall have the right to tag a machine or operation which he/she deems to be unsafe or dangerous to operate. For this purpose, management shall provide suitable tags which must be signed and dated with a brief description of the problem. After tagging a machine or operation, the employee shall immediately notify the supervisor who must then notify maintenance. In the event there is a dispute as to whether... the tag should be on the machine,there shall be an immediate meeting of the union and management safety representative... [CSEA/AFSCME 1000 model]

Equipment Maintenance and Unsafe Vehicles

Note: The International Brotherhood of Teamsters' National Master Freight Agreement contains extensive language on truck safety which can easily be adapted for other situations. OSHA is also developing a vehicle safety standard which should be available by early 1992.

Sample language which refers to trucks can be easily adapted to cover cars, fork lifts, and other motor vehicles. Motor vehicle accidents are the dominant cause of occupational fatalities in most groups of workers in both the public and private sector.

No employee shall be compelled to take out equipment that is not mechanically sound and properly equipped to conform with all applicable city, state, and federal regulations. All equipment refused because it is not mechanically sound, or properly equipped, shall be appropriately tagged, so that it cannot be used by any other drivers until maintenance has adjusted the complaint. [IBT 398, Rochester, NY]

Motor vehicles and power equipment which are in compliance with minimum standards of applicable law shall be provided to employees who are required to use such devices. [AFSCME District Council 37, New York City]

Employees will not be required to use unsafe tools or equipment or disciplined for refusal to use same. However, employees will be responsible for reporting unsafe... tools or equipment so that repairs... can be expedited. If... equipment has been properly tagged to indicate that it is unsafe & should not be used... it shall be with-drawn from service until proper repairs are made & the tag is removed and signed off by the person responsible... [IAM]

All equipment which is refused because not mechanically sound or properly equipped, shall be appropriately tagged so that it cannot be used by other drivers until the maintenance department has adjusted the complaint. [Teamsters IBT and Central States Area Tank Truck Employers, November 1976]

Employees shall not be held responsible for vehicles not properly equipped to comply with the State Motor Vehicle Laws and shall be compensated for fines and time lost if summoned to court, etc., because of same.

Personal Security

39% of occupational fatalities among women were the result of homicides, compared to 11% for men.
Nat. Traumatic Occupational Fatalities 1980-1985, NIOSH 89-116

Employees who work at night, with potentially dangerous clients or in high-crime areas have a right to expect the employer to take reasonable precautions to protect them. Examples might be lights in parking lots, security guards, escorts, etc.

When employees express reasonable concerns... in connection with assignments in localities in which it is reasonable for them to believe they may be the victims of assault or other criminal activity, the employees will not be required to work alone. [CWA and AT&T]

In work sites where actual violence is a continuing problem, the Commonwealth shall provide adequate safeguards, including security guards where necessary. ... At those work sites where employees are continually faced with threats of physical harm and/or verbal abuse, local representatives of the Employer and the Union shall meet to develop local policies to deal with such occurrences. [Commonwealth of Pennsylvania and SEIU Local # 668]

The employer will, within limits of its direct control, ensure employees' safe passage on streets, parking lots, and other areas near the office. [The Newspaper Guild and Associated Press]

Working Alone

...there must be two qualified men... when work is being done on live primaries and/or appurtenances; they shall not be separated by a distance greater than a span length. ... there must be two qualified men... working together (a) under storm conditions on the refusing of branch circuits and transformers, and (b) at any time, on the replacing of live primaries or repairing of live street lighting circuits. ... when employees, working alone, are confronted with work which would be dangerous for them to undertake by themselves, they shall be furnished assistance upon request. [IBEW 503, West Nyack, NY]

Noise

The employer shall keep noise at a level which will not cause aural or other injury. [The Newspaper Guild, model contract]

The company shall maintain a hearing conservation program to include (1) noise exposure analysis, (2) control of noise exposure, and (3) measurement of hearing through audiometric testing. [IBEW 503, West Nyack, NY]

Lighting

The employer will engage a lighting consultant to produce a report on the best lighting conditions for the type of work performed by employees whenever

new bureaus are instituted or relocated, and where possible, within reasonable financial limits, at existing bureaus. [The Newspaper Guild and Associated Press]

Air Quality and Ventilation

Examples are presented which deal with a few of the many potential hazardous air contaminants that a local might want to negotiate language over. Many of these issues would be appropriate to consider for other contaminants as well.

General

The employer shall provide a workplace with sufficient ventilation, heat and air conditioning to create comfortable work conditions. [CSEA\AFSCME Local 1000 model]

Meat wrapping

Employer agrees to use cool rod type systems or mechanical devices in wrapping operations. [UFCW 342-50, Mineola, NY]

Ethylene Oxide

The hospital agrees that the level of ethylene oxide (EtO) in central supply will not exceed one part per million on average over an eight-hour day or ten parts per million in any 15-minute sample. [SEIU Local 150T; not New York]

The OSHA action level for ethylene oxide is now 0.5 ppm, and the NIOSH recommended limit is 0.1 ppm as an 8-hour time-weighted average. The OSHA 15-minute excursion limit is 5 ppm.

Carbon Monoxide

Company shall implement in a timely manner consistent with the hazards [identified through a survey mandated elsewhere in contract] a reasonable program for control of carbon monoxide which shall include but not be limited to:

Timetable

Timetable for correcting the problem.(a) A reasonable time schedule for the implementation of the steps necessary to eliminate or control the hazard as identified in the survey; Alteration of work instructions to reduce or eliminate hazard.

Work Procedures

(b) Evaluation and, where necessary, amendment of safe job procedures for gas system maintenance programs with respect to equipment whose failure might result in exposure to dangerous concentrations of carbon monoxide. Copies of these procedures shall be included in the control program; Alarms, monitoring devices,and protective equipment.

Warning and Monitoring

(c) Installation of adequate automatic carbon monoxide sensing devices equipped with alarms and use of portable carbon monoxide monitors where necessary to protect employees... Monitors, alarms, and other parts of the detection and warning system shall be tested on a periodic basis sufficiently frequently to insure reliable operation... (e) Provision of an adequate number of approved breathing apparatus appropriate for emergency operations and escape in locations readily accessible to employees.

Training

(f) Training of employees in recognition of the hazards and symptoms of carbon monoxide poisoning. ...

Emergency measures.

(g) Posting of emergency escape procedures in areas of potential hazard; (h) An emergency rescue program which shall include provisions for treatment of carbon monoxide exposures... [USWA & Bethlehem Steel]

Asbestos Survey

The employer will survey all buildings for asbestos-containing sprayed or troweled-on surface materials and asbestos-containing pipe and boiler coverings. The survey will be completed by [date] with results made available to the union.Label the hazard. All asbestos-containing areas found in the survey will be, labeled with the words, ***"Caution -- Asbestos: Do not disturb without proper training and equipment."*** [SEIU-model]

Schedule to control or eliminate hazard

The employer will repair or remove all damaged asbestos areas found in the survey by [date]. All abatement will be performed in accordance with training

and equipment standards set by the Environmental Protection Agency (EPA).

Protect employees in the meantime

Employees not directly involved in abatement activities will be evacuated. Before they are returned the employer will conduct air sampling to assure that asbestos levels are not elevated. Develop a written program to protect employees in the future. The employer will develop an on-going written special operations and maintenance plan to regularly inspect any asbestos that may become friable and to protect custodial and maintenance staff from incidental exposure. Such employees will be trained in proper cleaning and maintenance including the use of HEPA vacuums and wet mops and establishing procedures assuring that asbestos-containing materials are not disturbed during building repair and renovation. [SEIU model]

Shorter version

The company shall develop an asbestos abatement program to include training in asbestos handling. ... A plan for the identification of asbestos in company facilities, efforts to minimize asbestos exposure, and appropriate monitoring and sampling on a regular basis. Any job classification not trained in asbestos handling will not remove asbestos. [IBEW 503, West Nyack, NY]

Pesticides

Particularly in situations involving misuse or abuse, pesticides can be a significant health concern for workers. Pesticide applications and "inert" carriers can also contribute to indoor air quality problems.

Least Toxic Alternatives

Control of insects, mites, rodents, weeds, molds, and other pests shall follow the principle of toxic use reduction and substitution. Least toxic, integrated pest management (IPM) shall be used to prevent and control pest infestations, rather than routine or emergency pesticide applications. IPM prevents infestations by eliminating sources of food, water, shelter, and access, and through sound horticultural practices. When pest control is needed, non chemical interventions, biological controls, and least toxic materials such as boric acid, silica gel, and insecticidal soaps shall be used.

Administrative Controls

Chemical pesticides shall only be used as a last resort; shall be applied only by trained and certified personnel; and shall not be applied in the presence of employees other than those involved in the application. Employees in affected areas shall be notified at least 24 hours in advance of any chemical pesticide application through posted signs or memos. [Model - New York Coalition for Alternatives to Pesticides]

Video Display Terminals, Cathode Ray Tubes

Note: The Newspaper Guild has extensive language regarding ergonomics and VDT training.

This technology is increasingly affecting not only office workers but also production and service workers. Similar controls might be appropriate for other highly repetitive tasks or tasks involving significant eye strain.

Breaks

Employees shall not be required to continuously operate a VDT terminal for more than 45 minutes without assignment to alternative work of a visually less demanding nature for a period of not less than 45 minutes. Meal periods and... rest periods shall count toward meeting the requirement.

Reassignment upon injury, illness or pregnancy.

Upon submission of proof ... that an employee is physically incapable of operating a VDT terminal due to injury, disability, or pregnancy, the board shall make every effort to assign... appropriate, alternative duties in the same title for the period of such disability...

Training

The board shall develop a module on VDT operational safety for inclusion in orientation training programs. Such training... shall also be offered to current employees as part of any regular right to know training given... Equipment should be designed to minimize negative effect of VDT use. The board shall advise the union of the installation and proposed use of new VDT equipment and shall make service logs available ... to qualified, authorized, union personnel. [CWA and NYC Board of Elections]

Eye exams

Company will... provide an initial eye examination for each employee who

regularly works a substantial portion of each shift at a VDT and will make available a follow up exam every two years. If it is determined... that special glasses are needed... company will purchase those special glasses if the cost... is not covered by insurance. The examination will be made by a physician mutually agreed upon by the company and Guild.

Equipment Maintenance — *VDTs shall be inspected/adjusted every six months by company technicians and the date of the inspection affixed to each machine.*

Radiation study — *...company shall conduct a radiation study including ionizing and non-ionizing radiation... the raw tests results of the study shall be provided to the Guild on a machine by machine basis.* [The Newspaper Guild and Albany, NY Times-Union]

Ergonomic study — *Company will conduct... an ergonomic study of working conditions relating to the operation of VDT terminals ... The tests... shall include a study of levels, quality, placement of lighting, seats,and desks. A copy of the written report shall be given to the Guild immediately upon its receipt by the company. All reasonable recommendations ... shall be promptly implemented by the company.* [The Newspaper Guild and Scholastic, Inc., NYC]

Infectious Disease

The employer will, at a minimum, institute the following measures to control the spread of infectious disease:

Immunization — *Each department or agency that provides medical care...shall establish and promulgate policies for the periodic testing and immunization of employees who have been exposed to Hepatitis B. Such policies shall be consistent with generally accepted medical practices.* [Public Employees Federation/SEIU Local 4053]

Physical exams — *...make available free annual physical exams. Special attention will be given to detecting occupational illness, including TB and hepatitis.* [SEIU]

Protective clothing — *...make available all protective clothing (i.e., gloves, gowns, aprons, masks) to prevent the spread of disease*

Waste Disposal — *...establish a contaminated waste disposal system, including tagging and "red-bagging," and will assure that all contaminated wastes are handled properly;*

Laundry and linen — *...assure that all laundry and linen from contagious patients are handled separately and in a safe manner.* [SEIU model]

Right to information and opportunity to avoid hazardous situations — *Teachers shall not be required to enter the home of any student when it is known that the student or any family member present...is suffering from a communicable disease. Whenever a student is identified as a carrier of hepatitis B or tuberculosis, members of the bargaining unit who work with the student shall be so informed.*

Right to Testing — *The [employer] will provide,at its expense, an examination and blood test or other needed tests...to such members of the unit who...work[ing] with such student.* [New York State Teachers Union]

Training — *The city agrees to provide training... on proper handling of infectious materials... The District shall provide in-service training to unit employees regarding AIDS/ARC, its transmission, and the proper handling of blood and bodily fluids.*

Protective equipment — *The city shall take appropriate steps to ensure that the proper equipment for handling blood or bodily fluids in available at all workplaces.* [United Public Employees 790, California]

Post-Exposure Policy — *During all work hours trained medical personnel will be available in person or via telephone to provide counseling regarding an appropriate response to occupational exposures to potentially contaminated blood or body fluids. Counseling, appropriate testing and follow-up testing, and appropriate*

prophylactic treatments including AZT, shall be provided at the expense of the Employer, during work time,.within twenty-four (24) hours of potential exposure. Such medical services shall be provided independent from the Company physician, if the employee so elects, and complete confidentiality shall be maintained with no report to the Employer. The Employer will preserve, actively pursue necessary permission to test, and test any source blood or body fluid. Employees who become aware that they carry an infection, and who perform tasks which could result in transmission to clients or co-workers are obligated in good conscience to report this to the Employer's infection control officer. The joint health and safety committee will develop and distribute a list of job titles or tasks with unacceptably high risk of transmission, to assist employees in this decision. Such reporting will be confidential. Employees who report under this section will be guaranteed assignment to duties which reduce the risk of transmission to clients and co-workers with no loss in pay, benefits, or seniority, and without discrimination. As required by federal law, all reasonable accommodation will be made by the Employer in placing employees so handicapped in appropriate positions for which they are qualified. The Union agrees to make reasonable accommodations such as individual changes in job classifications or descriptions which are necessary to appropriately place an employee so handicapped. [Model]

Stress

See the Service Employees International Union's (SEIU) Stress: Contract Provisions (1982)

Temperature, air quality, ergonomics, inappropriate equipment, electronic monitoring, and other working conditions can contribute to excessive stress. Throughout this section are samples of this kind of language. Contract language that gives workers more control over work methods, schedules, and pace will also help minimize stress. Most of the examples below were negotiated by locals outside New York but there is no reason they couldn't be won here as well. Workers compensation for illness related to occupational stress is currently the subject of considerable debate nationwide. There is also a growing body of science regarding shift-work which might yield significant improvements in safety and quality of life.

General

The employer agrees to take all reasonable measures to reduce all factors leading to workplace stress. [Model}

The employer agrees to organize production with due regard for the mental health and well-being of all employees.

...agrees to provide a work environment free from health and safety hazards, including undue stress or tension

... recognizes its obligation to provide, insofar as possible, working conditions which do not cause injury to employees' mental health or well-being. The employer and union shall meet... to bargain over any conditions alleged to cause employees stress or tension, with the view toward alleviating such conditions. The health and safety committee, consisting of equal representatives from the union and management, shall investigate present working conditions and their relationship to on-the-job stress and tension. Within six months... said committee shall complete its study and make recommendations to management as to what action... is needed to reduce stress and tension...

Shift work

Subject to the needs of the department, employees shall not be required to work shifts...other than the shift for which they were employed. The hospital shall make reasonable attempts to assign employees to regular shifts and then, subject to department needs, not require change of shifts. However, the employer reserves the right to employ personnel on schedules combining one or more shifts or parts of shifts. [SEIU 767]

Staff members shall be assigned to work on specific shifts. Assignments will be made upon hiring and will be changed only by mutual agreement. [Model]

Flexible Scheduling

It is recognized that unless otherwise established by agreement or practice, the regular County Business hours are 8:00 am to 5:00 pm and adequate coverage shall be maintained to assure the highest quality of service. Alternate

work schedules based on eight (8) hour shifts with either one-half (1/2) hour or one (1) hour lunch periods may be established with starting and quitting times between 6:00 am and 6:00 pm. [Santa Clara County CA and SEIU Local 715]

Overtime

No employee will be required to work more than eight hours per day, five days per week. [Model]

No employee will be required to work more than four hours overtime in any one (1) day or more than twenty-eight (28) hours overtime in any work week. There will be no overtime worked so long as any employee is on layoff due to lack of business who has not been offered re-employment... [Industrial Building Maintenance and SEIU Local 579]

Staffing

Staffing levels will be set so as not to impose an undue burden on employees nor compromise patient care. [Model]

Relief Operators

The Employer shall employ relief operators and train them to be able to relieve any work on the plant production jobs. Such relief operators will be in sufficient number so that each employee is relieved from a work station at least (amount of time) each day. [Model]
[Paul Chown, Workplace Health & Safety: A Guide to Collective Bargaining. ©1980 UC Berkeley Center for Labor Education & Res.]

Breaks

Each Company shall authorize all employees to take adequate relief periods which shall be approximately in the middle of each half-day of work. In the event that any question arises as to the adequacy of the relief periods, twelve (12) minutes within each four (4) hours worked shall be presumed to be adequate. The twelve (12) minute relief period is intended to provide the employee with twelve (12) minutes away from the job and is not meant to be a required time to go to the lavatory. Employees should be allowed to leave their work to go to the lavatory as reasonably required. [Teamsters and Cal Processors 1976]

Workload

Maximum production... shall in no case be a rate of speed which endangers health and safety... [United Rubber Workers]

There shall be no speed up or increase in the workload so as to impose undue burden upon any employee... or where the effect of such speed up or increase in workload is to diminish the work force or lessen the total number of hours worked... [SEIU]

Career advancement

The employer shall make every reasonable effort to promote the continuing education,training, and upgrading of employees. And, the employer shall make every reasonable effort to meet personnel needs through internal promotion and career development ... [Model]

Change in the Work place

Before reorganizing, introducing new methods, changing staff responsibilities, or making other changes, the employer will consult the union and affected employees. [Model]

The Employer-members of the Association shall give to the Union two weeks' notice in writing of the intention to install a labor saving device. [Bronx Realty Advisory Board and SEIU Local # 32B-32J]

The University shall notify the Union at the earliest possible date, but no later than 2 months in advance, of any introduction of automation or equipment that might result in (a) a reduction or displacement of bargaining unit employees, (b) substantial changes in an employee's job, or (c) changes in job classification. [Boston University and SEIU Local # 925]

Respect

The employer's policies and the actions of its managers will assure proper dignity and respect for all employees. No member of the bargaining unit will be required or expected to do personal chores for any other staff member. [Model]

Stress leave

In recognition of the medical condition of some patients and the nature of work performed ...an employee may use sick leave to alleviate temporary periods of stress.... [SEIU model]

Discrimination and Harassment

See the section on Assuring Just Treatment.*The inability to respond to harassment or discrimination can be a significant source of stress.*

Article XVI. Sexual Harassment

The University recognizes that no employee shall be subject to sexual harassment. In this spirit it agrees to post in all work areas a statement of its commitment to this principle. Reference to sexual harassment includes any sexual attention that is unwanted. In the case of such harassment, an employee may pursue the grievance procedure for redress. Grievances under this Article will be processed in an expedited manner. If, after the grievance is resolved in favor of the employee, the employee feels unable to return to his/her job the employee shall be entitled to transfer to an equivalent position at the same salary and grade if a vacancy then exists for which he/she is qualified. [Boston University and SEIU Local # 925]

Reproductive Hazards (Male & Female)

Although this has been dealt with in very few workplaces to date, it provides an important model for how unions and employers may deal with discrimination between workers determined to be at increased risk due to other genetic characteristics. Genetic screening is already utilized in several U.S. workplaces. Whether an inherited predisposition or sensitivity, which might be detected through genetic screening, is a legally protected disability under the Americans with Disabilities Act of 1990 (ADA) is yet to be determined. The recent U.S. Supreme Court Decision overturning fetal protection policies at Johnson Controls facilities where lead exposure created concerns has further defined the bounds of employer efforts to select a healthy or tolerant workforce rather than engineering a healthy workplace. Employers are also concerned about potential liability from civil suits by damaged children, which are not prevented by Workmens' Compensation restrictions on suing your employer. Women have also faced unjust restrictions from high reproductive risk jobs, even when male reproductive risks may be equally high. Union action should endeavor to maximize the occupational health and equal employment opportunities of all workers, including those capable of having children.

Policy on Potential Reproductive Hazards

A. It is the goal of the Company to fully protect the reproductive health of male and female employees, and to eliminate any risk of damage to unborn children. The Company recognizes that there are several which may be taken when exposure to toxic substances poses a risk to the reproductive health of employees, or to their unborn children. The best alternatives are the replacement of the substance by a safer material; the installation of effective engineering controls, such as enclosure and local exhaust ventilation; and the use of safer work practices. While the transfer of certain male or female employees may be necessary in some cases it will only be considered where:

(1) Substitution, additional engineering controls, and safer work practices are technologically infeasible or ineffective in reducing exposure to the desired levels, and;

(2) The risk of reproductive damage is confined to the group to be transferred.

B. Whenever the Company has reason to believe that a particular substance or substances may pose a risk to the reproductive health of male or female employees, or to their unborn children, the Company will inform the Union and will, prior to any action, discuss with the Union the reasons for its beliefs (with documentation if requested) and the steps to be taken.

C. When determination is made that exposure to a particular substance poses a risk to the reproductive health of male or female employees, or to their unborn children, the Company will replace the substance with a safer material, or will install all feasible engineering controls, and institute safer work practices, in order to reduce exposures to safe or lowest feasible levels. Such steps will be taken even if certain employees are also transferred from the particular job or department.

D. If it is decided that certain employees must be removed from exposure, then the group of employees affected will be defined as narrowly as possible,

taking into account the risks of the particular substance, while providing for the greatest possible element of employee choice consistent with adequate protection of reproductive health and the health of unborn children.

E. No employee removed as a result of this policy will suffer any loss of earnings. Transfers will take place according to existing seniority arrangements. Transferred employees will receive the earnings applicable to the new job, or to the former job, whichever is higher.

F. The Company will provide proper medical surveillance to employees exposed to occupational hazards.

G. The Company will maintain an adequate research program, in order to determine the reproductive and other effects of the substances to which employees are exposed.

H. The Company will not discriminate by sex, race, or age in the hiring or promotion of employees because of alleged differences in susceptibility to reproductive effects caused by toxic substances.

[Model - United Steelworkers of America, 1981]

5 Enforcing Your Contract Language

Part of a contract campaign strategy is a plan for enforcing what you win. Among successful local unions enforcement is a priority from the moment consideration of contract proposals begins to the time the agreement is actually signed.

Locals that already have active, experienced health and safety committees are in the best position to enforce new contract language. However, in describing language and how it will work, don't stop with union activists:

- **Let people know what you have negotiated.** Members and non-members, workers' families, other unions, environmental groups, and even the general public. If the language is hard to understand or legalistic, summarize it in simple words.
- **Make it easy for members to use new language.** Let all members know who they should go to and what will be done about health and safety concerns. Post the names, departments, and phone numbers of stewards or committee members. Run reminders in the local newsletter and make announcements at meetings.
- **Document violations and resolve them quickly.** Keep the initiative by acting on violations right away. If a grievance is necessary and individual members are reluctant, file a group grievance, file on behalf of the local, or seek out activists (don't overlook officers and stewards) who are unafraid.
- **Involve members in what you're doing and the results.** Report on actions and ask for help and ideas at local meetings, through newsletters, by posting notices on bulletin boards, by leafleting, and by talking about health and safety efforts. Avoid grievance settlements or informal resolutions that cannot be discussed or publicized.
- **Establish precedents on health and safety.** By acting immediately on violations, you help determine how future health and safety issues will be handled. If parts of the new language are unclear, look for opportunities that allow you to test the strongest interpretation.
- **Don't hesitate to use pressure tactics** if you have difficulty enforcing new language. Get members involved in petition campaigns inside the workplace and in the neighborhood, ask workers to wear a button or the same color shirt on a particular day, contact local environmental and community groups about the hazard.
- **Be creative.** The quality of life for you and your co-workers, now and in the years to come, may depend largely on these collective actions to improve conditions and practices.