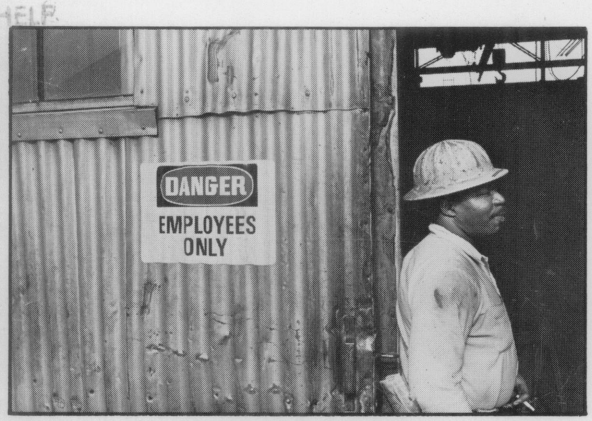
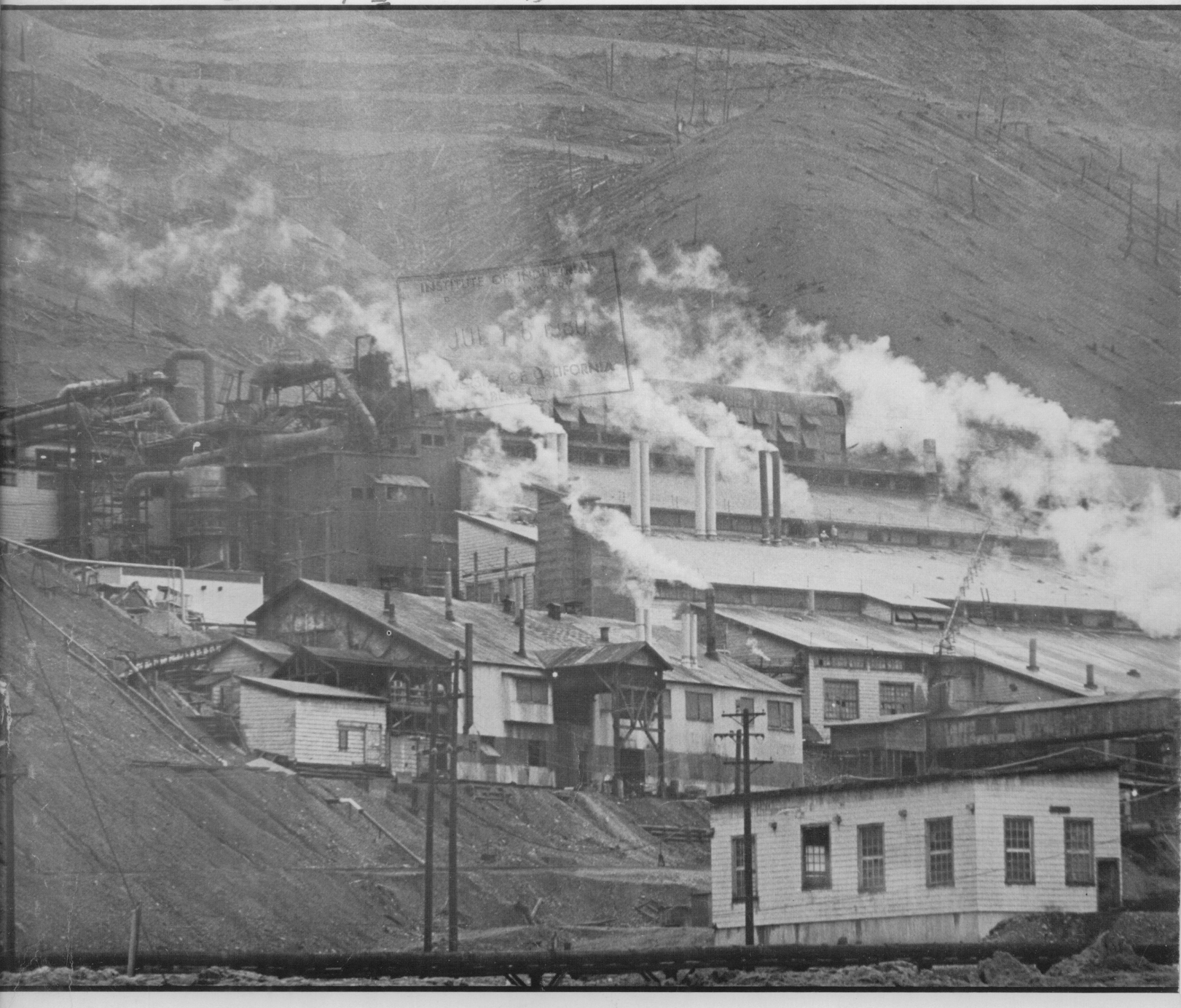


WORKPLACE HEALTH & SAFETY

A Guide to Collective Bargaining



A Labor Occupational Health Program Publication

WORKPLACE HEALTH AND SAFETY:

A GUIDE TO COLLECTIVE BARGAINING

Paul Chown
Labor Coordinator

Labor Occupational Health Program.
Center for Labor Education and Research.
Institute of Industrial Relations
University of California, Berkeley

ACKNOWLEDGEMENTS

This guidebook is based on the achievements of many negotiating committees who have successfully written into union agreements the various kinds of safety and health conditions described in what follows. Today over 80% of all collective bargaining agreements have safety and health language. The collection of clauses is built upon the initial work done by Morris Davis and Bruce Poyer who have contributed greatly to the assembling of this guidebook with their many helpful criticisms, suggestions and editing.

Thanks also to Patty Ayers for her diligent work on format design and typing and Kate Caldwell for coordinating production.

SOME SOURCES OF CONTRACT CLAUSES

Contract Clauses in Construction Agreements
U.S. Department of Labor, Bureau of Labor Statistics
Bulletin 1864
1975

Major Collective Bargaining Agreements: Safety and Health Provisions
U.S. Department of Labor, Bureau of Labor Statistics
Bulletin 1425-16
1976

Employee Relations
The Bureau of National Affairs, Inc./Job Safety and Health
0149-7510/78
1978

TABLE OF CONTENTS

I. INTRODUCTION 1

Bargaining for Health and Safety 1
Getting Ready for Negotiations 2
Determining Goals and Priorities 3
Health and Safety Checklist 3

II. PREPARATIONS FOR BARGAINING 4

A. Information The Union Should Ask The Employer(s) To Provide Before Negotiations Begin 4
B. Information About Past Health And Safety Practices Of The Union, The Workers, And Management, Whether Or Not Such Practices Have Been Formalized In Written Rules Or Procedures Or Specified In The Agreement 4
C. Contract Analysis Checklist 6
D. Housekeeping Checklist 6
E. Protection And Safety Equipment Checklist 7
F. Health Protection And Medical Treatment Checklist 7
G. Worker Compensation Checklist 8

III. COLLECTIVE BARGAINING CLAUSES 9

1. General Duty Clauses 9

a. Discussion 9
b. Sample Clauses
1. The Company Makes Every Reasonable Provision For Health And Safety 10
2. The Company Provides A Safe And Healthy Place To Work And Furnishes Safety Devices 10
3. The Company Agrees To Continue To Provide For Safety And Health 10
c. Models
1. All-Inclusive Clauses Committing Employer To Health And Safety 10
2. More Limited Recognition By The Employer Of His General Duty Obligations 11

2. General Duty To Bargain -- Recognition Clauses Used For Health And Safety 11

a. Discussion 11
b. Sample Clause
1. Scope Of Agreement All Inclusive: The Union Is Granted Complete Bargaining Rights Including "Other Conditions Of Employment". 11
c. Model
1. All-Inclusive Union Recognition Clause 11

3. Sanitation, Housekeeping, And Specific Working Conditions. 12

a. Discussion 12
b. Sample Clauses
1. Provides For Clean Water, Sanitary Conditions In Locker Rooms, Etc. 12
2. Provides Commitment For Safe, Healthy And Sanitary Working Conditions 12
c. Models
1. All Purpose Clause Covering Sanitation, Wash-Up Facilities, Wash-Up Time, Clean Lunch Rooms And Showers For Workers Engaged In Dirty Occupations 12
2. More Limited Clause Applying To Average Work-Place; Provides For Clean And Sanitary Facilities 13

4. Lighting, Ventilation And Noise 13

a. Discussion 13
b. Sample Clauses
1. The Employer Agrees To Provide Good Ventilation, Lighting, And Heat 14
2. The Employer Agrees To Proper Ventilation 14
3. The Employer Agrees To Noise Control 14
4. The Employer Will Regularly Test For Air And Noise Pollution 14
c. Models
1. Comprehensive Clause Directed At Reduction of Noise Hazards 14
2. Clause Providing For Decent Ventilation, Light And Heat Standards 15
3. Clause Providing For Good Ventilation And Air Conditioning 15

5. Protective Clothing And Equipment 15

a. Discussion 15
b. Sample Clauses
1. The Employer Agrees To Provide All Necessary Clothes And Safety Equipment 15
2. Employer Determines What Is Needed And Pays For Such Equipment 16
3. Employer Pays For Tools Required By The Job 16

c. Model
1. The Employer Is Required To Pay For All Safety And Health Items, Including Laundry Of Clothes 16

6. Crew Size, Working In Isolation, And Excessive Weight Lifting 16

a. Discussion 16
b. Sample Clauses
1. Prohibition Against Excessive Weight Lifting 17
2. No Excessive Weight Lifting 17
3. No Employee Required To Work Alone 17
4. Crew Size Specified 17
5. Work Assignments Specified 18
c. Models
1. Prohibits Working Alone 18
2. Prohibits Excessive Weightlifting 18
3. Specifies Number Of Workers To Be Assigned To Certain Operations 18

7. Protection From Hazardous, Dangerous Work Or From Unsafe Materials Or Processes 18

a. Discussion 18
b. Sample Clauses
1. Prohibits Requiring The Performance Of Dangerous Work 18
2. Back-Up Worker Required For Dangerous Substances 19
3. Prohibits Use Of Certain Toxic Substances 19
c. Models
1. Employer Will Not Require Or Assign Dangerous Work 19
2. Worker May Refuse Hazardous Work 19
3. Prohibits Use Of Listed Harmful Substances 19

8. First Aid, Shop Medical Care And Other Arrangements For Medical Treatment At The Worksite 19

a. Discussion 19
b. Sample Clauses
1. Provides For First Aid Training 20
2. Provides For Immediate First Aid And Ambulance Service 21
3. Provides For Guaranteed Transportation For Medical Care 21
4. Provides For Full-Time Physician And Nurse. 21
c. Models
1. First Aid Training For All Employees. 21
2. Simple First Aid Clause 21
3. Employer Committed To First Aid Training 21
4. Provides For First Aid And A Plant Nurse 21
5. Provides For Physician In Plant 21
6. Provides For Transportation For Medical Treatment 22

9. Regular Rest Periods And Relief Operations 22

a. Discussion 22
b. Sample Clauses
1. Provides For 12 Minute Breaks And Bathroom Privileges 22
2. Relief Time And Other Allowances 23
c. Models
1. 15 Minute Breaks Guaranteed Every Two Hours 23
2. Provides For Relief Operators For More Extended Breaks. . . 23

10. Medical Surveillance And Checkups 23

a. Discussion 23
b. Sample Clauses
1. Provides For Periodic Medical Examinations 24
2. Physical Examinations Will Be At The Worksite 25
3. The Union To Receive Results Of The Examination 25
4. Multi-Doctor Review 25
c. Models
1. Medical Surveillance And Check-Ups 25
2. Doctors Selected By Workers 25
3. Tests During Working Hours 26
4. Right Of Worker To Refuse Testing 26
5. Right To Arbitrate Medical Differences 26

11. Workplace Monitoring For Potentially Dangerous Health Conditions 26

a. Discussion 26
b. Sample Clauses
1. Company Provides Measuring Devices 27
2. Union Informed Of Medical Exposures 27
c. Models
1. Employer Provides Systematic Monitoring 27
2. Union Permitted To Take Own Measurements 27

12. Payment For Time Lost From Work While Undergoing Medical Examination Or Treatment 27

a. Discussion 27
b. Sample Clauses
1. Provides Payment For Transportation 28
2. Provides Pay For Injured Worker For Lost Time From Work. 28
3. Provides Lost Time Pay For Subsequent Visits. 28
c. Models
1. Worker Paid Lost Time For Doctor Visits 29
2. Workers Paid For Balance Of Shift And Following Visits 29

13. Payments To Supplement Wage Losses Caused By Injury Or Illness On The Job 29

a. Discussion 29

b. Sample Clauses
1. Supplemental Benefits For Industrial Injury 29
c. Model
1. Guarantees No Wage Loss 30

14. Rate Retention, Job Transfer And Seniority Rights 30

a. Discussion 30
b. Sample Clauses
1. Worker Guaranteed Old Rate For 6 Months When Assigned Light Duty Job 31
2. Higher Rate Retained On Temporary Assignment 31
3. Special Seniority Consideration For Partially Disabled. . . 31
4. Super Seniority For Partially Disabled 32
c. Models
1. Worker Retains Higher Rate For Duration Of Employment. 32
2. Worker Has Right To Transfer Including Long Training Time On New Job. 32
3. Worker Given Plant- Or Company-Wide Bump Rights 32
4. Modification Of Seniority Rules 32

15. Benefit Production For Workers With Long-Term Job Injury Or Illness 33

a. Discussion 33
b. Sample Clauses
1. Worker Accumulates Seniority When Receiving Workers' Compensation 33
2. Employer Gives Vacation And Pension Credits 34
3. Worker Accumulates Seniority For Three Years. 34
4. Six Months Insurance Coverage 34
c. Model
1. Protects Seniority, Vacation, Health And Welfare And Pension Benefits 34

16. Worker Training In Health And Safety. 34

a. Discussion 34
b. Sample Clauses
1. All New Workers Given Safety Training 35
2. All Workers To Participate Actively In Safety Instruction And Program 35
3. Each Company To Promote Safety 36
4. Employer Maintains Continuous Safety Education. 36
c. Model
1. Provides For Comprehensive Health And Safety Training 36

17. Workers Right To Refuse Temporary Transfer To Jobs 36

a. Discussion 36
b. Sample Clauses
1. Right To Refuse Assignment And Request Job Transfer 37
2. Right To Receive A Job Transfer At Same Rate 37
c. Model
1. Worker May Refuse Transfer And Request Other Assignment 37

18. Reporting Of Accidents Or Illness 37

a. Discussion 37
b. Sample Clauses
1. Worker To Report All Accidents And Illnesses 38
2. Report All Injuries No Matter How Slight 38
3. Report Injuries To Union And Management 38
c. Model
1. Union And Employer Both Notified 39

19. The Right For A Worker To Refuse To Work If A Job Is Unsafe Or Hazardous 39

a. Discussion 39
A. A Worker's Right To Refuse Work 39
a) Sample Clauses
1) Worker Has Clear Right To Stop Work 39
2) The Job Is Shut Down Until Determined To Be Safe. . . 40
b) Model
1) Worker May Use Own Judgment And Refuse To Work. . . . 40
B. Immediate Union Involvement In Stop Work Dispute. 40
a) Sample Clauses
1) Issue Goes Immediately To Final Step In Grievance Procedure 40
2) Issue Requires Immediate Union-Management Resolution 40
b) Model
1) Job Shut Down Until Union And Management Settle Dispute 41
C. Expedited Grievance And Instant Arbitration Of Stop Work Disputes Over Safety And Health 41
a) Sample Clauses
1) Provides For Instant Arbitration 41
b) Model
1) Provides Instant Arbitration 41

20. Pay And Job Right Issues Involved When A Job Is Shut Down Over Safety And Health Problems 41

a. Discussion 42
b. Sample Clauses
1. Worker Can Refuse To Work With Right To Transfer To Another Job 42
2. Worker May Refuse And If Job Is Found To Be Unsafe, Get Reimbursed For Any Lost Pay 42
3. Worker May Be Transferred To Another Job At The New Rate Or His Old Wage, Whichever Is Higher 43
c. Model
1. Protects Workers' Earnings During Job Shutdowns 43

21. Prohibiting Retaliation Against Any Worker Who Engages In Health And Safety Activities 43

a. Discussion 43

b. Sample Clauses
1. No Discrimination For Health And Safety Activities 44
c. Model
1. No Discrimination Because Of Health And Safety Activities 44

22. Prohibition Against Speed Up 44

a. Discussion 44
b. Sample Clauses
1. Workplace May Not Endanger Safety And Health 45
2. No Undue Burden Or Layoff Of Workers 45
3. Workers May Refuse Onerous Workload 45
c. Model
1. Prohibits Speed Up. 45

23. A Worker's Right To Lock Out Or "Tag" A Machine Or Work Process That Is Dangerous. 46

a. Discussion 46
b. Sample Clauses
1. Worker Has Right To Tag A Machine 46
2. Worker Tags A Machine, Subject To Approval Of Supervisor 46
c. Models
1. A System For Workers Using Stop Tags. 47
2. A Lock Out System For The Protection Of Workers 47

24. Special "Vacation" Or Time Off From Work With Pay When Exposed To Special Hazards. 47

a. Discussion 47
b. Sample Clauses
1. Extra Vacation With Pay Provided For Workers Exposed To X-Ray Radiation. 48
2. Comprehensive Protection For Employees Exposed To Radiation; Includes Transfer Rights, Earnings Protection, Detailed Recordkeeping 49
c. Model
1. Provides Full Protection Provided By Laws And Regulations And Unlimited Time Off With Pay To Recover From Radiation Exposure 49

25. Hazard Pay For Performing Dangerous Or Unhealthy Work 50

a. Discussion 50
b. Sample Clauses
1. 25¢ Hourly Premium For Toxic Materials. 50
2. Double-Time For Explosives 50
c. Model
1. Hazard Pay. 50

26. Information To The Union 51

a. Discussion 51

b. Sample Clauses
1. Workers And Union Get Reports On Toxic Materials, Workplace Monitoring 51
2. The Union Gets Written Report Of Lost Time Accidents. . . . 52
3. The Union Gets Copies Of Worker Compensation Data 52
c. Model
1. Union Furnished Comprehensive Information 52

27. Union Access To The Workplace 53

a. Discussion 53
b. Sample Clauses
1. Union Representative Admitted To Plant At Any Time. 53
2. Union Business Agent Surveys Plant For Health And Safety Violations 53
3. Union Safety Inspector Inspects All Equipment With Right To Shut Down 53
c. Model
1. Union Representatives Given Free Access To Workplace. . . . 54

28. The Union's Right To Bring In Outside Consultants On Health And Safety Issues 54

a. Discussion 54
b. Sample Clause
1. Union Participates In Selection Of Consultant; Gets Copies Of Results 54
c. Model
1. Union Given Right To Call In Outside Consultant 54

29. Employer Furnished Monitoring Equipment 55

a. Discussion 55
b. Sample Clause
1. Employer Agrees To Furnish Measuring Equipment 55
c. Model
1. Union Safety Representatives Furnished Monitoring Equipment; Employer Pays Cost Of Analysis 55

30. Walkaround Pay And Compensation Payment For Time Spent Handling Health And Safety Matters 56

a. Discussion 56
b. Sample Clauses
1. Union Safety Persons Paid At Their Regular Rate Of Pay. . . 56
2. Employer Pays For Health And Safety Activities. 56
c. Model
1. Union Health And Safety Employee Representatives Paid For All Time Lost. 56

31. An Employer Funded Health Consultant Or Independent Research Study. 57

a. Discussion 57
b. Sample Clause
1. 1/2 Cent Per Hour Fund For Health Research 57

c. Model
1. One-Half Cent Per Hour From Each Hour Worked Set Aside For A Joint Health And Safety Study Fund 58

32. Payment For Training Of Union Health And Safety Representatives 58

a. Discussion 58
b. Sample Clauses
1. Annual Training Meetings Paid For By The Employer 59
2. Union Health And Safety Committees May Attend State Or Federal Training Sessions 59
c. Model
1. Employer Pays For All Training Expenses 60

33. Union's Right To Shut Down Any Unsafe Or Hazardous Work Process 60

a. Discussion 60
b. Sample Clauses
1. Contract Specifically Affirms Legal Right To Strike Over Safety And Health 60
2. Union May Inspect Premises And Call Strike To Protect Members 61
3. Union Can Shut Down Job When Unsafe 61
c. Models
1. Employer Obligated To Furnish Safe Place To Work; Union Can Call Strike To Enforce The Agreement 61
2. Local Union May Strike Over Unsafe Or Unhealthy Conditions 61

34. Provisions For Recognizing Organized Health And Safety Structures 61

a. Discussion 61
b. Sample Clauses
1. Two Union, Two Employer Committee Handles All Safety And Health Problems 62
2. Committee Selected By Union, Recognized By Employer 63
3. Joint Union Employer Safety Committee 63
c. Models
1. Small Company Safety Committee 63
2. Employer Recognizes Union Committee And Provides Full Rights To Function At The Workplace. 64
3. Comprehensive Joint Union-Employer Committee. 64

35. Prompt Settlements Of Disputes Over Health And Safety 65

a. Discussion 65
b. Sample Clauses
1. Impartial Umpire Decides Cases Promptly 66
2. Ruling Given In Five Days 66
c. Model
1. Provides For Expedited Arbitrations 66

36. Non Liability For Health And Safety Problems 67

a. Discussion 67
b. Sample Clauses
1. The Union Is Not Held Liable 67
2. Union Not Liable For Poisoning 67
3. Union And All Its Agents Are Held Not Liable 67
c. Model
1. Employer Agrees Not To Sue Union And Holds Union Harmless 68

I

INTRODUCTION

This publication is designed to assist union representatives and negotiating committee members charged with the responsibility of drafting contract proposals and negotiating with employers on the complex subjects concerning health and safety in the workplace.

The publication begins with a checklist of health and safety issues and subjects which union representatives may want to consider to determine what changes and improvements may be needed. Then each issue is discussed under three headings. First, the issues surrounding the particular type of clause are defined and discussed. Second, sample clauses are included to give an idea of language actually negotiated in a variety of jurisdictions. And third, a model clause is furnished for guidance in putting together proposals.

This handbook should be viewed strictly as a starting point for achieving the goals of the union. There are many different kinds of workplaces, and there are vastly different kinds of relationships between unions and employers, and there are even more varied approaches by unions and companies to health and safety problems.

A primary requirement for any effective program is that a local or international union have a policy, a plan of action, and a set of goals it wants to achieve to improve health and safety in the workplace. This first requires finding out what the problems are and then determining the best approaches to solving them through collective bargaining and the present union structures, through OSHA and other administrative agencies, or through legislative action.

Having clearly defined goals and objectives, the union or labor organization can then pursue several avenues of approach, including collective bargaining. And even if all collective bargaining goals cannot be met in one round of negotiations, continued discussion and pressure on the employer to improve conditions on the job can be planned and carried out from many different directions to set the stage for future progress.

Thus, this handbook will only deal with collective bargaining as one major method to achieve the goals of your union or labor organization.

BARGAINING FOR HEALTH AND SAFETY

It is important to note that historically most employers have resisted negotiating health and safety language with union representatives. Their position has been that the health and safety of employees is solely and exclusively a "management prerogative"; and that management, by virtue of workplace ownership, is responsible for everything that goes on at the worksite. This is not to say that safety committees of one type or another have not existed for a long time. But employers have often controlled these committees and the selection of members and have had the last word on any actions to be taken.

Two events were instrumental in the growth of health and safety as a collective bargaining issue. First, in 1966 the National Labor Relations Board (NLRB) ruled in the Gulf Power Co. case [CA5(1967), 66LRRM 2501] that health and safety is a mandatory subject of collective bargaining. As a result, employers can no longer claim that control of safety and health is solely a "management prerogative". This decision requires management to at least bargain in "good faith" on any job safety and health proposals presented by the union.

The second key event to the rise of health and safety bargaining was passage of the Occupational Safety and Health Act (OSHAct) in 1970. This law, although originally based on the principle of "voluntary compliance", mandates that all workplaces be safe and healthful environments, and sets up agencies and procedures for researching, promulgating, and enforcing workplace standards.

GETTING READY FOR NEGOTIATIONS

Some unions are fortunate in negotiating with employers who have become committed to taking positive action about health and safety. Some employers have been persuaded that effective health and safety programs reduce the costs of workers' compensation. And some individuals within management are genuinely committed to improving health and safety in the workplace. When these conditions exist the union's task is more easily accomplished.

However, many employers resist meaningful union proposals on health and safety questions because they regard them as invasions of their right to manage the company. They fear they will lose control of decisions affecting work processes and methods, or choice of equipment and materials to be utilized. Employers fear that effective union "clout" on health and safety issues will mean immediate and continuous policing of standards and working conditions which the OSHA apparatus can never hope to duplicate. Finally, with regard to engineering controls to reduce or eliminate hazards, the employer argument is usually entered on excessive cost factors.

Unions that have been most successful in countering the above employer arguments have done so by insisting that the value of human life is not reducible to cost terms, that the health of a worker or groups of workers is not negotiable, that no trade-offs for health and safety are acceptable, and that the law is explicit in mandating a safe and healthful place to work. Unions starting from this strong legal and philosophical position and pursuing it aggressively have made health and safety a major issue in negotiations and have produced the best results.

The emphasis in this handbook is on putting agreements into writing rather than relying on verbal commitments. The main reason for the suggestion to reduce agreements to written form is to eliminate later differences and misunderstandings about what had been previously agreed upon. Of course, if the only way a union can gain a certain condition is by keeping it "verbal", then by all means that approach should be used until the time when such situations can be reduced to writing.

DETERMINING GOALS AND PRIORITIES

Before entering into negotiations, it is important for unions to determine what kinds of problems their members are facing, possible solutions to these problems, and appropriate approaches to negotiation. This means gathering information, establishing a plan, and setting goals and priorities.

The more information and facts negotiators have at their disposal to back up and justify their proposals, the more effective they will be in dealing with the employer.

HEALTH AND SAFETY CHECKLIST

Accordingly, a checklist is presented here as an aid to union negotiators in making a survey of what conditions they now enjoy and what areas require improvement through contract negotiations over health and safety questions.

A good way to deal with the following checklists is to organize a meeting of representatives from all sections of the bargaining unit to review this section of the handbook. Try to select those who possess a thorough knowledge of the current health and safety situation. Where union health and safety committee members have already been trained in these matters and have had experience, the job is much easier. You may wish to involve a health or safety consultant for advice on some matters. In any case, your best method of proceeding will be determined by your own unique circumstances.

II

PREPARATIONS FOR BARGAINING

A. Information The Union Should Ask The Employer(s) To Provide Before Negotiations Begin

1. The employer's costs for Worker's Compensation coverage including premiums and benefits paid, as well as medical costs over the period of the last contract.
2. A breakdown of all Worker Compensation claims including accident and injury reports, claims filed and lost time from work; where and when the accidents took place; and the cause of illnesses and accidents.
3. The trade and generic names of all toxic substances to which workers may be or are exposed.
4. The results of any regular monitoring reports on work areas by the employer or any expert hired by the firm.
5. Copies of all safety and health policies or rules of the employer that are currently in effect.
6. Copies of all safety data sheets issued by suppliers of toxic materials or manufacturers of machines, designers of work processes, etc.
7. Copy of the employer's accident prevention program.
8. Copy of the fire control and evacuation procedures of the employer.
9. Copies of all safety procedures relative to specific occupations in the jurisdiction of the union.
10. Copies of all training and instruction programs of the employer relative to health and safety.
11. Copies of any labor code provisions, or as in California, Industrial Welfare Commission regulations with respect to health and safety conditions, which may be relevant.

B. Information About Past Health and Safety Practices of the Union, the Workers, and Management, Whether or Not Such Practices Have Been Formalized in Written Rules or Procedures or Specified in the Agreement

1. Does the employer recognize any union health and safety procedures or programs even though they are not specified in the contract?
2. Does the union have the right to make unilateral inspections?
3. Does the union have the right to bring outside consultants and engineers to inspect and advise on conditions in the plant?
4. Does the union have the right to place a stop tag on unsafe machinery?
5. Does the union have the right to call a strike or take a more limited stop work action over a health or safety issue?

6. Is the union given regular reports on accidents and work related illnesses?

7. Does the union have the right to hold health and safety meetings with workers during work time, or during lunch hours or breaks, or before or after work?

8. Does the union have the recognized right to bargain for stricter standards than those established or provided by law?

9. Is the union furnished any monitoring data collected by the employer?

10. Are representatives of the union given access to the plant for the purpose of checking on health and safety problems and adjusting complaints relative to same?

11. Does the union have the right to make regular workplace surveys?

12. Is the union or are the workers on the job given regular reports or notices on hazards and toxic substances used by the employer?

13. Does the union have the right to obtain short term leaves of absence without pay for health and safety committee members to attend training sessions, standards board or appeal hearings, educational conferences, or any other meetings relative to health and safety? Do any other workers have such rights?

14. Does the union have the right to designate health and safety committee members in each department and on each shift?

15. Can the union send its health and safety committee members to educational or training sessions at the expense of the employer?

16. Does the union have the right to document health and safety hazards, including taking photographs or samples or making measurements?

17. Does the union have the right to receive notice on any new machinery or work processes or changes in the workplace design, including the introduction of new chemicals, so that it may negotiate about any potential impact of such changes on the health and safety of its members?

18. Does the union have right of access to Worker Compensation data and individual records?

19. Do any union or any other employee representatives have the unrestricted right to investigate health and safety problems, and are they paid for time spent in meeting with management to adjucate such problems (including pay for walkaround inspections)?

20. Is there a specific procedure for processing health and safety complaints with the employer?

21. Are there procedures for regular health and safety committee meetings, such as keeping minutes, or joint control of the agendas of such meetings?

22. Is there any jointly administered fund receiving contributions from the employer which can be used to engage independent organizations to pursue occupational safety or health hazard research?

23. Does the union have free access to the bulletin board and the right to post materials dealing with health and safety,and to distribute such information as the union considers necessary?

C. Contract Analysis Checklist

1. Copy all clauses pertaining to health and safety from the Union Agreement so they can be analyzed in conjunction with one another.
2. Does the union have contract language which clearly spells out the employer's exclusive liability for health and safety, together with a hold harmless clause referring to the union?
3. Are union members protected under the contract if they refuse to work under unsafe conditions?
4. Is the recognition clause broad enough to give the union the full right to bargain and to process grievances over health and safety through final and binding arbitration?
5. Extract any cases from the grievance file that have been handled in the past relative to health and safety. Based on these cases, determine how the contract could be strengthened.
6. Prepare a history of the handling of health and safety issues as they have arisen during the term of the present contract, including all issues that were not satisfactorily resolved.
7. Decide in terms of priority, what changes or additions should be made in the contract.

D. Housekeeping Checklist

1. Does the employer furnish clean drinking water in enough locations to satisfy worker needs?
2. What wash-up facilities do you have: hot and cold running water, towels, soap, adequate and clean facilities?
3. Are workers allowed to clean or wash up on company time? Before lunch? Before going home?
4. Are there shower facilities?
5. Does the employer furnish a lunch room or cafeteria? Is it sufficient for the needs of workers? Is it kept clean and well ventilated? Is it located in an area to avoid contamination from possible toxic substances, fumes, etc.?
6. Do workers get regular breaks?
7. Are lockers furnished for the convenience of the workers?
8. Is the lighting at the workplace satisfactory?
9. Are the ventilation, air conditioning and/or heat systems satisfactory?
10. Is the janitorial service adequate? Does the employer keep the workplace clean? Is the general housekeeping of the plant good? Are

traffic aisles and emergency exits kept clear, and are floors kept clean of oil and grease and other debris?

11. Are all housekeeping and ventilation and sanitation provisions of the IWC orders of the State of California being met by the employer? In other states, are all similar kinds of regulations adhered to?

E. Protection and Safety Equipment Checklist

1. If safety shoes are needed or required, does the employer pay the full cost?
2. Does the employer pay for prescription glasses for workers requiring safety glasses of that type?
3. Does the employer furnish work clothes?
4. Does the employer pay for laundering work clothes?
5. Does the employer furnish goggles, respirators and/or equipment such as hearing protection? Are employees individually fitted where this is possible?
6. Does the employer furnish special equipment such as welding gloves, rubber boots, raingear or other special protective equipment?
7. Are there any other required protective equipment or clothing for which workers have to pay?*

F. Health Protection and Medical Treatment Checklist

1. Does the employer have a medical department? Is a nurse available in the plant on one or more shifts? A medical doctor? Does the employer contract with a medical clinic?
2. If not, are there first aid facilities available with trained personnel to handle emergencies in each department?
3. Is transportation readily available to take injured or ill workers for treatment?
4. If toxic substances, radioactive materials or other dangerous substances or processes are in use by the employer, are all exposed workers notified of the hazards and given appropriate precautionary information?
5. Are workers exposed to hazardous substances such as lead or toxic chemicals given regular medical tests or exams by the employer? Are these workers told the results of these tests?
6. Does the employer regularly survey the workplace in any way in order to protect and guard the health of workers? Is the union given the results?
7. Does the contract and/or employer provide for breaks from the work routine to relieve stress related problems?

---

* Bendix Decision - Bendix vs DIR Cal. 3d 465

8. If the workplace has excessive noise, does the employer provide for a "quiet" or soundproof room for taking breaks and lunch?

9. Are workers trained in safety and health procedures when hired or when upgraded or transferred to other work either permanently or temporarily? Is training repeated at regular intervals?

10. Does a worker or any group of workers have the right to refuse to work under an unsafe or unhealthy condition?

G. Worker Compensation Checklist

1. Does the contract or company policy provide for any kind of payment to a worker to supplement Worker Compensation benefits?

2. If a worker is off work for an extended period because of a job-connected injury or illness does the negotiated company medical plan continue to cover the worker and his dependents during the absence from work?

3. Does seniority continue during a protracted absence caused by job-connected injury or illness? Are payments made into the pension plan and are pension credits "earned" during such absences?

4. Does the contract and/or company policy provide for leaves of absence for job-connected injury or illness? What rights and benefits is the worker entitled to during such leaves?

5. Is a worker reinstated to the former job at the same or a higher rate of pay after returning from an absence caused by job-connected illness or injury?

6. In the event the worker can no longer perform the previous work because of the nature of a job-connected illness or injury, is alternative employment provided with rate retention if the transfer is to another lower paying job? If so, is this rate retention temporary or permanent?

7. Is a returning employee guaranteed training for another job, even if it requires a long training period?

8. If a worker is sent away from the worksite for medical treatment does pay continue until he returns to work? If the doctor sends the worker home for the balance of the shift, is the employee paid for the full shift?

9. Have members experienced problems and difficulties with the medical treatment furnished by the employer? If so, what are they?

10. Does the seniority plan allow for retention of all accrued benefits and privileges of workers who have sustained job-connected illnesses or injuries?

11. Does the employer in any way help or assist in the rehabilitation of workers who have sustained job-connected illness or injury?

III

COLLECTIVE BARGAINING CLAUSES

1. GENERAL DUTY CLAUSES (to provide for a safe and healthy place to work)

Discussion Most employers will be inclined to include in the contract only a statement that both parties will obey workplace health and safety laws. Such an approach should be avoided because it means that the union and employer agree to be law abiding and not that the employer accepts the principle and responsibility involved in providing a safe and healthy place of work.

If possible, it is much better to incorporate language indicating that the employer recognizes an obligation and duty to provide a safe and healthful place of work. Best of all is a positive statement that the employer endorses and supports the concept of providing a safe and healthy place to work. Definitive contract language permits the development of optimum conditions over and above the health and safety minimums specified by law. Thus with respect to noise, nuisance dust and similar matters, unions with strong general duty clauses have usually been able to establish working conditions superior to OSHA standards.

Full discussion of the general duty clause also affords the union an opportunity to develop its own approach and policy with respect to health and safety. This is extremely helpful in setting the tone for future relationships with the employer. In some instances, a strongly worded general duty clause may provide all the framework needed in collective bargaining contract language to permit further development of all other aspects of health and safety through informal relationships based on joint understanding and agreement at the working level. This is particularly likely to happen in small bargaining units where relationships are necessarily more personal and informal.

Realistically it can be expected that many employers will seek to limit the scope of a general duty clause because of their fear of its infringement on "management rights". In such instances the union may try to broaden the contract protection of the workers involved by covering all

the subjects discussed below. This procedure would require explicit proposals dealing with every specific problem that has arisen in the bargaining unit.

Sample Clauses

1) The Company makes every reasonable provision for health and safety:

   The Company agrees to make every reasonable provision for the safety and health of its employees while at work, to abide by applicable Federal, State, County and City laws and to make available such protective equipment as is required by such laws. (*United Steel Workers of America*) *United States Steel, California, 8/1/74*)

2) The Company provides a safe and healthy place to work and furnishes safety devices:

   The Company agrees to provide a place of employment which shall be safe for the Company's employees and shall furnish and use safety devices and safeguards and shall adopt and use methods and provisions adequate to render such places of employment safe. (*International Chemical Workers Union*) *Lever Brothers Co., Los Angeles, California, 3/13/74*)

3) The Company agrees to continue to provide for safety and health:

   The Company agrees to continue to provide safe and sanitary conditions in the plant and to provide adequate and modern devices where necessary for the health and safety of employees. (*Warwick Electronics, Inc., Forrest City, Arkansas, IUE, 7/76*)

Models

1) All-inclusive clauses commiting employer to health and safety.

   The employer agrees to provide a safe and healthy place to work and shall furnish and use safety devices and safeguards and shall adopt and use methods and processes adequate to render the workplace safe and healthful, and shall do every other thing necessary to protect the life, health and safety of employees. The Employer shall repair and maintain every place of employment so as to render it safe and healthful.

   In accordance with the requirements of the OSHA Act of 1970, it shall be the exclusive responsibility of the Employer to ensure the safety and health of its employees.

   OR

   The Company 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 levels, and health and safety in general. The Company further agrees

to comply with all local, state and federal health and safety laws and regulations.

2) More limited recognition by the employer of his general duty obligations.

A. The Company agrees to maintain a safe and healthful workplace. The Company further agrees to comply with all federal, state, and local health and safety laws and regulations.

B. The Company recognizes its obligation and agrees to provide a safe and healthful working environment for all its employees.

2. GENERAL DUTY TO BARGAIN -- RECOGNITION CLAUSES USED FOR HEALTH AND SAFETY

Discussion A few unions still rely on the recognition clause of the agreement which broadly provides that "the employer recognizes the union as the bargaining representative with respect to rates of pay, hours of work and other conditions of employment." Such unions have used the grievance machinery, including arbitration, to settle unresolved general issues of health and safety. This approach is successful if the definition of a grievance is broad enough and if no other contract clauses modify the impact of the recognition clause (such as a broad "management prerogatives" clause). At best, this gives the union the right to grieve; however, it is no real substitute for a strong general duty clause.

Sample Clause

1) Scope of agreement all inclusive: the union is granted complete bargaining rights including "other conditions of employment":

The Company agrees to recognize the Union on behalf of and in conjunction with its Locals for those bargaining units of Company employees for which the Union or any of its Locals, through National Labor Relations Board certifications, is designated as the exclusive bargaining representative of employees within such units for the purpose of collective bargaining in respect to rates of pay, wages, hours of employment and other conditions of employment(*National General Electric Agreement, and UERMWA (Ind), 6/79*)

Model

1) All-inclusive union recognition clause.

The Company agrees to recognize the Union as the exclusive bargaining representative of the employees for the purpose of collective bargaining in respect to rates of pay, wages, hourse of employment and other conditions of employment.

3. SANITATION, HOUSEKEEPING, AND SPECIFIC WORKING CONDITIONS

Discussion This topic covers a broad spectrum of day-to-day working conditions, many of which are covered by state laws, local health ordinances, and other legislation which require adequate restroom facilities, drinking water, heat and ventilation, and similar conditions. Also, many other conditions may have been established through years of customs and practices built up on the job by the union organization.

Each negotiating committee will have to determine what language, if any, is needed to achieve the best working conditions possible. In older, antiquated plants there may be no room for such things as lockers or lunch rooms of any kind so that demands will have to be tailored to what is possible.

Sample Clauses

1) Provides for clean water, sanitary conditions in locker rooms, etc.:

Sanitary drinking fountains will be provided whenever necessary, and floors, locker rooms, toilets, and washrooms will be kept in a clean, sanitary condition, and will be lighted and heated. The Union agrees to give every assistance and cooperation toward maintaining these facilities in a clean and sanitary condition. (*Universal Oil Products Company, Flexonics Div. and Machinists, 1/78*)

2) Provides commitment for safe, healthy and sanitary working conditions:

The Company shall furnish and maintain safe and healthful sanitary working conditions and adequate locker accommodations. The employees will assist management to keep clean washing facilities and toilets. (*Borg Warner Corp., Morse Chain Div., Ithaca, New York, 9/75*)

Models

1) All purpose clause covering sanitation, wash up facilities, wash up time, clean lunch rooms and showers for workers engaged in dirty occupations.

The Employer will provide individual lockers for employees and adequate sanitary washroom facilities with sufficient hot water and towels. Employees assigned to work with extremely dirty materials will be provided with sufficient time during working hours to wash up before meals and prior to leaving the plant after work. Showers shall be provided for all employees working with extremely dirty materials. Such facilities shall be kept clean and adequately heated and ventilated to assure comfortable conditions in all seasons.

2) More limited clause applying to average workplace; provides for clean and sanitary facilities.

The Employer will furnish a clean and adequate lunch room facility in a designated area where employees may eat their lunch. The Employer further agrees to furnish good drinking water and sanitary facilities. The floors of the toilets and washrooms will be kept in good repair and in a clean, dry and sanitary condition. The Employer also agrees to provide sufficient janitorial service to maintain the work areas in a clean and tidy condition.

4. LIGHTING, VENTILATION AND NOISE

Discussion Each negotiating committee should be familiar with state and local regulations, building codes, OSHA standards and other requirements useful in judging whether a particular employer is in compliance with respect to lighting, ventilation and noise.

However, unions are often obliged to negotiate better standards than legally required on all three of these subjects. Each work area is somewhat unique, and whatever is done or can be done must deal with the specific situation. It is advisable to have industrial engineers of the union's own selection make bids on the work to be performed. As a result, the union will have its own cost estimate to counter employer statements that "it costs too much". Also, there will be an advantage when dealing with employers who have yearly budgets for plant improvements if it is known precisely how much the improvement will cost.

Thus, VENTILATION may sometimes involve only so-called nuisance dust in great volumes or temperature extremes for which no code or standard exists. In such cases, unions may have to insist on good ventilation in order to provide for better working conditions. In other cases, poor ventilation may expose workers to air contaminants that are harmful to human health. Then more regulatory leverage can be brought to bear on the employer to reinforce the union's negotiating proposals.

WITH RESPECT TO NOISE, many employers will attempt to argue the fact that the operation meets the current OSHA standard of 90 decibels. But prolonged exposure to this noise level may cause hearing loss. And although protective equipment might be required or recommended for workers' ears, there is debate over the effectiveness of such equipment. Therefore, one ob-

jective of the union may be to demand that engineering steps be taken to reduce noise levels so that protective equipment is unnecessary. Some sources of noise,such as compressors,can be eliminated by simple low-cost enclosures. The appropriate technology for eliminating or reducing noise is usually well known; the goal is to have the employer invest in it. Raising contract demands to improve lighting, ventilating and noise conditions is the first long step toward winning improvement.

LIGHTING is usually a less difficult problem to solve, but occasionally can be serious, especially in older workplaces and sometimes even in modern installations where glare and reflections can cause eye problems, as with VDT operators for example.

Sample Clauses

1) The Employer agrees to provide good ventilation, lighting and heat:

   The newspapers agree to provide a healthful, sufficiently ventilated, properly heated and lighted pressroom, washroom and locker room in accordance with the Illinois Factory Inspection Laws. (*Chicago Newspaper Publishers Assoc., Ill. Printing & Graphic (PGCU) Union, 4/75*)

2) The Employer agrees to proper ventilation:

   . . . Proper . . . ventilating systems shall be installed where needed and maintained in good working condition. (*American Shipbuilding Co. Interstate Boilermakers, et al, 4/75*)

3) The Employer agrees to noise control:

   The Company shall continue to institute and accelerate noise control programs by reducing noise in all areas and equipment to a safe level with emphasis on engineering and technology. (*White Pine Copper Co., Michigan, Steelworkers (USA) 7/77*)

4) The Employer will regularly test for air and noise pollution:

   The Company will continue its program of periodic inplant air sampling and noise testing under the direction of qualified personnel. Where the union co-chairman of the Safety Committee alleges a significant on-the-job health hazard due to inplant air pollution, the Company will also make such additional tests and investigations as are necessary. A report based on such additional tests and investigation shall be reviewed and discussed with the Joint Safety Committee (*Armoc Steel Corp., Interstate; Steelworkers (USA) 8/77*)

Models

1) Comprehensive clause directed at reduction of noise hazards.

   The Employer shall institute and carry out a noise control program by reducing noise in all areas to a safe level. The program shall

be based on engineering and technological controls sufficiently effective to eliminate any need for employees to wear personal protective equipment. There shall be a periodic hearing test program jointly administered and paid for by the employer.

2) Clause providing for decent ventilation, light and heat standards.

The employer shall furnish and maintain a healthful, sufficiently ventilated, properly heated and lighted workplace.

3) Clause providing for good ventilation and air conditioning.

The employer shall provide a workplace with sufficient ventilation, heat and air conditioning to create comfortable work conditions.

5. PROTECTIVE CLOTHING AND EQUIPMENT

Discussion In the early days employers expected and required workers to provide all of their protective clothing, shoes, glasses and equipment of all types, including all tools of the trade. In more recent times, the impact of legislation, collective bargaining, and even to some degree increased workers' compensation costs, have brought about a significant change. Many employers now furnish a substantial portion of protective equipment. However, the issue of whether the employer assumes all of the cost is still a much-debated question. Some employers pay a certain amount toward safety shoes or prescription glasses, but still make wearing them a condition of employment. Therefore, union negotiators will have to determine what is best for their own situation. However, with respect to clothing or equipment now furnished by the employer, these arrangements should be covered with appropriate contract language to avoid losing such benefits that may follow a change in company management or ownership. The basic issue, of course, is that workers should not be required to pay for protective equipment to preserve their health and safety since the hazards are caused by conditions on the job. The employer has legal responsibility for worker health and safety, and therefore should provide, pay for, and maintain protective clothing and equipment required by the job.

Sample Clauses

1) The Employer agrees to provide all necessary clothes and safety equipment:

The Company shall furnish protective devices and protective equipment, such as hard hats and liners, gloves, safety goggles, gas masks, welders fireproof clothing as necessary for the safety of the employees . . . *(National Fuel Gas Co., Buffalo, NY, IBEW 2/77)*

2) Employer determines what is needed and pays for such equipment:

The Company may require employees to wear personal protective equipment as is determined necessary for the requirements of safety and health which shall be supplied by the Company, such as, but not limited to, gas masks, plastic face shields, respirators, rubber gloves, hard hats, safety glasses, safety belts, life saving gear, rubber aprons and ear plugs. (*International Brotherhood of Electrical Workers, Independent Shipyards, San Diego, 9/30/75*)

3) Employer pays for tools required by the job:

Tools and equipment required by the Company to perform the work and protective garments necessary to safeguard the health of or to prevent injury to a worker's person shall be provided, maintained, and paid for by the Company. (*United Farmworkers of America, International Harvester, 9/14/78*)

Model

1) The Employer is required to pay for all safety and health items, including laundry of clothes.

All protective devices, wearing apparel, prescription glasses, goggles, gloves, shoes, personal clothing, ear plugs, weather protective gear, or respiratory protection necessary to preserve the health and safety of the employees shall be furnished by the employer without cost to the employees.

In addition the employer shall pay for the laundry, cleaning or other necessary maintenance of uniforms, coveralls or other clothing furnished to employees pursuant to this agreement.

6. CREW SIZE, WORKING IN ISOLATION, AND EXCESSIVE WEIGHT LIFTING

Discussion These three questions may be directly tied together in collective bargaining agreements, although each is usually treated separately. What they have in common is the issue of a person's job assignment and spelling out in advance precautions to be taken to protect the safety and health of the workers involved.

CREW SIZE is an issue which arises most frequently in construction work. The contract can make it clear how many people are required to do a certain kind of work. Then a clear basis is established for workers to refuse to work until the designated crew size has been obtained.

WORKING ALONE often comes up when there is more than one shift and when it would be dangerous for a worker to be assigned to work in isolation. Many agreements provide for an outright prohibition of this kind of work assignment.

EXCESSIVE WEIGHT LIFTING is another issue that pertains to certain kinds of work. The union contract can spell out in specific language the rights of workers in carrying out job assignments where excessive weight lifting is involved.

Both the Taft Hartley Act and the Occupational Safety and Health Act set forth conditions under which a worker may refuse to work or stop work in a situation that is hazardous. This question and the union approaches to it are discussed at greater length later. However, in industries where it is appropriate to negotiate specific restrictive rules dealing with the three issues raised in this section, clear criteria for refusal to work can be established in the union agreement.

Again, each negotiating committee will have to identify what the greatest work hazards are in the work environment and frame appropriate language to ensure worker protection.

Sample Clauses

1) Prohibition against excessive weight lifting:

   The Company recognizes that employees must not be required to handle equipment which is cumbersome or whose weight is excessive. The question as to whether a particular piece of equipment is cumbersome or excessive in weight under all circumstances may be submitted as an immediate grievance. (*National Association of Broadcast Employees and Technicians, American Broadcasting Company, California; 3/76*)

2) No excessive weight lifting:

   The Company agrees that it will not create an unnecessary burden upon any employee that would be injurious to his health by requiring him to do heavy work alone, such as heavy work on springs, transmissions, reline, repacks, batteries, etc.(*Greyhound Lines, Inc., Interstate, Amalgamated Transit Workers, 10/77*)

3) No employee required to work alone:

   Employees shall not be required to work alone in areas beyond the call, observation, or periodic check of others. In the event such work is of a hazardous nature, additional precautions may need to be taken. (*Koppers Company, Inc., Pittsburg, PA, IAM, 10/77*)

4) Crew size specified:

   In the loading and unloading of trailers from rail cars, there shall be at least 2 men in the crew at all times.

   In any continuous operation of hand loading or hand unloading of

100 pound lifts or more, the employer shall furnish 2 men to work inside of trailers or box cars.

When any employee is assigned work that is unsafe, he may request additional help. Any disagreement shall be subject to the disputes procedure of the agreement. (*Oregon Draymen & Warehousemen Association, Teamsters, 7/76*)

5) Work assignments specified:

Not less than 2 men shall be assigned to internal cleaning and repairing of boiler drums and furnaces and to elevator maintenance and repair. No single employee shall be assigned to internal cleaning of beer tanks or, where safety requires it, to other work in similar confined areas unless someone else is working in the vicinity. (*Brewery Proprietors of Milwaukee, Wisconsin, Teamsters, 5/77*)

Models

1) Prohibits working alone.

No employee shall be required to work alone in a department at any time.

2) Prohibits excessive weightlifting.

No employee shall be required to handle equipment which is cumbersome or is excessive in weight.

3) Specifies number of workers to be assigned to certain operations.

At all times at least ____ employees shall be assigned to work in order to ensure the safety and health of the workers involved.

7. PROTECTION FROM HAZARDOUS, DANGEROUS WORK OR FROM UNSAFE MATERIALS OR PROCESSES

Discussion Many agreements provide specific language designed to protect workers from hazardous or dangerous work in the traditional sense of safety; others provide for protection from working around substances or processes hazardous to health. In either case the purpose is to build into the contract specified rights and work restrictions designed to protect the worker and to establish or define what constitutes specific, real or imminent hazards.

Sample Clauses

1) Prohibits requiring the performance of dangerous work:

Under no circumstances will an employee be required or assigned to engage in any activity involving dangerous conditions of work or

danger to person or property or in violation of an applicable statute or court order, or governmental regulation relating to safety of person or equipment. (*Handleman Company and Teamsters; 7/77*)

2) Back-up worker required for dangerous substances:

Where it is consistent with the Occupational Safety and Health Administration's standards, where dangerous chemicals, explosives, toxic gases, radiation, laser light or high voltages are to be handled and where the safety of an employee would be endangered by working alone, another qualified employee shall be placed so that assistance can be rendered in the event of need. (*International Association of Machinists, Aeroject Electro Systems Co., Azusa, California 5/9/70*)

3) Prohibits use of certain toxic substances:

Employers agree not to use carbon tetrachloride or other toxic compounds or chemicals that are considered harmful and hazardous to personal health. Refusal to use harmful compounds will not be deemed refusal of duty. (*Pacific Coast Marine Firemen, PAC Maritime Association, 6/75*)

Models

1) Employer will not require or assign dangerous work.

Under no circumstances will an employee be required or assigned to engage in any activity involving dangerous conditions of work or danger to any person or property.

2) Worker may refuse hazardous work.

No employee shall be expected or permitted to work under conditions which the employee considers to be unduly hazardous or dangerous.

3) Prohibits use of listed harmful substances.

The employer agrees not to use the following hazardous substances, benzene, trichlorothylene, asbestos, in compounds of any kind since they are considered harmful and hazardous to personal health. Refusal to use such harmful substances or compounds will not be deemed refusal to perform work.

8. FIRST AID, SHOP MEDICAL CARE AND OTHER ARRANGEMENTS FOR MEDICAL TREATMENT AT THE WORKSITE

Discussion This subject covers a number of related problems ranging from first aid provisions to transportation for medical care, and to selection of physicians. Many different approaches to medical care for on the job injury or illness have been developed. Some state worker compensation laws have established employer liability for furnishing medical care and paying the costs of all treatment and rehabilitation, together with partial reim-

bursement for lost wages. Recently in California, the legislature has changed the law so that workers can be treated by physicians of their own selection from the first instance of accident or illness. This is a vast improvement over the old system. Industrial medicine has all too often been practiced under adversary conditions, and one major problem for workers has been the inability to obtain accurate and fair appraisals of illnesses as actually work-related and hence the responsibility of the employer. The Workers' Compensation system, which was originally designed to be both nonadversary and no-fault, has been turned into a lawyer's paradise with disputed claims often taking many months to litigate, all to the disadvantage of the worker.

Emergency first aid provisions are frequently inadequate in many workplaces. Unions should press for systematic improvements of first aid training for persons working in each department in order to handle possible emergencies. This problem is more important in some work environment than in others.

With respect to the issue of shop medical care, if the group represented by the union numbers 200 or more, every effort should be made to have the employer hire a full-time nurse. For larger operations, there should be a nurse employed for each shift. In some plants of 5,000 or more, the employer has an on-premise medical staff, or else contracts with a medical clinic which serves a number of employers in the same area. In any case, having excellent, top-quality, immediate medical care should be a major consideration for the union, particularly in industries where the accident rate is traditionally high.

Sample Clauses

1) Provides for first aid training:

An employee covered by this agreement is required to take first aid training unless he possesses a knowledge of at least the fundamentals of first aid to the injured, i.e., artificial respiration, control of arterial bleeding, treatment of shock. The company will conduct an annual review of the fundamentals of first aid listed above for all employees covered by this agreement.

Time required to be spent by an employee for first aid training shall be paid for at his regular rate of pay. (*Phelps Dodge Corp., and Steelworkers (USA) June 1977*)

2) Provides for immediate first aid and ambulance service:

Prompt ambulance service and first aid to injured employees shall be provided on all shifts and a safety man shall be employed and made responsible for the proper enforcement of safety rules. All first aid personnel shall be identified and signs indicating location of First Aid stations shall be posted. (*Pacific Coast Metal Trades Council, Pacific Coast Shipbuilding and Ship Repair Firms Master Agreement, Northern California, 6/77*)

3) Provides for guaranteed transportation for medical care:

An employee who is certified as qualified to administer First Aid shall be available. An employee who is injured while on duty will be given immediate and comfortable transportation to any designated medical center, hospital, or doctor's office that may be determined by the Company to be necessary (*Crane Carrier Company and Steelworkers; 12/77*)

4) Provides for full-time physician and nurse:

The Company will maintain a medical department, properly equipped and staffed and under the direction of a full-time licensed physician. All nurses employed in this department will be graduate nurses. A nurse will be assigned to any shift when there is a total of 200 or more hourly-rated bargaining unit employees on duty.(*White Motor Car Corp., Cleveland, Ohio, UAW (Ind), 3/77*)

Models

1) First aid training for all employees.

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.

2) Simple first aid clause.

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

3) Employer committed to first aid training.

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.

4) Provides for first aid and a plant 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.

5) Provides for physician in plant.

The employer agrees to maintain a medical department properly equip-

ped and staffed and under the direction of a full-time licensed physician.

6) Provides for transportation for medical treatment.

The employer shall have arrangements 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.

9. REGULAR REST PERIODS AND RELIEF OPERATIONS

Discussion Because of laws originally enacted to benefit minors and women workers, many workplaces have established regular employee rest periods. However, worksites which have traditionally employed only men may not provide rest breaks. In these instances, employees may have to take breaks only on a catch-as-catch-can basis. Or, some shops with continuous operations may require relief operators in order to make rest periods possible.

An increasing number of medical authorities recognize that stress is a contributing factor to many occupational illnesses or injuries. Regular rest periods and breaks from work routines, because they reduce the possibility of stress-related accidents and illnesses, are becoming more and more issues for negotiation.

In some industries requiring "hot" work processes or conditions where the work is of an intense nature, unions have been able to negotiate for relief operators or for job rotations of so many hours working and so many hours off the job. These systems vary; some may call for 1/2 hour of work and 1/2 hour of rest, or for other arrangements, depending on the job situation.

In any event, in view of the steady growth of production standards and increase in output paced by machines in many industries, relief time or breaks from the job will be increasingly important negotiating issues in the future.

Sample Clauses

1) Provides for 12 minute breaks and bathroom privileges:

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 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 the lavatory as reasonably required. (*Cal Processors, Inc., Teamsters, 7/76*)

2) Relief time and other allowances:

All employees on a regular eight-hour shift shall have a relief period or periods not exceeding in the aggregate twelve (12) minutes before lunch and twelve (12) minutes after lunch. Such relief periods represent five per cent of the shift time or three (3) minutes per hour. The amount of such relief time shall be modified accordingly for a shift other than a regular eight-hour shift. This shall not be deemed to affect the environmental relief allowance now included in the work standard of certain operations nor the allowance applicable to certain other operations as expressly set forth in letters from the Corporation to the Union.

Such relief time, except in emergencies, shall not be provided during the first hour of the shift or the first hour after the lunch period, or during such other periods, not exceeding in the aggregate two (2) hours per shift, as may be mutually satisfactory in the local plants. (*Chrysler Corp., UAW, 11/76*)

Models

1) 15 minute breaks guaranteed every two hours.

All employees shall be given a 15 minute break away from the immediate work area every two hours of employment.

2) Provides for relief operators for more extended breaks.

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. (Note: fill in the appropriate amount)

10. MEDICAL SURVEILLANCE AND CHECKUPS

Discussion Prior to OSHA's enactment in 1970 it was extremely difficult to secure employer agreements to schedule and pay for regular medical check-ups for employees. Now that some OSHA standards (for example, asbestos, lead, and certain carcinogens) explicitly require the employer to provide medical examinations, negotiating these issues is much easier.

Bargaining for medical surveillance programs poses special problems -- in particular, how to protect workers (especially those who shown signs of

non-job as well as job-related health problems) from layoff, from transfer to a lower-paying job, or from outright discharge for not being able to perform the work available. Confidentiality and right to information pose additional problems. It is common practice for employers to regard employee medical files as company property and to inform line management (but not the employees) of their contents. As a result, many workers prefer to provide for their own medical care as a means of ensuring privacy, confidentiality, and avoiding discrimination or possible loss of job.

One solution is to get the employer to agree to pay for regular employee medical check-ups which are carried out by an independent medical group, clinic, or hospital. Individual employees can thereby be assured of the confidentiality of the medical diagnosis, and can decide in consultation with their physicians, the course of action which best promotes and safeguards their health.

Bargaining should also involve discussion of the type of screening tests to be administered and how they relate specifically to job conditions, or to exposures to possibly harmful substances. It is appropriate for the union to request written opinions and access to medical files in this connection. The union may want to negotiate the right to choose (jointly, with management) the examining facilities or medical personnel.

Finally, a number of unions have negotiated the right to arbitrate medical differences of opinion as to the health of a given worker when the employer doctor disagrees with the employee doctor. This is typically done by the two doctors agreeing to a third doctor; or sometimes panels of physicians are made available (similar to panels of arbitrators).

Sample Clauses

1) Provides for periodic medical examinations:

   Employees in occupations which have inherent job hazards as to safety and health, such as those in sandblasting, plating, shipping, grinding, crane operators, shall be given physical examinations semi-annually. (*Oil, Chemical and Atomic Workers, ARMCO Steel, Torrance, California, 10/1/74*)

2) Physical examinations will be at the worksite:

The purpose of the Plan is to provide the employees with periodic physical examinations by a professional medical staff for the purpose of detecting and diagnosing diseases and health disorders. Examinations shall take place at the employees' job site. For purposes of administering the examinations, movable vans appropriately designated and equipped for administering complete medical examinations shall be utilized. (*International Brotherhood of Teamster/ Cannery and Food Processing, California Processors, Inc., Northern California, 7/76*)

3) The union to receive results of the examination:

One baseline cholinesterase test and other necessary cholinesterase tests shall be taken on those workers employed as applicators at Company's expense when organo-phosphates are used. Union shall be given results of said tests immediately. (*United Farm Workers of America, Inter-Harvest, Inc., 9/75*)

4) Multi-doctor review:

The employee may receive a copy of the report on request to the doctor. If the report adversely affects, or may adversely affect the employee's employment, he may within thirty (30) calendar days have a competent physician of his own selection conduct an independent examination at his own expense, a copy of the report to be furnished to the employer. If the two physicians disagree, a third may be called in to make an independent examination at the Company's expense. If a majority consider the original report erroneous, any action taken by the Company thereon shall be revoked. The third doctor shall be selected by the two physicians first mentioned and must be a specialist with special training pertinent to the case under consideration. (*Bunker Hill Co., United Steelworkers of America, 5/78*)

Models

1) Medical surveillance and check-ups.

The employer agrees to pay the costs of a program of systematic medical testing for potential work-related illnesses or disabilities which may arise because of the nature of the work process and the exposure of the employees to dangerous substances.

2) Doctors selected by workers.

The testing shall be conducted by doctors chosen by the employees through their labor representative. No medical testing or finding shall be used to discriminate against any employee or to deny any pay or privileges to which an employee is entitled. The company further agrees to provide each employee and the designated physician with copies of such medical records, together with copies of any monitoring records of the work environment which may be held by the employer. Such records shall be furnished at the expense of the employer.

3) Tests during working hours.

The program shall provide each covered employee with an opportunity for biological monitoring and medical examination, and shall be carried out during the employee's normal working hours without cost to the employee.

4) Right of worker to refuse testing.

If an employee refuses any medical examination or biological monitoring process, the employer shall inform the employee of the possible health consequences involved. In no circumstances shall an employee be required to sign a release statement or any language purporting to release the employer from any liability under any law as a result of refusal to take the medical examinations or refusal to be involved in any biological monitoring activity. The employee should not be disciplined in any way.

5) Right to arbitrate medical differences.

If an employee has had a physical examination by a company physician pursuant to a medical surveillance program and is not satisfied with the report, or if the report may adversely affect the employee's employment, he may within thirty (30) calendar days have a competent physician of his own selection conduct an independent examination at his own expense, a copy of the report to be furnished to the employer. If the two physicians disagree, a third may be called in to make an independent examination at the Company's expense. If a majority consider the original report erroneous any action taken by the Company thereon shall be revoked. The third doctor shall be selected by the two physicians first mentioned and must be a specialist with special training pertinent to the case under consideration.

11. WORKPLACE MONITORING FOR POTENTIALLY DANGEROUS HEALTH CONDITIONS

Discussion The increase of worker and general public awareness of health hazards on the job, in addition to prompting systematic medical checks of workers, has created the necessity for regular checks of the workplace for hazardous health conditions. Thus many unions are negotiating clauses covering such topics as the employer commitment to regular checks, the right of the union to participate in such checks, the right of the union to bring in independent consultants, and the right of the union to be notified in writing of the results of such workplace measurements and monitoring, along with notification to the immediately affected workers. Some unions have been successful in carrying out monitoring programs beyond the sometimes narrow requirements of OSHA standards. In fact, a careful study of such measurements should lay a good basis for improving existing standards, or for establishing new standards where none now exist.

Sample Clauses

1) Company provides measuring devices:

Provide equipment for measuring noise, air contaminants, and air flow which will be available for use by the Local Committees. Proper arrangements shall be made to permit the Union member of the Local Committee to use the safety and industrial hygiene equipment available to the Management member of the Local Committee and in which the members of the Local Committee have received training. (*Chrysler Inc., UAW (Ind), 11/79*)

2) Union informed of medical exposures:

Permit the Union member of the Local Committee to participate in and observe Management measurement or sampling of the occupational environment. Whenever it is determined that an employee has had personal exposure exceeding the permissable level as set forth in 29CFR-1910. 1000, Air Contaminants, Code of Federal Regulations, such information shall be entered in the employee's medical record. The Local Committee shall be informed in writing of such exposure and shall advise the employee. The Union member of the Local Committee shall also be informed of the corrective action to be taken. (*Chrysler Inc., UAW (Ind.), 11/79*)

Models

1) Employer provides systematic monitoring.

The employer shall arrange to have systematic and periodic monitoring of air samples, noise levels and other environmental conditions by competent persons in all areas where employees are exposed to potential health damage from hazardous chemicals and other dangerous substances used in the work process. The union organization in the plant, together with the local union, will be advised in writing of the results of these measurements and of any corrective measures deemed necessary to protect the health of employees.

2) Union permitted to take own measurements.

The union will be allowed to take measurements of its own, and, if need be, bring in outside consultants to assess potential hazards and advise the union and the company as to what corrective measures should be taken.

Affected employees shall also be advised of the results of any surveys, and of precautions to be taken in their specific jobs.

12. PAYMENT FOR TIME LOST FROM WORK WHILE UNDERGOING MEDICAL EXAMINATION OR TREATMENT

Discussion When a worker is injured or suffers a job-related illness necessitating medical care, the usual practice is that the worker does

not punch off the time clock for the work time remaining on that shift. Still, it is a good idea to put this practice in writing in the agreement. Since the injury or illness is work-related, the employee should continue to be paid for the balance of the shift.

In addition, a question frequently arises about transportation costs. Payment of such costs is usually required by state laws, but should be covered in the union agreement as well.

It is more difficult to secure employer agreement to pay for lost time to cover periods of extended medical treatment. Usually the employer will insist that such treatment be provided outside working hours, or that the employee suffer lost wages.

Sample Clauses

1) Provides payment for transportation:

   If an employee is injured during the course of his employment and during regular hours of employment, the Employer agrees to provide transportation for said injured employee to and from a doctor's office or hospital. (*Handleman Company and Teamster; 7/77*)

2) Provides pay for injured worker for lost time from work:

   An employee who receives an injury at work and who because of such injury is not able to complete that shift will receive pay for the regular shift hours which would normally have been worked by such employee that day. Such pay will be based on the employee's hourly day-rate, plus the shift bonus in those cases where the employee is assigned to the afternoon or night shift.

   Should the injury not be serious enough to keep the employee away from the entire shift, he will receive pay for the time spent going to and coming from the doctor. The doctor or the authorized first aid attendant shall be the judge as to whether or not the employee can return to work. (*Feders Corp., Illinois, Stove Workers* (SFAAW) *12/76*)

3) Provides lost time pay for subsequent visits:

   If the employee who has sustained an industrial injury is required to visit a doctor and cannot be scheduled at a time outside his normal shift hours on any day following the day of injury, he will be compensated for the time between the time he leaves the plant and the time he returns to the plant or until the time his shift ends, whichever occurs first. Such compensation shall be computed by multiplying the time elapsed by his straight-time hourly rate. (*Area West Coast Paper & Paper Converting Industry, Printing and Graphic* (PGCU), *6/76*)

Models

1) Worker paid lost time for doctor visits.

Employees suffering injuries or illnesses requiring time off from work shall be provided with the necessary transportation to and from the doctor's office at no cost to the employee.

2) Workers paid for balance of shift and following visits.

Employees shall be paid for all time lost from work while receiving medical treatment or examination; and, if required by the doctor to go home for the balance of any shift, shall be guaranteed their full regular pay plus any premiums. If subsequent medical treatment is needed requiring the employee to take time off from work, such lost time will be paid for at the regular rate of pay plus premiums, if any.

13. PAYMENTS TO SUPPLEMENT WAGE LOSSES CAUSED BY INJURY OR ILLNESS ON THE JOB

Discussion Typically, workers only receive 50% of their regular pay as temporary disability payments from Workers Compensation insurance. In some states the weekly rate for permanent disability is even less than that.

Because of the obvious severe hardship suffered by workers drawing such benefits, unions have negotiated various types of supplemental pay plans to make up the difference in pay. In some instances unions have successfully integrated disability compensation with existing sick leave plans. In others, agreements provide for varying amounts of supplemental pay from the employer to make up for the loss in earnings. The principle in each case is simple; workers should be protected from economic hardship as a result of a work related injury or illness.

Sample Clause

1) Supplemental benefits for industrial injury.

When an employee is absent by reason of injury arising out of and in the course of the employment with Company which comes within the application of the Workmen's Compensation and Insurance Chapters of the State Labor Code, he shall be eligible for supplemental benefits for the duration of temporary disability. Such benefits shall commence with the first work day of absence immediately following the day of injury. The amount of the supplemental benefit payable for each day of absence shall be 85% of an employee's weekly wage rate divided by five, less the sum of any payments to which he may be entitled under the Workmen's Compensation and Insurance Chapters of the State Labor Code and benefits from the Voluntary Wage Benefit Plan which provides benfits in lieu of

unemployment compensation disability benefits provided for in the California Unemployment Insurance Code. Any supplemental benefits paid during the first week of disability shall be considered as a credit against disability compensation which may be retroactively due under the provisions of the Workmen's Compensation and Insurance Chapters of the State Labor Code. Supplemental benefits shall be considered as a credit which may be applied to any permanent disability settlement. (*Pacific Gas & Electric Co., and IBEW 1245, Expired 12/1 79*)

Model

1) Guarantees no wage loss.

In the event an employee suffers lost time from work due to an accident or injury or illness, the employer shall reimburse the worker for the difference in the amount received through Worker's Compensation or through unemployment compensation for disability, and the amount of his regular wages, so that the worker shall suffer no loss in earnings.

14. RATE RETENTION, JOB TRANSFER AND SENIORITY RIGHTS

Discussion Some collective bargaining contracts and the OSHA lead standards protect workers who are prevented from returning to their former jobs because of a job-related injury or illness, by providing that they shall not suffer a loss in earnings or benefits.

Such agreements which enable workers to retain the same earnings, or enjoy a "red circle rate," may also provide for other conditions clarifying the workers' rights under such circumstances. For example, some agreements specify that workers unable to perform their regular job because of a work-related injury or illness shall have the right to "bump" a junior employee. Some agreements require the employer to train such workers for unfamiliar jobs. In some instances, less senior workers are retained on certain jobs to meet the requirements of rate retention and the continuity of employment implied by the concept discussed here.

In many work environments these issues can be very difficult to solve. It is never easy to persuade the employer to make concessions for rate retention, job training, and seniority bumping rights (especially bumping into other departments). In addition, there may well be opposition within

the union organization to special seniority rights for "handicapped" people. This will be particularly true if the transfer of a worker leads to the layoff of another worker solely because of the rate retention and special seniority rights afforded an occupationally injured worker. There are no easy answers to these problems. Perhaps that is why some unions have negotiated an open-ended clause which allows for case-by-case seniority arrangements without being specific. In this way, special cases can be handled on an individual basis, without setting precedents. Some unions have been able to win temporary rate retention and the right of transfer to a job the worker is able to perform. It must be borne in mind that employers are usually very resistant to the approaches discussed here, and usually prefer to make a permanent, compensable settlement with an individual worker -- including termination of his employment.

Sample Clauses

1) Worker guaranteed old rate for 6 months when assigned light duty job:

   This letter will confirm our understanding concerning the concept of rate retention for employees who are unable to perform their normal job duties as a result of an industrial injury. Such an employee who is temporarily placed on a light duty job which is lower rated than his normal work assignment, or who is permanently assigned to a job which is lower rated than his normal work assignment, shall retain the rate of his normal work assignment for a period of 6 months. (*Kaiser Aluminum and Chemical Corp., Oakland, CA, Steelworkers, USA, May 1977*)

2) Higher rate retained on temporary assignment:

   When an employee is temporarily reassigned to another department, or to another job classification in a different area in the same department, as a result of the Medical Department's determination that his exposure to a toxic substance calls for such temporary assignment, he shall receive for hours worked his regular rate of pay or the pay of the job classification or job classifications to which he is assigned, whichever is higher, for a period of thirty days following reassignment or upon his return to his former department, whichever is sooner. The local parties may mutually agree to extension of the rate retention period. (*American Can Co., Interstate, Steelworkers, USA, February 1977*)

3) Special seniority consideration for partially disabled:

   Notwithstanding any other seniority provisions of this agreement, the company will endeavor to re-employ former employees who have serious service-connected disabilities on a job within the employee's seniority unit suitable to such employee's capacity and ability;

and when such former employee has qualified for the job to which he is also assigned, he shall thereafter be given special consideration at time of layoff. (*Wagner Electric Corp., St. Louis, Missouri, Electrical Workers (IUE), 4/76*)

4) Super seniority for partially disabled:

Any employee who is unable to perform his regular work because of occupational disease or injury may be employed by the company at other work in the plant which is available and which he is able to do, and every reasonable effort shall be made by the company to find such employment for him. In the event of any layoff, such employee may be retained regardless of seniority and shall be exempt from the seniority provisions of this agreement in that respect. The company will notify the union in case it retains any employee in accordance with the provisions of this subsection out of line of seniority and the propriety of such retention may be questioned by the union. The incapacity referred to herein must be such as to substantially prejudice the employee's opportunity of securing other employment. (*Borg-Warner Corp., York Division, PA, Auto Workers (UAW) (Indiana) 10/76*)

Models

1) Worker retains higher rate for duration of employment.

Rate retention: Any employee required to change a job because of an occupational injury or disease arising out of or in the course of employment shall retain the regular rate of pay if transferred to a lower-rated job. Subsequent raises in pay, cost of living adjustments or other upward pay adjustments applying to the former position shall be granted as though the original job were still being performed. Similarly, all other compensation-related benefits shall be maintained at the same or higher level.

2) Worker has right to transfer including long training time on new job.

Right to transfer: Any employee who suffers an industrial accident or illness which makes it impossible or medically unsuitable to perform the duties of the present job, shall have the right to transfer to another job. Every effort will be made to find an open position with comparable pay which the employee can do with little or no additional training. If necessary, however, the employer will train such an employee for the length of time necessary to qualify fully for the new job.

3) Worker given plant- or company-wide bump rights.

Seniority rights: In the event there are no open jobs for an employee pursuant to Model 2 above, then such employee may exercise seniority rights to bump an employee who is junior on the seniority roster. Such bumping shall be accomplished in such a manner that no one is laid off from work.

4) Modification of seniority rules.

Where necessary to protect the employment rights of handicapped and

otherwise medically disabled employees, the union and company agree to negotiate special rules of procedure to permit such employees to be assigned to and retained in jobs they are able to perform.

15. BENEFIT PROTECTION FOR WORKERS WITH LONG-TERM JOB INJURY OR ILLNESS

Discussion Long-term absences from work caused by work-related disability occur infrequently. Most employers are reluctant to commit themselves to benefits for workers absent for long time periods regardless of the reasons for the absence. For this reason, union agreements are often silent about job rights, benefit rights, and seniority rights under such circumstances.

Some union agreements set limits on how long a worker can be absent from work regardless of the cause and still retain benefits and seniority rights.

A critical question is whether the months away from work are counted toward vacation credits; also whether payments are continued to be made into insurance and pension plans and whether the time off is credited as accumulated time for vesting purposes under the pension agreement. Perhaps most important of all is continued coverage of dependents under insurance plans.

All of these issues should be looked at by a union in preparation for contract negotiations. Fortunately occupational injury or illness of a long duration occur so infrequently in most industries, and the cost of vacations, insurance and pension plan coverage is so little, that employers should be persuaded to extend such protection to the unfortunate worker suffering a long time forced absence from employment. Continued seniority rights to a job should be granted on the basis of no fault on the part of the worker.

Sample Clauses

1) Worker accumulates seniority when receiving workers' compensation:

An employee who receives Workmen's Compensation payments shall accumulate seniority during the period covered by compensation payments. If, at the end of such period, he is physically unable to return to work he shall accumulate seniority for any additional period during which he shall furnish satisfactory evidence of continuing disability. (*Rubber Workers, Goodyear, 4/20/76*)

2) Employer gives vacation and pension credits:

Any time missed from work by an employee on the Attrition List which is compensated for by the Employer shall be counted as time worked for vacation credit and for contributions to the Health and Welfare and Pension Funds. (*San Francisco Printing Agency, Web Pressmen, Local 4, 12/76*)

3) Worker accumulates seniority for three years:

An employee who receives Workmen's Compensation payments shall accumulate seniority during the period covered by compensation payments. If, at the end of such period, he is physically unable to return to work on his classification or on another classification to which he might be eligible for transfer, he shall accumulate seniority for an additional period not to exceed 3 years, during which he shall furnish satisfactory evidence of continuing disability.

An employee who is off work because of non-factory injury or illness, shall accumulate seniority for a period not to exceed 2 years from the first date of his absence. During this period he shall be subject to layoff and recall according to his seniority.(*Firestone Tire & Rubber Co., United Rubber Workers, National Agreement, 7/76*)

4) Six months insurance coverage:

The Company will continue for a maximum of six months insurance coverage for an employee who is unable to work because of a compensable industrial injury while such employee is on an approved leave of absence. (*Campbell Soup Co., Sacramento, California, Teamsters Local 228, 4/29/79*)

Model

1) Protects seniority, vacation, health and welfare and pension benefits.

Any employee unable to work because of a job-related disabling condition shall be entitled to a leave of absence for the duration of the time for which he is medically certified as being unable to work. During such leave of absence the employer will maintain regular payments into medical and pension plans to ensure continued coverage for the employee and any dependents. Seniority, vacation benefits and pension credits shall be given for the time spent on such a leave of absence.

16. WORKER TRAINING IN HEALTH AND SAFETY

Discussion It is essential that the employer thoroughly train new workers in safety and health procedures when workers are first hired as part of the on-the-job training programs at the work site. New workers are often handed a list of plant safety rules when first entering a

job but receive no direct training on the job to which they are assigned by the employer. Even in the skilled trades all too frequently the only safety training received is during the apprenticeship period and thereafter there is no check-up on how safely work is performed nor any periodic review of safe ways to work. Yet only through such training will workers avoid forming dangerous work patterns or be able to correct any that may have developed.

In the case of employers who hire a large proportion of machine and assembly operators who advance in pay and job classification through promotions, it is particularly important that there be full training for such transferred workers. Often employers of necessity use a temporary transfer system of workers to fill in for absentees or for production imbalances from one department to another. When this happens, supervision must be provided to instruct such workers in the safety and health hazards of the unfamiliar work process or machine.

Some industries have large seasonal layoffs. Workers recalled after a long layoff should also be refreshed on safety and health procedures on the job. Finally, when new equipment or processes or toxic substances are introduced into the workplace, full training of all workers concerned should take place.

Sample Clauses

1) All new workers given safety training:

   Adequate First Aid facilities and access to emergency First Aid treatment shall be provided by the Company. All new employees shall be given a thorough indoctrination in the Safety program, and instructed on the safety aspects of their particular job. Further, when the Company introduces new equipment or processes, all employees involved shall be instructed and trained in its safe operation. (*American Smelting and Refining Company and Steelworkers, 12/77*)

2) All workers to participate actively in safety instruction and program:

   The Company will maintain its safety program and safety instruction and all employees shall be expected to participate actively in such program which shall include reporting unsafe working conditions. (*Union Oil Company and Teamsters; 3/77*)

3) Each company to promote safety:

Each company shall maintain a sound safety program in accordance with general industry standards taking into consideration individual company business and operational requirements. Such program will be directed toward providing safe working practices, equipment and facilities. (*California Processors and Growers, Teamsters (Ind) 6/76*)

4) Employer maintains continuous safety education:

The employer agrees to maintain a continuing program of safety education to develop a safety awareness among its employees. (*California Brewers Association and Teamsters, 5/76*)

Model

1) Provides for comprehensive health and safety training.

All new employees shall be given full and complete training in the safety and health problems of the work environment. 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 has been provided. This shall include proper training in health and safety, first aid, and any other emergency procedure consistent with protecting the health and safety of the employee.

Employees who are temporarily or permanently transferred to other positions in the employer's operation shall receive the same training specified above.

In the event of the introduction of new technology or other changes in work processes, the employees affected shall be fully trained in all the health and safety aspects of the new procedure or work process.

17. WORKERS RIGHT TO REFUSE TEMPORARY TRANSFERS TO JOBS

Discussion Workers are sometimes asked to perform jobs that are not part of their regular assignments. In some instances workers may have physical infirmities such as back trouble which would be aggravated or seriously enhanced if they accepted an assignment on a job requiring heavy lifting, for example. Commonly such requests are for short run duration to fill in for absences, production imbalances or other emergencies.

Some collective bargaining agreements have given the worker the option of refusing a temporary transfer if the worker considers it to be unsafe or dangerous for him to work. However, if by refusing, paid time is lost, workers become pressured to accept the assignments; the alternative in some cases is to be sent home for the balance of the workday and to be paid only for actual hours worked.

Other agreements give the worker the option of remaining on his regular job or being assigned still other work in the plant without loss of pay. Frequently the union steward or representative is immediately involved in problems of this type and recourse to the grievance machinery is available.

Sample Clauses

1) Right to refuse assignment and request job transfer:

An employee who sincerely believes and alleges that an unsafe condition exists on a job beyond the normal hazards inherent in the operation such that he is in danger of injury, may on request, be promptly assigned to another job if available, at the rate of pay of that job, or sent home. (*American Smelting and Refining Company and Steelworkers,(USA), 12/77*)

2) Right to receive a job transfer at same rate:

If any employee believes that the working place in which he is required to work is unsafe, he shall proceed to remedy such unsafe condition if it is a part of his job to do so. If it is not part of his job to remedy an unsafe condition, he shall have the right at his option to refuse to work in the place he believes to be unsafe after first discussing it with his foreman, and to leave the property without penalty. However, at his request, management will assign the employee to other available work at his scheduled rate pending investigation of his claim whenever circumstances permit . . . (*Cleveland-Cliffs Iron Co., Steelworkers (USA) 8/77*)

Model

1) Worker may refuse transfer and request other assignment.

In the event the employer requests an employee to tranfer temporarily to another position for the convenience of the employer, or to work at a different job for the balance of the shift, such employee may refuse to accept such a transfer if in his opinion he may injure himself or sustain an occupational illness. Such refusal shall not be grounds for discipline of any kind. The employee shall have the right to continue on his regular job if work is available, or to request other employment at the workplace, and if none is available, will be free to punch out and leave work for the day. Any dispute as to the availability of other work shall be subject to the grievance procedure.

18. REPORTING OF ACCIDENTS OR ILLNESSES

Discussion Workers will frequently fail to report initial accidents or illnesses, especially if they appear to be minor, as in the case

of falls, cuts, back strains or wrenches, and illnesses which do not seem to be job-connected. Or health problems will not be reported because the worker does not want to incur criticism from an immediate supervisor or be referred to an employer-selected physician. However, verifying that the problem is work-related becomes increasingly difficult as time elapses.

Therefore, a union may wish to include in its contract a procedure for workers to report all accidents and illnesses to the union representatives as well as to the immediate supervisor, no matter how "insignificant" they may seem. In this way occupational hazards can be identified and the union can become an integral part of the documentation process on worksite accidents and illnesses. Such a procedure has both short and long-term advantages. For example, the union, through its members, will receive continuous information on the occurrence of accidents and illnesses. In addition, union-retained accident reports can be invaluable in the event that a worker subsequently seeks workers' compensation or disability benefits, and the employer denies that the injury is work-related.

Sample Clauses

1) Worker to report all accidents and illnesses:

   All employees who may be injured or become ill while on the job should report to their supervision immediately and to First Aid, and should follow the instructions of the trained attendant in charge. (*Beech Aircraft Corp., Machinists* (IAM) 8/75)

2) Report all injuries no matter how slight:

   All accidents must be reported to your foreman, whether or not there is injury to someone or damage to material or equipment.

   All injuries, no matter how slight, must be reported to First Aid. Notify your foreman, if possible. (*Raytheon Co., Amana Refrigeration Co. Division, Machinists* (IAM) 9/76)

3) Report injuries to union and management:

   Journeymen, no matter how slightly injured, must immediately report such injury to the employer's representative and his union representative and shall be immediately taken care of by a physician. (*Association of Master Painters and Decorators of the City of New York, Inc., Painters, 7/77*)

Model

1) Union and employer both notified.

All accidents and illnesses arising at the worksite or in connection with work processes or procedures shall be reported immediately to the foreman or the job supervisor, and to the union representative on the job.

19. THE RIGHT FOR A WORKER TO REFUSE TO WORK IF A JOB IS UNSAFE OR HAZARDOUS

Discussion Central to the question of the right to refuse work is determining what constitutes a working condition sufficiently unsafe or hazardous to justify such an action. The question is subject to a wide variety of interpretations. Since job hazards differ according to the work and some jobs may be inherently dangerous, unions have developed a wide variety of contract language to deal with the right to refuse to work ranging from clauses which refer to "undue" or "abnormal" risk or danger, to clauses which give workers the clear right to shut down a job until the issue of its safety is thrashed out between the union and the employer.

In most instances the right to refuse to work is a serious challenge to an employer's authority, and refusal to perform work can be interpreted as insubordination and immediate grounds for discipline or discharge. Since arbitrators and courts have upheld this employer concept over the years, it is necessary for the union organization to develop language which will prevent workers from having to put their jobs on the line in order to protect their health. In proposing contract language, three kinds of approaches are possible. The worker can be given a clear and simple right to refuse work if the worker determines conditions are unsafe; the job can be shut down until a union representative is brought to the scene; or a system can be devised for instant arbitration of health and safety issues in a stopwork situation.

A. A WORKER'S RIGHT TO REFUSE WORK

Sample Clauses

1) Worker has clear right to stop work:

It shall not be a violation of any provision of this contract

for employees to refuse to: (1) start work, (2) return to work, or (3) continue working, when any condition exists which would endanger the employee's health, safety, or well-being, and such employees will not be subject to discharge or disciplinary action. (*California State Council of Freezer Unions [Teamsters], Frozen Foods Employer's Association Statewide, 6/76*)

2) The job is shut down until determined to be safe:

No employee shall be discharged or disciplined for refusing to work on a job if his refusal is based upon the claim that said job is not safe, or might unduly endanger his health, until it has been determined that the job is, or has been made safe or will not unduly endanger his health. (*IAM - California Metal Trades Association, 3/31/1977*)

Model

1) Worker may use own judgement and refuse to work.

It shall not be a violation of any provision of this agreement for employees to refuse to start work, return to work or continue working when any condition exists which in their opinion would endanger the health, safety or well-being of such employees. Any employee exercising this right will not be subject to discharge or to any form of discipline.

B. IMMEDIATE UNION INVOLVEMENT IN STOP WORK DISPUTE

Sample Clauses

1) Issue goes immediately to final step in grievance procedure:

Any employee or group of employees who believe that they are being required to work under conditions which are unsafe or unhealthy beyond the normal hazard inherent in the operation in question shall first report such conditions to their immediate supervisor and then shall have the right to file a grievance in the third step of the grievance procedure for preferred handling in such procedure and arbitration . . . (*Lone Star Steel Co., Texas, United Steelworkers, 10/77*)

2) Issue requires immediate union-management resolution:

Any employee who is assigned to a job which he has good reason to believe may be dangerous to life and limb, may immediately notify the Foreman and his Steward or Committeeman. If the matter is not resolved with the Foreman, the Steward or Committeeman may take the matter up immediately with the Industrial Relations Manager or his designated representative, for the purpose of resolving it. If the decision of the Management and the Union is that the job is safe, the employee must perform the job assigned. (*Houdaille Industries, Hydraulics Div. & Auto Workers, 10/77*)

Model

1) Job shut down until union and management settle dispute.

In the event that an employee or group of employees determine that a condition of work is sufficiently unsafe or hazardous to stop work, then the appropriate job or process shall be shut down and no one shall be required to work on it until a meeting has been held between representatives of the union and the management to resolve the dispute. In no case shall a stop work dispute be deemed in any way to be a violation of the no strike provision or the arbitration provision or any other provision of this agreement.

C. EXPEDITED GRIEVANCE AND INSTANT ARBITRATION OF STOP WORK DISPUTES OVER SAFETY AND HEALTH

Sample Clause

1) Provides for instant arbitration:

Workers shall not be required to work on or handle any articles or materials which contain or were processed with the use of any noxious, deleterious or poisonous substance such as mercury, or any of its compounds which may tend to endanger the health of the workers.

Should any workers refuse to perform work on such articles or materials, the association shall have the right forthwith to present the matter in dispute before the Impartial Chairman.

The Impartial Chairman shall render the decision in such matters within 24 hours after the dispute is referred to him by the association or the union. Such decision shall be final, binding and conclusive upon the parties as provided in the arbitration provisions of this agreement. (*American Millinery Manufacturers Association, Inc., Hatters Union, 12/76*)

Model

1) Provides instant arbitration.

In the event of a dispute involving a worker or group of workers who stop work or refuse to work because of an unsafe or unhealthy condition, the dispute will be discussed immediately between appropriate representatives of the union and the employer in the final step of the grievance machinery provided for in this agreement. If not resolved, the matter will be submitted to arbitration within 24 hours of the occurrence of the dispute and the arbitrator shall be obligated to render an on-the-spot decision resolving the dispute.

20. PAY AND JOB RIGHT ISSUES INVOLVED WHEN A JOB IS SHUT DOWN OVER SAFETY AND HEALTH PROBLEMS

Discussion If a job is shut down temporarily or for a longer period lasting more than one work day because of an unsafe or unhealthy conditions, regardless of whether the job was shut down by action of the worker, the employer, an OSHA inspection or by a joint union-management safety committee, there are a number of questions involving the rights and pay of the workers affected. Are the affected workers entitled to be transferred to other available work? Is their wage rate protected? If sent home because no work is available, are they compensated for the entire shift? Is the unsafe or unhealthy job clearly tagged so no one else will be subject to the danger? Do the call in pay-provisions of the union agreement apply in such circumstances? Finally, have the union and management worked out an orderly procedure for dealing with problems of this nature so that issues which may arise can be readily adjusted? The rationale behind all of these questions is of course that the worker should not be penalized because of hazardous conditions on the job.

Sample Clauses

1) Worker can refuse to work with right to transfer to another job:

   No employee shall be discharged or disciplined for refusing to work on a job if his refusal is based upon the written claim that said job is not safe or might unduly endanger his health until it has been determined that the job is or had been made safe or will not unduly endanger his health. Pending such determination such employee shall be transferred to other available comparable work which he is qualified to perform. When it has been determined that the job is or has been made safe, the employee shall be returned to such work. (*International Association of Machinists, McDonnell Douglas Corp., El Segundo Santa Monica, 9/15/74*)

2) Worker may refuse and if job is found to be unsafe, get reimbursed for any lost pay:

   Any 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 in question shall discuss the matter with his supervisor in an attempt to resolve the matter. If a dispute exists after such discussion, the employee or group of employees shall have the right to file a grievance in the third step of the grievance procedure for preferred handling in such procedure and arbitration; or relief from the job or jobs, without loss to their right to return to such job or jobs, and; at management's discretion, assignment to such other employment as may be available in the plant; provided, however, that no employee other than communicating the facts relating to the safety

of the job, shall take any steps to prevent another employee from working on the job. Should either management or the arbitrator conclude that an unsafe condition within the meaning of this section existed and should the employee not have been assigned to other available equal or higher-rated work, he shall be paid for the wages he otherwise would have received. (*Armco Steel, United Steelworkers of America, 8/77*)

3) Worker may be transferred to another job at the new rate or his old wage, whichever is higher:

If the existence of such a condition is disputed, the Miner shall have the right to be relieved from duty on the assignment in dispute. Management shall assign the Miner to other work not involved in the dispute, if such work is available; and the Miner shall accept such assignment at the higher of the rate of the job from which he is relieved and the rate of the job to which he is assigned. The assignment of such alternative work shall not be used to discriminate against the Miner who expresses such belief. If the existence of such condition is disputed, at least one member of the Mine Health and Safety Committee shall review such condition with mine management within four hours to determine whether it exists. (*Anthracite Operators and Mine Workers, 4/78*)

Model

1) Protects workers' earnings during job shutdowns.

When a job or jobs are shut down because of an unsafe or unhealthy condition, regardless of who is responsible for stopping the work, every effort will be made between the union and the employer to resolve the dispute and find a solution to the problems involved. The immediately affected workers shall have the right to be transferred to another job or area, and shall be paid at their regular rate of pay or at the rate of the job transferred to, whichever is higher. In the event the employer is unable to transfer such employee or employees, they will be sent home for lack of work and paid for all time lost from the job until the hazardous condition is corrected.

21. PROHIBITING RETALIATION AGAINST ANY WORKER WHO ENGAGES IN HEALTH AND SAFETY ACTIVITIES

Discussion Both OSHA and the Taft Hartley Act prohibit employer discrimination against workers who engage in health and safety activities. However, since both of these laws are limited in their application, collective bargaining language will doubly protect union members.

A contractual commitment discourages the employer from taking reprisal against persons involved in health and safety activities and encourages

the recognition of new types of legitimate conduct at the workplace. Also, specific language establishing and expanding the worker's right to be involved in health and safety activities will help dispel the concept of "management prerogative" in this area and provide joint procedures for protection against discrimination. The union agreement should refer specifically to taking up health and safety complaints, and to all activities concerning OSHA complaints, inspections and hearings. The agreement should protect the right of an individual not designated officially by the union to act for the benefit of the entire group on a matter concerning safety and health. And finally, interpreters of union agreements, especially arbitrators, should have it clearly stated that health and safety activities are as protected as the more traditional self-help union activities.

Sample Clause

1) No discrimination for health and safety activities:

The employer shall not discharge or discriminate against any employee for activity on behalf of the Union or any organization with which it is affiliated for upholding Union principles, for serving on any committee of the Union, or for performing any work with which the Union is concerned. The activities of the Union described herein shall not be carried on in such manner as to interfere unnecessarily with normal plant operations. (*The Singer Co., IAM District 115, July 1971*)

Model

1) No discrimination because of health and safety activities.

No employee or employees shall be discriminated against in any way, or discharged, or disciplined, for activities they may engage in relating to health and safety. All employees shall have the right and shall actively be encouraged to report promptly to their supervisors any unsafe or unhealthy condition. If the supervisor does not respond, employees shall have the right to report such complaints to any company official other than their immediate supervisor or to regulatory agencies without reprisal.

22. PROHIBITION AGAINST SPEED UP

Discussion Many employers traditionally argue that they only expect eight hours work for eight hours pay; however, more and more employers, even those using white collar workers, are introducing systems involving

the measurement of work inputs and the setting of minimum output requirements. Frequently these systems depend on "sophisticated" computer measurements and findings. Many different measurement techniques are used but the findings and conclusions of these studies are remarkably uniform; they always call for more output than presently achieved by the workers in question. The effort to "rationalize" work and to increase efficiency of workers is as old as the industrial revolution. Frequently the consequences of job pressure and speed up is an increase in job accidents and illnesses. A number of studies are now in progress over the health effects of stress on the job. It is important therefore to attempt to establish safeguards in the collective bargaining agreement, although it is always difficult to get any kind of agreement from employers on any subject directly affecting productivity.

Sample Clauses

1) Workplace may not endanger safety and health:

   Maximum production as used herein shall in no case be a rate or speed which endangers the health and safety of any employee. (*United Rubber Workers, Eloon Industries, Inc., Hawthorne, Los Angeles, California, 2/27/77*)

2) No undue burden or layoff of workers:

   There shall be no speed up or increase in the work load so as to impose an undue burden upon any employee covered by this Agreement or where the effect of such speed up or increase in the work load is to diminish the work force or lessen the total number of hours worked at any job location. (*Standard Office Building Agreement; Southern California except San Diego, SEIU, AFL-CIO, 2/76*)

3) Workers may refuse onerous workload:

   Longshoremen on cargo handling operations shall not be required to work when in good faith they believe that to do so will result in an onerous workload. The Union pledges in good faith that the onerous workload 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 7/1/79*)

Model

1) Prohibits speed up.

   There shall be no quota system or any system of measured daywork. Each employee will be expected to work at his normal pace with suf-

ficient allowances for breaks, personal time and other considerations to provide a non-stressful work environment.

23. A WORKER'S RIGHT TO LOCK OUT OR "TAG" A MACHINE OR WORK PROCESS THAT IS DANGEROUS

Discussion In work situations where several people share equipment such as fork lift trucks, cranes or electrically driven devices or where there are several shift operations where workers may not be aware of previously noted faulty equipment, collective bargaining agreements and internal plant practices have developed systems for locking out machinery prior to maintenance work being performed and systems of "tagging" various kind of machinery as a clear warning against its use.

In some cases management approval or signature is required on a tag before it can be placed on a machine. In other industries, each worker is given the right to lock out machinery prior to his performing any maintenance work. The inherent weakness in the use of a tagging procedure is that anyone can remove the tag and use the machine or throw a switch that sometimes tragically leads to loss of life and limb. Clearly a system that can effectively assure that an operation is shut down and cannot be started up again until the repair is completed, provides the maximum protection of workers. What is vitally necessary is to work out a complete procedure of how a tagging and/or lock out system is to work; who has the right and authority to tag or lock out; who has the right and authority to remove a tag or lock shutting off the power; and how any disputes can be resolved quickly. Some OSHA codes require lock out systems but do not spell out the details of how they should work.

Sample Clauses

1) Worker has right to tag a machine:

   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. *(Central States Area Tank Truck Employers, Teamsters (IBT)(IND.) 11/76)*

2) Worker tags a machine, subject to approval of supervisor:

   If it is impossible to lock-out a machine, piece of equipment or main power source, danger tags may be utilized. However, your

supervisor must give approval before the danger tag is utilized. Danger tags must be signed, dated, fastened securely and removed only by parties using them. No employee is permitted to attach a danger tag with the name of some other employee on it. (*Hammermill Paper Co., Thilmany Pulp and Paper Co. Subsidiary, Kaukauna, Wisconsin, 7/76*)

Models

1) A system for workers using stop tags.

Each employee shall have the right to tag a machine or operation which he deems to be unsafe or dangerous to operate. For this purpose the management shall provide suitable tags which must be signed and dated; a brief description of the nature of the malfunction shall also be provided. The employee shall immediately notify his supervisor upon placing a tag on a machine. The maintenance department shall be notified of the problem by supervision. In the event there is a dispute as to whether in fact the tag should be on the machine, there shall be an immediate meeting of the union and management safety representatives to resolve such dispute. The above tagging of a machine will only be utilized where it is impossible to lock out the operation.

2) A lock out system for the protection of workers.

All employees who may be required to lock out any machinery shall be provided with a good lock. The lock shall have the name of the individual employee and other identification on it. Each employee shall have the only key to his lock. Every person working on the machinery must put his lock on the machine's lock out device(s). 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 even if the switch is in the off position.

Fully interlocked safety blocks should be utilized whenever necessary.

24. SPECIAL "VACATION" OR TIME OFF FROM WORK WITH PAY WHEN EXPOSED TO SPECIAL HAZARDS

Discussion The new OSHA lead regulations for the first time established the right of a worker to get a leave of absence from work if the levels of lead in his blood exceed the standard, and if the only recourse to avoid exposure is removal from the workplace. Such leaves can extend for as long as eighteen months on each occasion, and the employer is required to guarantee that the worker involved receives his full rate of pay. The OSHA approach is very detailed and is careful to provide safeguards for workers' rights with respect to who does the medical examination, the right of the

worker to see his own physician, and other protections. OSHA also provides for rate retention in the event a worker must be transferred to a lower paying job in the factory or smelter.

A few unions have pioneered collective bargaining arrangements whereby workers exposed to extreme hazards such as lead poisoning, radiation and the like, may receive time off with pay to recuperate from the effects of excessive exposure and to restore their health. Whenever a union is considering negotiating such provisions it is important to provide for independent medical evaluation, clear procedures for determining when a worker is fit to return to work and lastly, the circumstances under which a worker will be re-employed; that is, transferred to other work at the same rate, or merely put back on the same job which caused the overexposure in the first place.

When workers are subject to devices which emit ionizing radiation it is important for the union to ensure that all monitoring procedures and other safety precautions are fully followed by the employer at the place of employment.

Sample Clauses

1) Extra vacation with pay provided for workers exposed to X-ray radiation:

Each Technician and Mammography Technician assigned to X-ray work involving exposure to X-rays and other sources of irradiation shall be granted a maximum of 2 weeks vacation with pay at the completion of each 6 month period of continued exposure; provided that such vacation which is in excess of that which the employee would be entitled to . . . shall be for reasons related to the employee's health, and that the vacation period which is in excess of that which the employee would be entitled to under the provisions of Section 1 above and that which the employee is entitled to because of working in the vicinity of sources of irradiation shall be nullified insofar as pay is concerned if the employee engages in X-ray work elsewhere. Those employees assigned to X-ray work prior to January 1, 1954 will continue to receive vacations in accordance with past practice. Radiation indicators will be supplied to those classifications of employees and will be checked periodically to prevent over-exposure to X-rays. (*Kaiser Foundation Hospital, SEIU, 10/76*)

2) Comprehensive protection for employees exposed to radiation; includes transfer rights, earnings protection, detailed recordkeeping:

All State and Federal laws and regulations governing radiation exposure shall be applicable under this contract.

The employer agrees to make available to the employee and the local union records of film badge exposure, which records shall provide running total of each employee's radiation exposure weekly. The employer is responsible for assuring and providing accurate personnel dose monitoring equipment, and procedures including the film badge determination.

The employer agrees that no employee shall be exposed to whole body dose of more than 3000 MREN (MREN - 1/1000 of REM - Roentgen).

If an employee reaches his maximum exposure in any one quarter, he shall be offered employment in a cold or non-radiation or non-contaminated area for the balance of such quarter or the duration of the job, whichever is longer.

If an employee received his maximum radiation exposure as set down by State and Federal regulations per quarter and he loses employment for this reason, the work lost or time lost for the duration of said job shall be reimbursed, providing said employee cannot gain employment elsewhere, this is to be determined by the local union.

The employer is responsible for proper scheduling of radiation exposure for each and every employee to comply with State and Federal regulations in each work assignment and shall provide all personnel and equipment, including health physics technicians necessary to control the amount of radiation received.

The employer is to provide records of the weekly running total of the amount of radiation received by each employee and to deliver same to each employee and to the local union office.(*Master Builders Association of Western Pennsylvania, Inc., Carpenters, 5/76*)

Model

1) Provides full protection provided by laws and regulations and unlimited time off with pay to recover from radiation exposure.

All state and federal laws and regulations governing radiation or exposure to any other health hazard shall be applicable under this contract. The employer is responsible for seeing that all regulations are complied with. In the event an employee must take off from work because of excess exposure to radiation or any other hazardous substance, such employee will continue to be paid his regular rate and any health, pension or other contributions will be paid. Seniority will accumulate during such leaves of absence. Such employee will be entitled fully to any fringe benefits provided by the contract as though he were regularly employed.

25. HAZARD PAY FOR PERFORMING DANGEROUS OR UNHEALTHY WORK

Discussion These kinds of clauses establish a pay premium for some hazardous conditions, which, however, does nothing to reduce the dangers involved to the workers. Unfortunately, many job evaluation plans or union negotiated pay scales have hidden in them allowances for the fact that a job is unsafe or unhealthy. It is difficult, if not impossible, to accurately assess how prevalent such a practice is. However, there are unions and industries which clearly provide for premium rates, percentage bonuses, and also specify which kinds of work are involved. What this does is to pinpoint and acknowledge unsafe and unhealthy work. This provides a good basis for worker compensation claims and also puts pressure on the employer to change or modify the process if possible so as to eliminate the hazard.

Sample Clauses

1) 25¢ hourly premium for toxic materials:

All carpenters working with creosoted or other toxic materials shall receive 25 cents per hour more than the scale of wages. Toxic materials shall be interpreted as materials which contain any treatment to preserve same and which will cause irritation of the skin or other parts of the human system and defined as toxic by the Ohio State Industrial Commission. (*Associated General Contractors of America, Inc., West Central Ohio Chapter, Carpenters (CJA), 4/75*)

2) Double-time for explosives:

All personnel assigned to ship loading or discharging explosives or ammonium nitrate of a type requiring a U.S. Coast Guard Permit handled over at explosive facilities, will be paid double the straight-time or overtime rate (whichever is applicable) . . . Small-arms ammunition and firecrackers shall not be construed as explosives. (*Savannah Maritime Assoc., Ga., Longshoremen's Assoc. (ILA), 9/77*)

Model

1) Hazard pay.

Any employee assigned to work with _____ shall be paid a premium of _____% per hour over the regular rate of the job for all time spent working with such material or work process. (Note: fill in the appropriate material or work process)

26. INFORMATION TO THE UNION

Discussion In order to be effective, the union health and safety organization should receive full and complete information from the employer on a broad number of subjects which should be furnished on a regular basis and in useable form. Not every local will need as much information as others. The union should try to include in its agreement, or if this is not feasible, in a letter of understanding, a requirement that the employer will furnish certain specified data as needed.

It is suggested that the checklist of subjects enumerated in Section II above starting on page 4 be reviewed for purposes of determining data necessary for contract bargaining and the effective formulation of union health and safety policies. In addition, the following list of types of information the union should receive may be useful:

a. Information on all toxic substances used in the workplace together with their generic names and manufacturer safety provisions. This information is especially necessary wherever workers might come into contact with solvents, chemicals, epoxies, and other toxic substances.

b. Information on any new substances or the combination of various substances that may be introduced by the employer during the life of the union agreement.

c. Copies of all accident, injury and illness reports to any insurance company, and/or the state or federal government. The union should be fully informed of what and where accidents have occurred, their exact causes, corrective measures taken, and all circumstances surrounding them.

d. Results of all workplace monitoring activities and inspections of all types, including health and safety evaluations of noise levels, air pollutants, or ventilation problems.

e. Results of any medical examinations of workers subject to medical surveillance and testing with due regard to privacy protection for the individual worker.

f. Prior notice of any plans for plant changes, modernization, or the introduction of new equipment or processes so that the union may be able to assure proper safeguards for health and safety.

Sample Clauses

1) Workers and union get reports on toxic materials, workplace monitoring:

Where the company uses toxic materials it shall inform the affected employees what hazards, if any, are involved and what precautions

shall be taken to insure the safety and health of the employees. The company will continue its program of periodic in-plant noise and air sampling and testing under the direction of qualified personnel. When the union Co-Chairman of the Health and Safety Committee alleges a significant on-the-job health hazard due to in-plant air pollution, the company will also make such additional tests and investigations as are necessary. A report based on such additional tests and investigations shall be reviewed and discussed with the Joint Safety and Health Committee. (*United Steelworkers of America and U.S. Steel, Pittsburgh and Torrance, 8/1/74*)

2) The union gets written report of lost time accidents:

The company will notify the union of all lost time accidents as soon after they occur as is practicable. The company will forward a written monthly report of all lost time accidents to the Chairman of the Union Safety Committee.(*Colt Industries, Fairbanks Morse Engine Division, Beloit, Wisconsin, Steelworkers* [USA] *8/75*)

3) The union gets copies of worker compensation data:

Promptly after the occurrence of any lost time accident to any employee within a plant of the company, the company shall furnish to the Workmen's Compensation Committee of the local union or to such other committee or representatives as may be designated by the local union a copy of the record of the initial visits to dispensary or to the doctor provided by the company and copies of accident reports required to be submitted to State Workmen's Compensation agencies.

In the West Virginia and Indiana plants covered by this agreement, the company will continue its present practice of making available to the union records of all accidents which occur within the bargaining unit. (*White Consolidated Industries, Inc., Blaw-Knox Subsidiaries Steelworkers* [USA] *1/75*)

Model

1) Union furnished comprehensive information.

Upon request the employer shall promptly furnish to the union the generic names and composition of all substances used in the plant. The employer agrees to give the union the results of all environmental tests of the workplace and plant areas; all medical test results of employees; all blueprints and design criteria and inspection reports of all potentially hazardous equipment and all equipment designed to reduce workplace hazards. The Union shall be furnished all accident, morbidity and mortality records in the possession of the employer. The Union shall receive the results of all inspections of workplace conditions. The above information shall be supplied at company expense and no later than five days after receipt of a request by the union.

The employer agrees to notify the union 60 days before the introduction of any new substance, machine process or procedure and agrees to discuss with the union the possible effects on the health and safety of all employees potentially exposed.

27. UNION ACCESS TO THE WORKPLACE

Discussion Some unions employ or elect full time health and safety officers or representatives who, on the basis of union agreements, have access to all company plants and job sites to insure that the provisions of the union agreement are being carried out. Of course a contract that only allows for joint inspections is still better than having no provision for systematic surveys of workplace conditions. The right to enter a plant is also particularly important in amalgamated locals with many different kinds of plants under contract with the union. It is important to be able to survey the workplace freely and to make independent evaluations of safety and health problems. This is particularly true in many situations where the employers are small and are unwilling or unable to systematically survey themselves.

Sample Clauses

1) Union representative admitted to plant at any time:

Business representatives of the union, for performance of official union duties, upon application to the offices of the employer, shall be permitted to enter the premises of the employer at any time during working hours. The business representative shall not unreasonably interfere with the normal work duties of employees or the operation of the plant. (*California Metal Trades Association and IAM , 3/31/79*)

2) Union business agent surveys plant for health and safety violations:

The delegate or business agent of the union shall call the attention of the employer to any condition which he considers is endangering the safety of the employees represented by the union. If the employer does not remedy the condition, either through negligence, disagreement as to the presence of danger, or question of responsibility under his contract, it shall be the right and duty of the delegate or business agent to refer the matter to the New York State Department of Labor with a request for an immediate inspection. (*Cement League and Building Contractors Association of New York and Laborers Union, 6/78*)

3) Union safety inspector inspects all equipment with right to shut down:

The union's qualified safety inspector shall have the authority to inspect any and all equipment classified under the jurisdiction of the union and deadline any equipment he deems unsafe for operation. (*Associated General Contractors of America, Inc., Alaska and Teamsters, IBT, 6/77*)

Model

1) Union representatives given free access to workplace.

Union representatives, after duly notifying the offices of the employer upon their arrival, shall be granted admittance to the plant for purposes of ascertaining whether this agreement is being properly enforced, and for making such health and safety inspections as deemed necessary by the union and for the conduct of other legitimate union business.

28. THE UNION'S RIGHT TO BRING IN OUTSIDE CONSULTANTS ON HEALTH AND SAFETY ISSUES

Discussion Few employers, at this time, will agree that the union can bring in outside consultants or engineers to study problems and propose solutions. Such consultation might occur only by specific agreement, limited to a particular hazard or operation. A few unions have negotiated industry agreements where, by mutual consent, the union may bring in a consultant. Unions also have the option of requesting a NIOSH health hazard evaluation, filing an OSHA complaint or in some instances utilizing local health authorities or other resources to obtain the same results. But many employers will not agree to permit non-employees access to their plants or worksites except under the most limited and controlled conditions.

Sample Clauses

1) Union participates in selection of consultant; gets copies of results:

The company will, from time to time, retain at its expense qualified independent industrial health consultants, mutually acceptable to the International Union President or his designee and the company, to undertake industrial health research surveys, as decided by the Committee, to determine if any health hazards exist in the workplace.

Such research surveys shall include such measurements of exposures in the workplace, the results of which will be submitted in writing to the company, the International Union President, and the joint committee by the research consultant, and the results will also relate the findings to existing recognized standards. (*Oil, Chemical and Atomic Workers and Gulf Oil, California, 1/7/75*)

Model

1) Union given right to call in outside consultant.

In the event the union decides that it would like to have an outside expert on health and safety make a survey and study of a particular health or safety hazard, the employer agrees to admit such consultant

to the premises and to cooperate in every reasonable way to make such an inspection a success. The Union agrees to furnish the employer the results of such surveys and proposals for correcting the problem.

29. EMPLOYER FURNISHED MONITORING EQUIPMENT

Discussion In many workplaces it is necessary to monitor for air quality or for noise levels and to take other measurements to determine acceptable levels of workplace exposures. A number of unions have negotiated agreements whereby the employer will purchase, maintain and calibrate the required measuring devices and make them available to the health and safety committee members or representatives of the union. Immediate access to such equipment and the right to use it on the job is especially necessary in worksites where conditions change frequently and "safe levels" fluctuate fairly rapidly. Where samples are collected the employer should provide for prompt analysis so that the results will be swiftly obtained and recorded by the union and the employer for their analysis in safety meetings.

Sample Clause

1) Employer agrees to furnish measuring equipment:

The corporation agrees to provide equipment for measuring noise, air contaminants, and air flow which will be available for use by the representatives of the Local Joint Committees on Health and Safety, established pursuant to Section III hereof. (*General Motors National Agreement, UAW, 11/22/76*)

Model

1) Union safety representatives furnished monitoring equipment; employer pays cost of analysis.

The employer agrees to make available to health and safety representatives all appropriate equipment for measuring noise, air flow, concentration of contaminants and any other workplace hazard which the union may wish to study and evaluate.

The employer will pay the cost of any analysis of samples which may be necessary and promptly provide the union and when appropriate, the affected employees with the results.

30. WALKAROUND PAY AND COMPENSATION PAYMENT FOR TIME SPENT HANDLING HEALTH AND SAFETY MATTERS

Discussion Besides securing the right to make unilateral inspections, check equipment or monitor workplace conditions, the union must settle the question of payment by the employer for time spent while engaging in such actions. OSHA has adopted a policy of requiring that employers pay the designated worker representative for time spent during an OSHA inspection. The rationale for this is simple; if a worker suffers a loss in pay because of participating in an inspection, such worker is much less inclined to be involved in the OSHA complaint procedure. The OSHA directive to field staff also provides that workers should be paid for participating in opening and closing conferences and any informal conferences that may be held as a result of an OSHA investigation of a complaint.

Employers regard this as a cost, but an effective health and safety program will decrease high worker compensation insurance costs and related expenses. A union health and safety organization will "pay for itself" by actively contributing to the success of an effective safety program. There are varying arrangements concerning this important question and employers will customarily seek to place limitations on time spent in such activities.

Sample Clauses

1) Union safety persons paid at their regular rate of pay:

   Members of the Safety Committee will be paid at their regular rate of pay for time lost attending safety meetings, conducting inspections, or performing any other safety function designated by the committee. (*Yawkey-Bissell Hardwood Flooring Company and Woodworkers; 6/78*)

2) Employer pays for health and safety activities:

   Time spent in committee meetings by Union representatives, including walkaround time during joint inspections and investigations, shall be considered and compensated for as regularly assigned work. (*Oil, Chemical and Atomic Workers, Gulf Oil, 7/1/75*)

Model

1) Union health and safety employee representatives paid for all time lost.

   Any employee serving as a member of a union safety and health com-

mittee shall be paid for all time spent during working hours, including such overtime as may be necessary, time spent attending meetings, making inspections, investigating accidents and/or health and safety complaints, using monitoring instruments and documenting conditions and engaging in such other legitimate duties as may be required as a part of the work of health and safety committees.

31. AN EMPLOYER FUNDED HEALTH CONSULTANT OR INDEPENDENT RESEARCH STUDY

Discussion Many unions are successful in persuading employers, particularly in high risk industries, to set aside a certain sum per hour for each hour worked by workers to be used exclusively for research into job and health hazards. Such studies include medical surveillance and an examination of morbidity and mortality patterns. By negotiating this kind of approach, namely by taking money out of the economic "package" in contract negotiations, the members of the union in effect are paying for the research. Accordingly, the union is able to achieve a full involvement in the decisions as to the kinds of studies to make, whom to employ, how long term studies can best be devised and, of course, regular participation in the evaluation of the results. Moreover, early disclosures of possible problems and the immediate warning of the workers involved will create a more effective demand for solutions to such problems.

Sample Clause

1) 1/2 cent per hour fund for health research:

The parties hereby mutually agree as follows:

1. To establish at Harvard University School of Public Health, an Occupational Research Study Group to undertake an epidemiological study of the employees covered by this agreement.
2. The functions of the Occupational Research Study Group shall be as follows:
   a) To make preliminary study as to the appropriate procedures for conducting an epidemiological study into potential environmental health problems which might affect employees under this Agreement and to formulate long range programs based upon the results of this study.
   b) To assist the Company in the development of safe standards for occupational environments.
   c) To recommend uniform methods of record keeping to assist in the prevention and detection of environmental diseases.
   d) To act as a consultant to the Occupational Health Committee

on matters referred to that Committee for consideration.

e) To assist in the development of appropriate environmental controls of (1) new chemicals and processes introduced into the Company's operations covered hereby, (2) chemicals and dusts of already recognized toxicity, and (3) other working conditions as appropriate.

3. All necessary expenses incurred in the implementation of this Program not to exceed the equivalent of 1/2¢ per hour for each hour worked by employees covered hereby, shall be borne by the Company, including the expenses of the Occupational Research Study Group and the salary of its Director. (*United Rubber Workers Goodyear Tire & Rubber, 4/1/76*)

Model

1) One-half cent per hour from each hour worked set aside for a joint health and safety study fund.

For each hour worked by employees covered by this agreement, 1/2¢ per hour shall be set aside for the exclusive purpose of meeting the expenses incurred by the implementation of the program described below.

It is agreed between the parties that in furtherance of the health and safety of employees covered by this agreement, it may be necessary to hire independent consultants, or to contract with independent research organizations to aid and assist the parties to determine the exact nature and extent of such health hazards as may exist in the workplace. Either party may propose specific studies or health hazard evaluations to be made pursuant to this agreement. Both the administration of the funds and the selection of personnel to perform the required tasks shall be joint responsibilities of the parties to this agreement.

32. PAYMENT FOR TRAINING OF UNION HEALTH AND SAFETY REPRESENTATIVES

Discussion Some unions have been able to negotiate employer financed training in safety and health hazards and protective procedures for union committee members. This training is the foundation of a first rate health and safety program. When the employer knows that the union representatives are fully knowledgeable, it facilitates the settlement of problems. Union members also benefit from having excellent and knowledgeable representation. In terms of setting priorities as to which health and safety problems should be tackled first, good training is indispensable. Regular and systematic training of union health and safety personnel is critical because there is usually a turnover of representatives. Also, in many work settings there are changes in job conditions which require new anal-

yses and solutions. Again, the employer should understand that well trained union health and safety people will help lower Worker Compensation premiums and all other related employer costs from job-related worker injuries.

This kind of agreement for training is particularly necessary for high hazard industries requiring specialized hazard recognition techniques and protective procedures, and is also indispensable for many employers who are unable to provide job site training due to a lack of qualified personnel.

Worker representatives should become acquainted with a variety of monitoring equipment to evaluate specific health hazards such as noise or carbon monoxide levels. Knowledge of OSHA standards, medical surveillance requirements and related subjects are essential for effective union work in the field of health and safety.

In the event a union is unable to secure management payment for lost time from work, at the very least the right of leaves of absence to attend training sessions designated by the union should be written into the contract. There are now resources in many parts of the country that can help in providing training on weekends, after hours in the evening, and for sessions where the lost time is paid for by the union. But many unions cannot afford to pay lost wages, and reliance on such arrangements makes it difficult to create regular, systematic training programs. Where the employer does agree to pay for training it is best to involve the union fully in the selection of trainers.

Sample Clauses

1) Annual training meetings paid for by the Employer:

   Develop and recommend to the Corporation an appropriate training program to be established for Union members of the Local Joint Committees on Health and Safety. Annual training programs agreed to by the National Committee will be provided to the Local Joint Committee so that they may perform their functions satisfactorily. In addition, they will receive specialized training appropriate to the operations in their respective units. The National Health and Safety Committee will be provided the opportunity to review and participate in such training or instruction programs and make necessary and desirable recommendations. (*UAW and General Motors, 11/76*)

2) Union Health and Safety Committees may attend state or federal training sessions:

Bargaining unit workers on the Unit Safety Committee shall be eligible to attend state or federally sponsored safety conferences held in Marin, Alameda, Contra Costa, San Francisco, San Mateo and Santa Clara Counties, which have been recommended by mutual agreement of the Union and University members of the Unit Safety Committee as being related to the exercise of the committee's responsibilities as set forth in this Article, provided that attendance at any one such conference shall be limited to one worker on the committee and that no worker on the committee shall attend more than two such conferences in any one-year period. The University upon the written recommendation of such a conference by the committee shall pay any registration fee required and provide release time for attendance. (*SEIU and Stanford University, 9/1/79*)

Model

1) Employer pays for all training expenses.

The employer shall pay for time lost from work and other expenses incurred by members of the union health and safety committee attending formal training sessions - selected by the union - relating to health and safety hazards in the plant. Such payment shall be generally limited to a total of _____ time per calendar year and to a total of ____ union health and safety committee members.

Note: Fill in the appropriate numbers for your particular group.

33. UNION'S RIGHT TO SHUT DOWN ANY UNSAFE OR HAZARDOUS JOB OR WORK PROCESS

Discussion This right is exercised most frequently in the construction industry when the union refers men for the work from a hiring hall, and when the employer is obligated to provide certain immediate standards of safety and health on the job. In the event the employer fails to meet such minimum conditions, the union business agent has the right and authority to pull union members off the job or refuse to dispatch them. The Union may also have the express contractual right to set up a picket line.

Some unions in the mass production field have also established the clear contractual right to strike or walk off a job that is unsafe or injurious to health. This is especially true in the auto and electrical industry. This is in part reflected by the fact that production standards are not subject to binding arbitration and other contractual understandings.

Sample Clauses

1) Contract specifically affirms legal right to strike over safety and health:

Nothing herein shall be construed to restrict any employee's rights under Section 502 of the Labor-Management Relations Act, 1947, as amended. (*General Motors, UAW 11/76*)

2. Union may inspect premises and call strike to protect members:

   The union reserves the right to inspect the premises of all stations and where it has been determined that health or safety hazards may exist, the union may call and authorize a strike or closure of the station, including such stations where the company may raise as a defense that they are complying with local ordinances or other regulatory authorities. If such conditions are not satisfactory to the union, then the union shall be empowered to do whatever is necessary to protect the safety of its members or eliminate the source of the problem. (*Area Independent Service Station Operators, California and International Brotherhood of Service Station Operators (Ind), 12/74*)

3. Union can shut down job when unsafe:

   . . . in instances where adequate safety and/or sanitary health conditions have not been provided and maintained, a job may be stopped immediately. (*Contracting Plumbers Association of Brooklyn and Queens, Inc., Plumbers Union, New York, 8/75*)

Models

1) Employer obligated to furnish safe place to work; union can call strike to enforce the agreement.

   The employer shall at all times, provide safe tools, materials and equipment and safe working conditions. If at any time, in the opinion of the business agent such tools, materials or equipment or working conditions are unsafe and constitute a hazard to the health or physical safety, the employees shall not be required to work until and unless they are made safe and approved by the union or its authorized agent. No employee shall be dismissed or otherwise disciplined for refusal to work under these circumstances.

2) Local Union may strike over unsafe or unhealthy conditions.

   Notwithstanding any other provisions of the agreement, the local union may strike when in good faith it determines that dangerous or unhealthful conditions of work exist.

34. PROVISIONS FOR RECOGNIZING ORGANIZED UNION HEALTH AND SAFETY STRUCTURES

Discussion Unions handle safety and health issues in a variety of ways. Some appoint full time safety officers with the status of union representatives who regularly investigate health and safety complaints and problems on the job. Other unions establish health and safety committees in their locals, and within each individual plant meet regularly with employers to resolve problems. Still other unions participate in joint

labor-management health and safety committees. And some unions use their established grievance machinery and shop stewards system to deal with health and safety.

All of these methods have proven to be effective in a variety of differing circumstances. What seems to be the real key to improving health and safety on the job is for the union to have a plan and set of objectives and goals to actively pursue, with the broadest support possible of the membership. Whatever structure is utilized or adopted by a given international or local union, it is essential that the safety representatives function independently of the employer and formulate their own agenda and approaches to employers. Obviously a non-adversary atmosphere is ideal, but there also must be an orderly method for resolving differences between the union and employer in this area as well as in resolving traditional grievances. The chief complaint of many workers who serve on joint labor-management committees is that such organizations are chiefly cosmetic, or that they are so dominated by the employer that they cannot be effective, or that the employer representatives lack real authority to accomplish change. Another reason for having an independent group of union safety representatives recognized by the employer is to clearly delineate the employer's sole responsibility for providing a safe and healthy place to work.

In the sample clauses which follow, it has not been possible to find samples which accurately reflect model language furnished for consideration. In numerous cases unions have obtained extensive rights for safety representatives which are exercised as a matter of practice and policy, reflecting mature collective bargaining relationships which are not written down in the agreement. Each union will have to decide, as a matter of tactics, how detailed they wish to be in formulating contract language for collective bargaining purposes.

Sample Clauses

1) Two union, two employer committee handles all safety and health problems:

   A safety committee shall be established. The Committee shall be composed of four (4) representatives, two (2) from the Union and

two (2) from the Company. The Committee shall handle safety matters in connection with the Plating Division. The safety committee may shut down a machine or operation which a majority of the committee (a quorum shall be four (4) members) agrees is safe. (*Superior Plating, Inc. and Electrical Workers (IUE); exp. 9/78*)

2. Committee selected by union, recognized by employer:

   The company will recognize at each plant a Safety Committee to be selected by the Union, consisting of not more than three (3) employees and their alternates, and will meet with said Safety Committee at mutually agreed times to discuss matters relating to safety within the plants. All complaints or suggestions for the betterment of health conditions in the plant submitted by the Committee shall be promptly investigated by the Company. If a matter complained of is not promptly settled to the satisfaction of the Committee, it shall, at the request of the Committee, be immediately submitted for final decision to the Division of Industrial Safety of the state in which the plant is situated. (*Printing Specialties and Paper Products Workers, Crown Zellerbach Corp., San Leandro, California, 9/30/75*)

3. Joint union employer safety committee:

   A Safety Committee consisting of three (3) employees designated by the Union and three (3) management members designated by the Company shall be established. The Union and the Company shall designate their respective Co-Chairmen and shall certify to each other, in writing, such Co-Chairmen and Committee members. The Committee shall hold monthly meetings at times determined by the Co-Chairmen who may also agree to hold special meetings, preferrably outside of regular working hours. Each Co-Chairman shall submit a proposed agenda to the other Co-Chairman at least five (5) days prior to the monthly meeting. The Company Co-Chairman shall provide the Union Co-Chairman with a copy of the minutes of the monthly meeting. Prior to such monthly meeting, the Co-Chairmen or their designated representatives shall engage in an inspection of mutually selected areas of the Plant. Before the monthly meeting is held, a report of the inspection shall be prepared by the Company which shall include unsafe conditions and practices observed during the inspection. A copy of the report shall be furnished to the Union Co-Chairman. (*United Steelworkers of America, Kaiser Steel Corp., exp. 3/1/74*)

Models

1) Small Company safety committee.

   There will be a safety committee in the plant. This committee will consist of ____ Union representatives and ____ representatives of the employer.

   The Union members of the committee shall be paid at their regular rate for any time required to investigate and meet on safety and health problems. (Note: fill in the appropriate number for your situation)

2) Employer recognizes union committee and provides full rights to function at the workplace.

The employer shall recognize the union health and safety committee established by the union with one representative from each shift in each department. Safety committee members shall have all the safeguards and protections given shop stewards. Committee members shall have unlimited access in their department or area of jurisdiction and shall have the right to investigate and process safety and health complaints and problems. The chairperson of the union committee shall have the freedom of movement to contact safety committee members throughout the plant and aid them in handling health and safety problems. Members will be paid their regular rate of pay when performing their duties.

3) Comprehensive joint union-employer committee.

1. Joint union management committees:

There shall be a joint labor-management health and safety committee. The committee shall be composed of an equal number of management and union representatives. The union representatives shall be selected by the local union.

2. The joint committee shall perform the following functions:

a. Meet at least once every month at established dates;

b. Make periodic inspections of the plant at least once every month.

c. Make recommendations for the correction of unsafe or harmful conditions and the elimination of unsafe or harmful work practices.

d. Review and analyze all reports of industrial injury or illness, investigate causes of same, and recommend rules and procedures for the prevention of accidents and disease and for the promotion of the health and safety of employees.

e. Promote health and safety education.

f. Accompany government inspectors and employer consultants on all surveys of the plant and participate in these inspections.

g. Investigate any worker exposure to potentially dangerous substances, fumes, noise, dust, etc.

f. Be notified by the employer of any proposed measurement of worker exposure to any potentially dangerous conditions and be involved in these measurement procedures;

h. Receive in writing the identification of any potentially toxic substance to which the workers are exposed together with material data sheets, if any.

3. The employer shall keep minutes of all meetings and provide union representatives with copies.

4. The employer shall pay union members of the committee at their regular rate for all time spent on committee business, including time spent in inspections, handling of safety problems, accompanying inspectors, and in meetings.
5. The employer agrees to provide the committee with adequate equipment and training for measuring noises, air flow, tion of air contaminants, and other workplace hazards. Specifically, the employer shall pay all reasonable costs of training and lost time when necessary, for the union committee members.
6. The committee shall be considered an adjunct of, and subordinate to, the regular grievance procedure. 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 be subject to the grievance procedure.
7. The committee may ask the advice, opinion and suggestions of experts and authorities on safety matters. The committee or union representatives thereof shall have the right to call to the plant such experts and authorities, as well as international representatives of the union; and they shall be permitted to make such examinations, investigations and recommendations as shall be reasonably connected with the purposes of the committee.

35. PROMPT SETTLEMENTS OF DISPUTES OVER HEALTH AND SAFETY

Discussion Methods of settling acute questions involving stoppages of work were discussed earlier. However, regular or "ordinary" day to day problems should receive prompt attention and resolution, since workers become discouraged from raising problems if they are not effectively resolved. Moreover, delays increase the probability of an injury or illness occurring. Labor studies and union experience have shown that removing safety and health disputes from regular contract enforcement procedure is effective if a non-adversary, problem-solving relationship can be established between employer and worker representatives.

On occasion arrangements are made where health and safety issues bypass regular grievance procedure because they are not defined as grievances or made subject to final and binding arbitration. Such arrangements are made in an effort to remove controversy in handling such issues. The difficulty is that OSHA then becomes the only recourse for differing opinions, when the dispute falls outside of OSHA's authority and standards; thus, the problem may not be easily or quickly resolved.

In any case, there should be some "court of appeal" or proceeding to ensure that issues will be resolved quickly. Some unions provide for this

by stating in their agreements that all health and safety problems go through the special safety committee process, and if not resolved can then be immediately filed in the grievance machinery at the last step. Other unions have negotiated to refer disputes to be settled by state safety inspectors, impartial arbitrators, outside consultants or others. Unions with multi-employer master agreements frequently hire permanent arbitrators who are on call to settle disputes immediately.

Sample Clauses

1) Impartial umpire decides cases promptly:

. . . If the existence of such alleged unsafe condition shall be disputed, the chairman of the grievance committee of the union at the mine or his designee and the management's representative or his designee shall immediately investigate such alleged unsafe condition and determine whether it exists. If they shall not agree and if the chairman of the grievance committee or his designee is of the opinion that such alleged unsafe conditions exists, the employee shall have the right to present a grievance in writing to the management's representative or his designee and thereafter to be relieved from duty on the job. . . Such grievance shall be presented without delay directly to an impartial umpire . . . who shall determine whether such employee was justified in leaving the job because of the existence of such an unsafe condition. (*Hanna Mining Co. and United Steelworkers, 8/74*)

2) Ruling given in five days:

In the event the Union believes that the number of employees designated by the Foreman is insufficient to safely perform any assigned Pressroom work or will impose an unreasonable hardship on employees, such question(s) if not mutually resolved between the Union and the Employer, shall immediately be presented in writing to a Three-Member Panel which will have the authority to observe and study the work and/or operation complained of by the Union. A final and binding determination of such complaint shall be rendered by the Panel not later than five days after the Panel's observation and study of such work/operation. The Panel's determination shall be submitted in writing with a copy to the Union and Employer. (*Web Pressmen #4, San Francisco Printing Agency, 1/1/77*)

Model

1) Provides for expedited arbitrations.

In the event the parties to this agreement cannot resolve a difference arising over a safety and/or health question, the issue shall be immediately discussed in an emergency meeting on one (1) days's notice at the final step of the grievance procedure. If it cannot

be resolved after such a meeting and there is no agreement to extend discussion of the matter, then the union shall have the right to refer the matter for resolution by the special arbitration procedure established by the parties to this agreement which 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 his decision within five days from the date of the hearing, unless the parties by mutual agreement, extend such time period for the decision.

36. NON LIABILITY FOR HEALTH AND SAFETY PROBLEMS

Discussion Recently a few employers have been found liable for worker illnesses in connection with health and safety. After the courts have levied a fine against such employers, some have turned around and cross sued the union on the grounds that the union has responsibility for an unsafe or unhealthy workplace as well. In most cases such counter suits have not been successful. However, as a precautionary measure, it is a good idea for a union to secure in writing a commitment by the employer that the union will not be held liable for any work connected injuries, disabilities or diseases which may occur.

Sample Clauses

1) The union is not held liable:

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. (*Bethlehem Steel Corp., South San Francisco, Los Angeles (Vernon), Richmond, Torrance, 8/1/74*)

2) Union not liable for poisoning:

Union will not be held responsible for any poisoning of workers or consumers. The Union will be free from legal recourse and will be free to assist any worker who has been poisoned with his demands against Company for such poisoning. (*United Farm Workers of America, InterHarvest, 1/76*)

3) Union and all its agents are held not liable:

It is intended that, consistent with the foregoing functions of the safety and health committees, the International Union, Local Unions, Union Safety Committees and its officers, employees and agents shall not be liable for any work-connected injuries, disabilities or

diseases which may be incurred by employees. (*United Steelworkers of America, U.S. Steel, Pittsburgh and Torrance, California, 8/1/74*)

Model

1) Employer agrees not to sue union and holds union harmless.

The Employer will not engage in any litigation against the Union, so as to obtain a money judgment from it in connection with any death or injury which occurs at the workplace covered by this agreement. If, as a result of anything contained in this agreement, any judgment of liability is entered against the Union, the Employer agrees to indemnify and keep indemnified the Union to the full extent of such liability, as well as any costs and attorney fees awarded against or incurred by the Union in such litigation.

KEY TO PHOTOGRAPHS:

1. Break at the Forge
2. Zinc Smelter, Kelloge, Idaho