Union Approach to Health and Safety:

Using a “Continuous Bargaining” Approach to Improve Workplace Health and Safety and Build Union Power

Union Training for Union Members

United Steelworkers’ Health, Safety and Environment Department

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Framework for a Union Approach to Health and Safety
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PURPOSE

To understand why some workplace health and safety problems were corrected and others were not.

TASK

As a group, discuss participants’ experiences with health and safety problems in their workplaces, including those that have been corrected and those that remain uncorrected. Choose one (1) solved problem, and, as a group, answer the questions below about that problem. Next, chose one (1) unsolved problem, and answer the questions below about the unsolved problem. Choose a reporter/recorder to share these answers with the larger group.

1. Choose a health or safety problem from one of the participants’ workplaces that has been corrected/solved. What was this problem?

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2. How was the problem corrected?

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________________________________________________________________________
3. Why did this problem get corrected/solved?
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4. Choose a health or safety problem from one of the participants’ workplaces that has not gotten solved/corrected. What is this problem?
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5. What barrier(s) have prevented this problem from being corrected?
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Activity Handout: Changes in the Workplace

New Technologies, Work Restructuring, and New Management Policies that are Impacting our Members, their Health and Safety and our Unions

Purpose: To identify key changes in technology, work organization and management policies that are affecting our members, their health and safety and our unions.

Tasks: Individually, write down key changes that are taking place in your workplace in each of the three areas listed below. Then, as a group, gather these changes and prepare to report back to the full group about the range of changes in technology, work restructuring and management policies that participants in your group are experiencing. Make sure to choose a reporter to present your report.

Changes in Technology/New Technologies

Changes in How Work is Organized/Being Restructured:

Changes in or New Management Policies:
Activity Handout: Impacts of Workplace Change

Purpose: To identify impacts of workplace change/work restructuring on members and on the union.

Tasks: Consider the range of workplace changes that participants have identified, and answer the following questions:

1. Identify how MEMBERS are being affected by these changes. Be sure to consider and include health and safety impacts. Be as specific as possible.

2. Identify how the UNION is being affected by these changes, including impacts on solidarity and union power. Again, be as specific as possible.

Make sure you identify a reporter to present your group’s answers.
WORK RE-ORGANIZATION
A Hazard To Workers’ Health And Safety

Workers and union health and safety representatives are increasingly listing issues such as downsizing/understaffing, mandatory overtime, push for production, cross-training/multi-tasking, and work overload as key factors causing or contributing to injuries, illness and stress in their workplaces. All of these issues are related to how work is organized and being restructured.

Work organization is about the control of work and the division of labor. It includes the tasks performed, who performs them and how they are performed in the process of making a product or providing a service. Many workplaces are undergoing massive changes in the ways in which work is organized, often made possible by innovations in information and communications technologies. New forms of work organization, such as combined jobs, multi-tasking, teams, telecommuting, electronic performance monitoring, use of temporary workers, contract workers and alternative work schedules, are being introduced with very little attention to their potential to hurt workers. However, we do know that these forms of work restructuring can increase workers’ risk of injuries, illnesses and stress.

Forms Of Work Organization

The organization of work includes many aspects, such as pace of work (speed of an assembly line, quotas), work load, number of people performing a job (staffing levels), hours and days on the job, length and number of rest breaks and days away from work, layout of the work, skill mix of those workers on the job, assignment of tasks and responsibilities, and training for the tasks being performed. When work is restructured, these aspects of work organization can be changed dramatically. Work is restructured by management to achieve the goals of standardization of the work, which in turn is used by management to increase their control over work.

Some common terms for work organization/reorganization include:

- **Lean Production**: An overall approach to work organization that focuses on elimination of any “waste” in the production/service delivery process. It often includes the following elements: “continuous improvement”, “just-in-time production”, and work teams.

- **Continuous Improvement**: A process for continually increasing productivity and efficiency, often relying on information provided by employee
involvement groups or teams. Generally involves standardizing the work process and eliminating micro-breaks or any “wasted” time spent not producing/serving.

- **Just-in-Time Production:** Limiting or eliminating inventories, including work-in-progress inventories, using single piece production techniques often linked with efforts to eliminate “waste” in the production process, including any activity that does not add value to the product.

- **Work Teams:** Work teams operate within a production or service delivery process, taking responsibility for completing whole segments of work product. Another type of team meets separately from the production process to “harvest” the knowledge of the workforce and generate, develop and implement ideas on how to improve quality, production, and efficiency.

- **Total Productive Maintenance:** Designed to eliminate all nonstandard, non-planned maintenance with the goal of eliminating unscheduled disruptions, simplifying (de-skilling) maintenance procedures, and reducing the need for “just-in-case” maintenance employees.

- **Outsourcing/Contracting Out:** Transfer of work formerly done by employees to outside organizations.

In many workplaces undergoing restructuring, worker knowledge about the production/service process is gathered through "employee involvement" and then used by management to "lean out" and standardize the work process, thereby reducing reliance on worker skill and creativity. This restructuring has resulted in job loss for some workers, while increasing the work load and work pace for those who remain on the job. The result of these changes in work organization is that it is no longer just machines that are wearing out – it is the workers themselves.

**Occurrence Of Restructured Workplaces**

The vast majority of workplaces in the U.S. have gone through formal or informal restructuring of work. The introduction of computers in every sector of the economy has created changes in work processes that can negatively impact workers’ health and safety. One measure of change is in the number of hours that workers spend on their jobs. In the United States the number of hours worked annually has been steadily increasing over the past couple of decades to the point where American workers work more hours than workers in any other major industrialized country. Overtime hours, including mandatory overtime, have also risen in the United States.
Hazards Of Work Organization/Work Re-structuring

Recent research on the impact of new forms of work organization documents negative impacts on health and safety, and is cause for concern. The organization of work itself can influence the level of psychological stress that workers experience and can increase exposure to physical hazards, both which can lead to injuries or illnesses. New forms of work organization can result in the intensification of work, leading to working faster and harder. This work intensification may be increasing stress on the job, with low worker control over the work, often coupled with higher job demands.

Changes in work organization systems have been linked to the development of musculoskeletal disorders (MSDs) in health care, automobile manufacturing, meatpacking, telecommunications, and contingent work. Work-related MSDs associated with work organization changes have been linked to exposure to physical hazards and psychologically stressful conditions resulting from machine-paced work, inadequate work-rest cycles, wage incentives, time pressure, low job control, low social support, electronic performance monitoring, and repetitive work.

In the health care industry, organizational changes associated with understaffing among nurses and high patient-to-nurse staffing ratios have been linked to increases in needlestick injuries, nurse burnout, and greater surgical patient mortality.

Studies have shown that work stress can have serious impact on workers’ cardiovascular system. High job strain (jobs with low job control and high work demands) is associated with increases in blood pressure and increased risk of dying from heart attacks.

Long hours of work also appear to be hazardous to the cardiovascular system. Overtime work has been shown to increase blood pressure and increase the risk of experiencing a heart attack. Long work hours increase the risk of having a workplace injury, with the risk going up significantly beyond the ninth hour of work. Increased levels of fatigue and greater exposure to physical hazards are thought to play a major role in the increased injury rates in workers who work long hours.

Protecting Workers From Work Organization Hazards

Workers are experiencing increased injuries, illness and stress from downsizing/understaffing, mandatory overtime, 12-hour shifts, outsourcing, lack of training for added job duties, increased work load, and increased work pace. To hide this increase in work-related injuries and illnesses, many employers are implementing “blame-the-worker” approaches to safety and health which
discourage workers from reporting injuries, illnesses and hazards. These programs, policies and practices blame workers who have (or report) an injury for committing “unsafe acts” and engaging in “unsafe behaviors”. “Blame-the-worker” or behavioral safety approaches include such practices as “safety incentive” programs that offer rewards to workers who don’t report injuries; injury discipline policies that threaten and deliver discipline to workers who do report injuries; and behavioral observation programs that take the focus away from hazardous conditions, including work organization hazards such as production pressures, lack of staff, work overload, and long work hours – and blame workers for being inattentive or working carelessly if they suffer injuries. Workers and unions need to eliminate these blame-the-worker schemes and instead focus on identifying and eliminating the real hazards that are causing injuries and illnesses.

Addressing work organization hazards would include, for example, increasing staffing levels, providing job security, prohibitions or limits on mandatory overtime, shorter work shifts, job training, and reasonable workloads and pace of work. Solutions to these problems come from workers and unions having a greater say in how work is organized and restructured, how technology is used, and the policies and practices employers want to impose on the workforce.

Approaches that unions can use include:

**Collective bargaining**
Unions have successfully negotiated language in contracts to require minimum staffing levels, limited or prohibited mandatory overtime, reduced production quotas, put limits on the pace of work, mandated rest breaks, and developed safety and health programs that are focused on finding and fixing hazards rather than blaming workers.

The AFL-CIO has a fact sheet on its web site with examples of contract language that put some limits on the employer’s use of mandatory overtime: [http://www.aflcio.org/issues/safety/issues/otexamples.cfm](http://www.aflcio.org/issues/safety/issues/otexamples.cfm)

**Mid-term bargaining campaigns**
For unions with bargaining rights, the right to bargain is continuous (not just granted at contract expiration time). Employers are prohibited from making unilateral changes in wages, hours, or conditions of work (including health and safety) without notifying the union about the changes and giving the union an opportunity to bargain over those changes. Employers must also bargain over the impacts of changes they make if the changes impact working conditions.

Check the fact sheet linked below from the AFL-CIO web site that provides some additional information on mid-term bargaining: [http://www.aflcio.org/issues/safety/issues/upload/injury_policies.pdf](http://www.aflcio.org/issues/safety/issues/upload/injury_policies.pdf)
**Training and education**

Training and education of workers is critically important in building successful campaigns to address the hazards associated with work organization and workplace restructuring. An important first step is educating workers that the way in which work is organized and being restructured can be hazardous to their health and safety. The use of surveys, body mapping, and hazard mapping can then be used to help identify injuries, illnesses, and stresses suffered by workers in a particular department or workplace where work restructuring has caused or contributed to those problems. Once the work organization hazards have been found, the union can take steps to control exposure to those hazards.

**Legislative campaigns**

Labor unions, particularly in the health care industry, have been successful in several states in passing legislation or regulations that places limits on mandatory overtime for nurses and health care workers – California, Connecticut, Illinois, Maine, Maryland, Minnesota, New Jersey, Oregon, Washington, and West Virginia. California also sets minimum nurse staffing levels in hospitals.

**Further Reading And Resources**

The web sites listed below can provide additional health and safety information on work organization, long work hours, and workplace stress:

**AFL-CIO:**

[www.aflcio.org/issues/safety/issues/](http://www.aflcio.org/issues/safety/issues/)

**Job Stress Network:**

[www.workhealth.org](http://www.workhealth.org)

**NIOSH:**

[www.cdc.gov/niosh/topics/workschedules](http://www.cdc.gov/niosh/topics/workschedules) (work schedules)

[www.cdc.gov/niosh/topics/stress](http://www.cdc.gov/niosh/topics/stress) (stress)

**Hazards Magazine:**

[www.hazards.org/bs](http://www.hazards.org/bs) (blame the worker programs)

[www.hazards.org/workedtodeath/index.htm](http://www.hazards.org/workedtodeath/index.htm) (overwork)

[www.hazards.org/getalife/index.htm](http://www.hazards.org/getalife/index.htm) (work-life balance)
References


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OVERTIME AND EXTENDED WORK SHIFTS
The Hazards To Workers’ Health and Safety

Over the past couple of decades in the United States, hours worked annually have been steadily increasing. Workers in the US now work more hours in a year than workers in most of Western Europe and Japan. In some industries, such as mining, manufacturing, and wholesale trade, more than a quarter of the workforce work more than 40 hours per week. Many workers are finding that overtime hours are mandatory hours they are forced to work under the threat of reprisal if they refuse.

Hazards Associated With Long Hours Of Work

Evidence that long hours of work can cause injuries and illnesses in workers is growing. NIOSH recently reviewed and summarized the latest scientific reports of the impact of long work hours on workers in a new publication, Overtime And Extended Work Shifts: Recent Findings on Illnesses, Injuries, and Health Behaviors (April 2004, Publication No. 2004-143). The report concluded overall that: “Overtime was associated with poorer perceived general health, increased injury rates, more illnesses, or increased mortality in 16 of 22 studies.”

Some specific findings reported in the NIOSH review are highlighted below:

Injuries

- Overtime (working more than 40 hours per week) was associated with an increase in work-related injuries in health care workers and construction workers.

- The risk of experiencing a workplace injury increases dramatically after the 8th or 9th hour at work. The risk of having an injury appears to be higher for the evening and night shifts compared to the day shift.

- The risk of developing back disorders increases for nurses working 12 or more hours per shift compared to an 8-hour shift.

Illnesses

- Overtime can increase the risk of workers developing heart attacks. The risk was increased for workers working more than 11 hours per day or more than 60 hours per week in the month before the attack.
- High levels of monthly overtime (84 to 96 hours of overtime per month) are linked to increases in blood pressure and heart rate.

- Workers working 12-hour shifts and 40 or more hours per week had increased risk for neck, shoulder and back disorders compared to working five 8-hour shifts per week.

- Overtime and extended work shifts (shifts longer than 8 hours) have been associated with unhealthy weight gain, increased alcohol and smoking use, decreased alertness, increased fatigue, and deterioration in performance.

- Jobs with high pressure to work overtime and low rewards are associated with health complaints, burnout, and negative work-home interference.

**Responding To Long Work Hours And Mandatory Overtime**

The hazards that are associated with long work hours can be addressed most effectively by reducing exposure and eliminating mandatory overtime. Approaches that unions can use include:

*Training and education*
Training workers about the potential hazards of long work hours and then using surveys and workplace hazard mapping to identify worker injuries and illnesses caused by long hours is a critical step in addressing the problem.

*Collective bargaining*
Unions have negotiated language that have limited or prohibited mandatory overtime. The AFL-CIO has a factsheet on its web site with examples of contract language that put some limits on the employer’s use of mandatory overtime ([http://www.aflcio.org/issues/safety/issues/otexamples.cfm?RenderForPrint=1](http://www.aflcio.org/issues/safety/issues/otexamples.cfm?RenderForPrint=1)). Unions have also negotiated language to reduce excessive hours of work by creating minimum staffing limits, mandating rest breaks, and placing limits on the pace of work.

*Legislative campaigns*
Labor unions, particularly in the health care industry, have been successful at the state level in passing legislation that places limits on mandatory overtime for nurses and health care workers and sets minimum nurse staffing levels in hospitals.
Accident risk as a function of hour at work and time of day as determined from accident data and exposure models for the German working population

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Objectives Recent studies indicate that accident risk may be a function of hour at work and time of day. Further evidence was sought for these assumptions, along with the answer to the question of whether the risk of accident can be conceived as an interaction between hours at work and time of day.

Methods Data on more than 1.2 million accidents for the year 1994 were provided, all listed according to the time of day and hour at work. Since information about how long each day and at what time of day people work is not available in Germany, different exposure models had to be estimated. For estimating the risk of having an accident relative accident risks were calculated from the ratio of accident frequencies to the exposure data.

Results An exponentially increasing accident risk was observed beyond the 9th hour at work. The relative accident risks differed considerably according to the respective exposure model with regard to time of day. A highly significant interaction effect was found for hour at work by time of day, the percentage of accidents at different hours at work varying according to the particular time of day when work is started. For the 3 "traditional" shiftwork starting times, it was shown that, with later starting times, the relative accident risk increased dramatically beyond the 8th hour at work.

Conclusions Since the results clearly indicate that there are time-related effects on occupational accident risk, more detailed analyses are called for. More elaborated exposure models should be used to assess the efficiency of work schedules with extended workhours, especially under shiftwork conditions. The results also indicate the necessity of recording and providing adequate data bases for such analyses.

Key terms extended workhours, safety, shift work, work time.

Recent results in accident research indicate that the risk of accidents at work is a function of hour at work. Folkard (1) and Åkerstedt (2) both reported an exponentially increasing accident risk beyond the 9th hour at work. Åkerstedt (2) used data of the Swedish Occupational Injury Information System as a basis for his report. He found that accident risk is nearly the same for the first 8 to 9 hours at work. Beyond the 9th hour at work, however, the risk increases considerably. Folkard (1) calculated the relative accident risk from 5 published studies and found it to be doubled after the 12th hour and trebled after the 14th hour. He concluded that the safest system would be based on 6- to 9-hour shifts. But he also claimed that these findings have to be supported by further research, especially to identify the underlying causes.

Although, on one hand, an 8-hour workday is legally widely established (e.g., in German law on work time), reality is often quite different. Extended work times and overtime are still widespread. On the other hand, in the United States, Australia, and some other countries, there is a marked tendency to expand work time beyond 8 hours. Twelve-hour shifts are increasingly popular for different reasons. Employers appreciate the economic advantages and employees like the long periods of time-off resulting from the longer hours on fewer shifts. Therefore, the development of accident risk over hours at work is an urgent question, and the efficiency of such work schedules needs to be assessed (3).

At the same time it is also likely that the risk of accidents may depend on the time of day. Åkerstedt (2) found
a clear indication for a nearly doubled accident risk during night hours, and Smith et al (4) found evidence for an increased risk of injuries during the night shift in comparison with morning and afternoon shifts.

Another question which has not yet been addressed thus far is whether there is an interaction between hours at work and time of day with regard to accident risk. It can be hypothesized that working a 12th hour on a job may differ according to the starting time of the shift (e.g., when the 12th hour is at 1800 at the end of a day shift or at 0600 at the end of a complete night shift).

In order to shed more light on these problems, a study was conducted to determine whether accident risk can be conceived as a function of hours at work, time of day, or an interaction of the two.

**Materials and methods**

One of the main problems of answering questions related to associations between hours at work, time of day, and accident risk is the availability of adequate data bases, especially with regard to exposure towards the risk of having an accident. For this reason, accident frequencies must be analyzed together with adequate exposure data on the relevant population.

There have been no difficulties in obtaining data on the frequencies of registered accidents (leading to an absence of >3 days) from the confederation of workers’ compensation boards [Hauptverband der Gewerblichen Berufsgenossenschaften (HVBG), public services and agriculture not included] in Germany. More than 2.2 million such accidents were registered for 1994, all listed according to time of day (24 hours) and hour at work (1st to 12th hour, >12th hour).

Unfortunately, information about how long each day people work and at what time of day they work is not available in Germany because such data are not registered and no complete or workable national statistics have been collected on these work characteristics. Therefore, suitable exposure models, based on the best available evidence, had to be developed for the comparison with accident rates.

For this purpose different exposure models that could be (cross-) checked for consistency were constructed and calculated from the results of 2 independent surveys on problems of workhours in Germany (5, 6).

The first study (5), conducted in 1992, included data from approximately 5000 employed and self-employed respondents from the Federal Republic of Germany (including the former German Democratic Republic). The second study (6), conducted in 1993, was based on data from 2577 respondents from the employed population (aged 18–65 years) from the area comprising the former West Germany, including West Berlin. [A subsequently published survey (7) from 1995, including the former German Democratic Republic showed that there was essentially no difference with regard to the number of overtime hours worked between former West and East Germany; therefore the data can be regarded as representative for the whole of Germany with regard to this point.] The samples of both studies proved to be representative. The calculated exposure models based on the data of these studies, although relying on slightly different samples collected roughly 1 year apart, were in good agreement (and moreover proved to be in good agreement with some later published microcensus results for Germany). Therefore, the exposure models can be assumed to be both representative and valid. A detailed description of the rationale and the calculations performed to arrive at the exposure models are included in an unpublished report by Tiedemann.

For an index for comparing the risk of having an accident according to hour at work and time of day, the relative accident risk was calculated as the ratio of the accident frequencies (from the data of the workers’ compensation board) to the calculated exposure data of the German working population by the following formula: relative accident risk = (accidents [in %] x 100) / (working population [in %]), percentages being based on the relevant distribution (i.e. hour at work or time of day).

**Results**

**Accident distribution**

In figure 1 the distribution of registered accidents provided by the HVBG is shown for 1994. It can be seen that the absolute number of accidents is extremely high for people starting their job at 0600, 0700 or 0800, which is the majority of the work force, including day workers, part-time workers, and shift workers, eg, working 12-hour shifts and starting their work at 0600. There is also another small peak for people starting work at 1400, and another very small peak for people starting their work at 2200 to 2400, probably shift workers starting their afternoon or night shifts.

A decrease in accident frequencies at common times for work breaks can be observed (eg, around 0900 and 1200–1300) in other words after different numbers of hours at work, depending on the starting time (eg, for those starting their work around 0700 during the 2nd or 3rd hour and again during the 5th to the 7th hour at work). The same seems to hold for other starting times (eg, for the 5th hour at work for those starting at 1400).

**Hour at work**

Figure 2 shows an exposure model of the German working population, accident frequencies, and accident risk.
by hour at work. According to this model 100% of the employed population works up to 2 hours per day. Thereafter a slight decrease can be seen. Nearly 70% of the population works up to 9 hours per day (including breaks). Beyond the 9th hour the percentage decreases considerably.

The bars at the bottom of figure 2 represent the distribution of accidents from the 1st to the 12th hour at work and for >12 hours at work. The increase in the first 5 hours, a rather even distribution until the 9th hour, and the decrease from the 10th hour are typical for the frequencies of accidents. This distribution has already been reported earlier (8); therefore it can be assumed that the distribution is reliable.

The calculated relative accident risk for hour at work (based on the exposure model and the accident distribution) is also shown in figure 2. It increases exponentially beyond the 9th hour at work.

**Time of day**

The basis for developing a valid exposure model of the working population over time of day from the available data bases was limited and rather uncertain. A variety of possible exposure models could be constructed. Two were calculated on the basis of the survey data in combination with the distribution of the starting times from the accident data, one as a maximum estimate and the other as a minimum estimate. The effect of a break around noon was taken into account in both models. In figure 3 the 2 different exposure models of the working population and accident frequencies are shown by time of day. It can be seen that, at night and around noon, the 2 graphs are similar. A difference in the estimates can be observed, however, for the hours between 0600 and 1100 and again between 1400 and 1900.

The bars at the bottom of figure 3 represent the distribution of accidents over time of day, according to the
Accident risk as a function of hour at work and time of day

Figure 3. Two exposure models of the working population and accident frequencies by time of day.

Figure 4. Accident risks for 2 different exposure models by time of day.

Figure 5. Accident frequencies by hour at work and starting time of work (time of day).

Figure 6. Accident risks on shifts starting at 0600, 1400, and 2200.
data of the workers' compensation board. The data show a peak at 1000 and 1100, a drop between 1200 and 1300, and a second peak at 1400 and 1500.

Figure 4 shows the accident risks for the 2 exposure models by time of day. As shown in this figure, the relative accident risks for both estimates, minimum and maximum, differs considerably in the early morning hours and in the afternoon. It should be emphasized that the relatively small differences in the exposure models yielded relatively big differences in the estimated accident risk.

**Time of day by hour at work**

An analysis for the effect of time of day by hour at work for the absolute accident frequencies shows a clear and statistically highly significant (c² = 71 484.9; df = 264; P<0.0001) interaction for hour at work with time of day.

Figure 5 shows the accident frequencies by hour at work and starting time of work (time of day) in cumulative percentages. Each column shows the distribution of accidents across the 1st to the 12th and >12th hour at work for the subsamples of people starting their work at a given time of day (eg, the first column shows the subsample starting work at 0200 and their distribution of accidents for the consecutive hours at work). The darkly shaded parts of the column represent, for example, the relative frequencies of accidents in the 7th and 8th hour at work, which means the time of day between 0800 and 1000 for the first column, where work starts at 0200.

With work starting in the evening (1800 to 2000) or at night or in the early morning (2000 to 0700), the percentage of accidents beyond the 8th hour at work is increased, whereas, for people starting their work in the afternoon, the proportion of accidents beyond the 8th hour is rather small. With work starting at 1400 to 1800, on the other hand, the percentage of accidents in the first 4 hours is increased, whereas the accident rate is relatively low for the first 4 hours when work starts at night and in the early morning (0200 to 0700). These results thus suggest that, in fact, there seems to be a difference in the risk of having an accident at the xth hour at work, depending on the starting time of work. This hypothesis would, however, only be testable with an adequate data base for estimating valid exposure models for every hour of starting time of work, which is not yet available.

Although the available data base used for estimating the exposure models according to the starting time of work was rather vague, different models for the exposure with regard to selected starting times were constructed. As an example, the available data for the 3 "traditional" shiftwork starting times at 0600, 1400, and 2200 were used to calculate exposure models (proportions of people at work). The model (and the accident data) for the starting time 0600 was, of course, confounded by the subsample of people not working shifts (but starting early) or by part-time workers. Therefore, 100% of the working population was not present for the whole 8 hours of the shift. The models for starting times 1400 and 2200 represent, however, 100% of the working population for the first 8 hours, because these starting times are typical for shift workers on 8-hour shifts.

In Figure 6 the calculated relative accident risks are shown for shifts starting at 0600, 1400, and 2200, representing the 3 "traditional" shiftwork starting times. Since the risk increases exponentially beyond the 8th hour at work, a logarithmic representation and labeling has been chosen for the y-axis. The results seem to suggest that the exponential increase in the risk of accidents with hour at work is especially distinct with "normal" starting times for shifts during the day (eg, those deviating from the "normal" workday).

Figure 6 also shows very clearly another feature of the hypothesized (and for the absolute accident frequencies statistically significant) interaction between hour at work and time of day. There was a marked difference in the risk of having an accident at a certain time of the day, depending on the hour at work (eg, at 1500 when this time was the second hour at work on an afternoon shift, as compared with the 10th hour at work on a morning shift) and the same seems to be true for other combinations of hour at work and time of day as well.

**Discussion**

The results show that there is clear support for the conclusion already drawn by Folkard (1) and Åkerstedt (2) that accident risk increases exponentially beyond the 8th or 9th hour at work. In addition, this seems to be a rather conservative estimate, as shown by the results of some sensitivity analyses (not presented).

It should also be kept in mind that these results include a wide variety of occupations with different accident risks (eg, from office work to the mining or steel industries). The reported increase in accident risk with

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3 Since the data basis for the hours 0000 and 0100 showed inconsistently high values — probably due to the method of assessment — the reliability and validity of these data could not be assumed for these hours. These data were thus excluded from the analyses.

4 The labeling on the y-axis as 1 to 10 and >10 hour at work (while the data are grouped into 1st to 12th and >12th hour at work) has only been chosen for the reason of appropriate and readable labeling, because the proportion of accidents, and thus the size of the segments, was very small beyond the 10th hour at work.
hour at work in this case might thus, as well, be regarded as a conservative estimate from such a different perspective, at least for certain industries. It would therefore seem especially interesting to perform similar analyses for certain professional groups or different branches of industry to obtain differentiated estimates of the time-related risk for different occupational conditions. The accident data would be available for such analyses, but there are no exposure data available nor can they be constructed from available data bases. Therefore, such calculations would be impossible at the moment — at least in Germany.

Another weakness of our approach is that many confounding variables cannot be controlled for in these analyses. This lack of control may obscure some distinct effects that would be revealed if one were able to control for such confounding effects at type and amount of work to be done, and presence of supervisory personnel. Smith et al (4) have raised this issue and shown that there are different risks associated with such factors in conjunction with the effects of worktime. In fact, it could be assumed that one of the reasons why no increased risk could be found for night hours in our analyses was the lack of control for such confounding factors.

On the other hand, the results clearly indicate that, in general, the extension of daily workhours to up to 10 hours (and more under certain conditions, excluding breaks), as provided by the directive of the European Union and the German law on workhours, cannot be regarded as not increasing the risk of accidents. In fact the opposite applies, as the available evidence clearly demonstrates.

The effects of time of day on accident risk remain unclear. Our results show no increased risk for night hours, neither with the maximum nor with the minimum exposure model. This may be due to the different conditions of work during the day and the night, an observation that is not uncommon (4, 9), and which may be especially true for this heterogeneous population. Such possibilities can, however, only be hypothesized since reliable data are again missing. Once again, a more-detailed analysis with reliable data for specific subgroups would seem urgently required.

Regarding the interaction of time of day and hour at work, our results suggest that it would be worthwhile to expend more effort on such analyses, trying to develop more adequate exposure models (with possibilities of cross-validation) to arrive at more reliable estimates. But again, more adequate data bases for the exposure, at least for being able to estimate the exposure, would be urgently required. Such a data base could be achieved by registering workhours according to their starting time and duration, and, if such a procedure is too expensive, at least representative samples should be surveyed with questions that deliver the information required from an ergonomic point of view.

To summarize, the results obtained thus far clearly indicate time-related effects on occupational accident risks, which deserve further scientific attention and efforts. However, adequate data bases for estimating the exposure should be provided, even if the results might not be in agreement with the popular requests for more flexibility in the regulation of workhours. From a health and safety perspective, limiting the acceptable amount of hours of work might still make sense, especially for shift workers, as our results indicate. Such a limitation might even be an economically sound approach when the costs of accidents are considered against the benefits of saving personnel or even undermanning, not to mention the question of solving the resulting problems by less efficient (and sometimes even illegal) overtime work.

Acknowledgments

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References

Management Has a Plan for Reorganizing Work and Taking Control:

What’s Going On in Our Workplaces is No Accident

KEY WORK PROCESS TRENDS

- Standardization/De-Skilling
- Intensification/Lean
- Multi-Skilling/Job Combination/Flexibility
- Automation/New Technologies
- Monitoring
- Outsourcing/Moving Work
Multi-skilling
Multi-tasking
Flexibility
Job Combination
Operator Maintenance
Super Crafts
And other duties as assigned
In your truck

On your ankle

Under your skin


gps satellites

monitoring

Mobile (GPS) Data

Communications Network

Base Station Software

Work that has been

- Standardized
- Analyzed
- Automated
- Simplified

Is work that is easy to

Contract out and Outsource

All of these trends have negative impacts on union members

- Speed-up
- Stress
- Job Loss/Insecurity
- Loss of Skill
- Low Morale
- Workers pitted against each other
- Repetitive Strain Injuries
- Increased risk of job injury, illness and death
All of these trends have negative impacts on union strength
Loss of Skilled Work
Isolation of Members
Division/Loss of solidarity
Loss of Jobs, Members and Dues
Drain on Union Resources
Members’ Loss of Faith in the Union
Loss of Union Power

They are using fear along with Continuous Improvement, Kaizen, Six Sigma, Problem Solving Teams, 5S, Self-Directed Work Groups, and other restructuring programs to get our members to:
• Accept the Idea of Change, and
• Contribute their Ideas and Knowledge to Management’s Plans for Change

They use techniques we call the Tricks and Traps to get us to go along
• Brainstorming
• Language
  – Improvement
  – Empowerment
• Common Goals
Absenteeism, Light Duty and Lost Work Time Don’t Fit With Their Plan

Because they are non-standard, non-flexible, non-lean

If we challenge management’s plan, they say:

Management Rights
Arenas of Struggle: Where Management seeks to Save Money and Increase Their Power

Contract Bargaining
Contract Enforcement (Avoidance)
Work Process Change
Management Resources
Union Response?

We need strategic and strong local unions and Health and Safety Committees taking on Management's plans.

"Hey! They're lighting their arrows! ... Can they DO that?"
Employee Involvement:

Watching Out for the Tricks and Traps

United Steelworkers of America
Collective Bargaining Services Department
Five Gateway Center
Pittsburgh, PA 15222
Introduction

In 1993, the USWA initiated the New Directions bargaining program with the goal of gaining greater voice for the members, through their union, in areas that have traditionally been viewed as “off-limits” under the management rights doctrine. The goal was to give local unions tools which would aid them in more effectively representing the members in workplaces that are being buffeted by the ongoing introduction of new technologies and work re-organization initiatives, tools that would help them build the strength and viability of the USW - supporting union-building and internal organizing efforts while entering into a process of “continuous bargaining” with management over change in the workplace.

Today, our workplaces are experiencing rapid and ongoing change. New technologies such as computers and computer-controlled equipment; new forms of work organization such as Lean Production, teams, multi-skilling, cells and just-in-time (JIT); and new programs designed to facilitate changes in the work process such as Six Sigma, Continuous Improvement, Process Mapping and Kaizen are all being introduced into the workplace on a regular basis, and are creating turbulence in the lives of our members and in our unions.

Management is making changes in technology and in the work process to meet their goals of productivity, efficiency, profitability and control. At the same time, these changes have impacts on all of the issues that are important to the workforce including but not limited to the number of jobs, job security, wages and benefits, respect and dignity, health and safety, equity, unity, and skills. These changes can also undercut sources of union strength and viability, and lead to fundamental shifts in the power relationship between the union and management.

Historically, unions in the United States have been excluded from any significant discussion of (or bargaining over) work restructuring and technological change by the doctrine of management rights which is built into most contracts and into the “culture” of labor-management relations. In too many cases, unions have accepted the doctrine of management rights, even when facing devastating changes in the workplace. Local unions end up feeling like there is nothing they can do. The union role has often been limited to “rearranging the deck chairs on the Titanic” or, at best, what might be called “negotiating the terms of the funeral”.

Continuous bargaining is an approach that seeks to insert the union in bargaining over changes in technology and work organization that are having such a significant impact on the members and on the union. Model contract language to support continuous bargaining seeks to provide a framework and
protections needed to insure effective participation by the Union. Contract language on workplace change should include:

a. Advanced Notice of Changes

The Union must be provided with notice of all proposed changes affecting the workplace well before any decision regarding the change is made. Without such notice, it is impossible to effectively research, evaluate and bargain over these changes.

b. Full Access to Information

The right to information to support traditional contract bargaining is a well established principle. Information to support continuous bargaining over workplace change is equally important. Any clauses on change must contain language that ensures full and complete access to information about any and all changes that are being considered.

c. Resources for Union Activity

Continuous bargaining takes significant resources. We cannot prepare ourselves and carry out the analysis and bargaining that is necessary without significant resources under the Union's exclusive control. If we are to keep up with the changes that are occurring, and train our officers, stewards and members to deal with this process, it is absolutely critical that we have and control the resources to do it.

d. Mechanism for Bargaining

An enforceable mechanism must be created that mandates ongoing discussions/bargaining between the Union and management. At the same time, it is necessary to ensure that all discussions regarding change in the workplace take place only in a union-sanctioned forum, and that all Union participants be chosen exclusively by the Union.

e. Job Security and Other Basic Protections

Technological change and work re-organization can pose a threat to job security, seniority, health and safety and many other issues of importance to the Union. To the extent possible, we must negotiate protections which provide security to our members in the midst of rapid change.

Finally, it is important to recognize that winning good contract language, while critical, is only a first step. We must also develop a strategy for dealing with the issues that arise as the workplace changes. We need training, research, and the development of a clear sense of union goals and priorities.

While the USW was working on its plan for giving the members an enhanced voice in their own future, many in management were busy developing their alternative - "new management" programs and involvement techniques which often contain the appearance of involvement and voice, without the
substance of collective worker power. These management-designed programs, under names like Continuous Improvement, Employee Involvement, Kaizen, Corrective Action Teams, Six Sigma, Problem Solving Groups, etc., are designed to make changes in the workplace and the work process and to engage the workforce in the discussion of change, while maintaining strict management control over the process. These programs are designed to bypass the union and undermine sources of union strength. They specifically interfere with union members “acting like a union” within the discussion of change.

This document is designed as a warning to local unions and a guide to questioning the techniques and watching out for the “Tricks and Traps” of involvement. It focuses on situations where management is using some kind of committees, teams, focus groups, involvement committees, problem-solving groups, etc. to facilitate changes in the work process and to engage the workforce in a discussion of change. But it is also important to see that these tricks and traps are used in all types of labor-management discussion, ranging from contractual labor-management committees such as health and safety committees to management formed and controlled continuous improvement teams. This document takes a critical look at the techniques used in many of the involvement programs and analyzes how they impact the members and the union. Understanding the tricks and traps is a key first step in developing a true union strategy for bargaining over change.

The Involvement Movement: A Management Driven Program for Discussing Change

Under many different names, such as Six Sigma, Lean, Kaizen, Continuous Improvement, Total Quality Management (TQM), Employee Involvement, Empowerment, Employee Participation, Problem Solving Teams, World Class, etc., management is bringing programs into our workplaces which create new and important challenges for our locals.¹

Despite the wide variety of names, the programs that have been brought into our workplaces generally have certain common characteristics:

* They are designed to facilitate change in the way work is done;
* They often use the rhetoric of workforce involvement in decision-making, using such terms as empowerment and self-direction;
* They often contain significant "criticism" of management, and particularly of the "old way" that management has been operating;
* They use "teams" or some kind of group activity, either within (self directed work

¹ We will use the general term “involvement program” to describe these programs in this pamphlet. It should be noted that the actual level of employee involvement can vary greatly from program to program, and work restructuring programs that contain no employee involvement should still trigger a strategic response by the union.
teams or natural work groups) or outside (problem-solving teams, department steering committees, etc.) the work process;

* They gather and use employees' knowledge about the work process;
* They often involve a great deal of "training" for the members in so-called soft skills (communications, group processes, holding meetings, etc.) and in the "right" way to think about and solve problems;
* They are often designed and/or implemented by or with the support of a consultant; and
* They are generally developed without significant union input or with union input coming only after many of the key decisions have been made. Even where there is union “participation”, the core approach and principles of the program typically come from management or from a management-oriented consultant.

There are concrete reasons why restructuring programs with an involvement component are appearing in many of our workplaces. Companies and public sector organizations are facing pressures from competitors, from investors, from customers and/or from taxpayers to save money and to increase profits. At the same time, new technologies, especially computers, computerized equipment and telecommunications, are allowing management to make changes in the work process that they could not have even dreamed of a decade ago. The combination of pressure and opportunity is creating a management movement for change in the way goods are produced and services are provided.

In order to meet their goals of maintaining and increasing profitability, management is looking for a program for implementing change that gathers or “harvests” the skills and knowledge of the workforce while maintaining management control. Management therefore needs two things from the workforce:

• They need the workers to accept change (and in particular the changes that management is seeking); and

• They need the workers to contribute to management’s plan for change, to help implement it by volunteering their intimate knowledge of the work process.

Key to all of this is the reality that most work processes are dependent on the skill of the workforce, on what is sometimes called organic knowledge or tacit knowledge – the knowledge that isn’t written down, hasn’t been captured in computer programs and hasn’t been made “scientific”. Management is trying to find a way to “harvest” this knowledge so that they can build it into their work processes, their computer systems and their standard operating procedures.
Management is seeking to create a program for discussing change that they can shape and control, a program that doesn’t allow workers to use the power that their knowledge and skill provides and that doesn’t allow workers to act collectively. The techniques described in this pamphlet are the heart of that program.

Even where the union has been aggressive in negotiating protective language and in carving out a union space within management’s program, the pitfalls described below can de-rail the union’s plans and bend the programs activities (and our members) to the company’s wishes. Negotiated language that seeks to give the union some mechanisms of control is often not as protective as it seems on the surface and unions have often been lulled into complacency and have not been aggressive in pursuing and enforcing the rights that the language does gives them. Because local unions are often not trained about the dangers of these management programs, and because they often do not have the resources, the experience, the specific expertise or the trained personnel to analyze, critique and revise management-developed plans, they are generally at a significant disadvantage in dealing with management and their well-paid consultants. Where management is successful in controlling the program, it is often because we have not been sufficiently vigilant or successful in pursuing the rights we have under the law and through contract language. Too often, we have allowed consultants and others to lead and direct these programs, without engaging in the ongoing information gathering, analysis, training for and communication with our members and bargaining that are important to ensure that these programs are not used against us. We have not figured out how to “act like a union” within the involvement programs.

Involvement programs have been developed by and are often introduced with the help of consultants who use a series of techniques and exercises to involve your members in management's program of workplace change and to change the way your members think about the world around them. These techniques are the result of years of research into group dynamics, peer pressure, conformance (getting people to adopt or conform to a new set of values) and other powerful but subtle methods of persuasion. They are used to create small group identity among your members and bend it towards management’s needs. Instead of identifying themselves with the union, members identify with the group or team. We sometimes call this: “Hijacking the collective.”

While many consultants claim to be neutral - neither pro-labor nor pro-management – it is

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2 See the Fact Sheet Avoiding False Security: Analyzing the Limitations of “Protective” Contract Language by the Labor Extension Program, University of Massachusetts Lowell.
important to understand that in claiming to be neutral, these consultants are really siding with management. Paulo Friere who developed many of the educational techniques used by labor educators once said: “Washing one’s hands of the struggle between the powerful and the powerless is to side with the powerful, not to remain neutral.” He was pointing out that as long as there is an imbalance of power between management and workers, anyone who comes into this situation claiming to be neutral is really siding with management. You will see that many of the techniques described below, despite their appearance of "fairness", significantly undercut core sources of union power while leaving management sources of power intact or even strengthened.

Continuous Bargaining in the Changing Workplace

The challenge for unions is to find a way to insert the collective voice of the union into the discussion of change in the workplace in order to protect the members and protect the union. Unfortunately, as we will discuss, the basic model for most change programs that involve our members has been developed by management and management-oriented consulting firms, and cannot serve as the basis for real collective union input into change. This management model seeks to involve the members in the discussion of change, while leaving the union, and unionism, on the outside. A different model would have the union approaching any discussion with management as bargaining - with the independent goals, resources and activities that we engage in during contract bargaining that are designed to build the union and effectively represent the needs of the members. We call this approach, continuous bargaining.3

The goal of this document is not to shut down a program that allows and supports real collective voice and real bargaining over change. It is instead to make sure that the union is at the table, prepared to powerfully represent the members’ interests and protect the union whenever change is occurring and to make sure that the union enters into any discussion with management about changes in the work process with eyes wide open. The challenge for the union is to develop a union agenda and a union-building strategy for responding to change. In order to do this, union members should be aware of the dangers that can accompany these techniques, and the union should be making conscious decisions about how to deal with them.

This document is aimed at giving you an understanding of involvement programs where the

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3 See the Fact Sheet Treat It as Continuous Bargaining by the Labor Extension Program, University of Massachusetts Lowell for information about adopting a bargaining approach to dealing with change and counteracting management involvement initiatives.
"rubber hits the road," in the actual implementation. This is where our members will see it, and this is where they can be led astray by management's way of looking at the world and by management’s use of the tricks and traps.

If the techniques described in this document sound familiar to you - Watch Out! Look at the involvement program at your workplace to understand how it might be affecting your union. You can then adopt some of the strategies suggested here, or develop your own.

Involvement Techniques: Don’t we use these inside the union?

As you read this pamphlet, you may notice that the approaches and techniques we describe sound suspiciously like ones used by union/labor educators, organizers and others who are working to involve and activate members. You may even have used some of them in your union. Many of these techniques, when used in a union-only process, can be very helpful in building the union and developing union strategies. But techniques which are useful for the union, can have very different impacts and meanings when they are used in a labor-management setting.

Brainstorming, for example, is a technique used by labor educators and involvement consultants alike. Brainstorming is described in one employee involvement booklet as: “An idea generation technique useful whenever a wide variety of ideas is desirable.” In brainstorming, participants try to generate a long list of ideas using ground rules like:

- Criticism or evaluation of ideas not allowed during the brainstorming session.
- Quantity of ideas is desirable.
- ‘Wild and Crazy’ ideas welcomed.
- Combining/improving of ideas encouraged, e.g. piggybacking on others’ ideas.”

Brainstorming is in fact a very good way to gather new ideas from your members and involve them in a discussion of issues. It is a great technique to use when a union committee or union side of a joint committee is planning strategy. But when brainstorming is used in a labor-management setting, it is an anti-union technique. It is anti-union because it forces union participants to act as individuals rather than as a group. Brainstorming is also problematic because:

- ideas are put on the table before the union has had a chance to evaluate them for their impact on
the members and the union;

- there is no opportunity for the union to package ideas or proposals (to link together proposals or suggestions that are good for the company with proposals that are good for the union);

- union members put forward contradictory ideas or suggestions, which can give management an edge when it comes to formal bargaining over issues;

- divisions among bargaining unit members are exposed to management.

Participants in brainstorming are in fact specifically told not to evaluate the impacts of their ideas before putting them in front of management, not to think about how the members and the union might be affected. They are told to act as individuals and to set aside the whole concept of collective voice.

Some of the points that are made in this document may seem like nitpicking or may seem to overstate the dangers of these techniques. But there are a couple of things to remember: First, individual techniques that may not, by themselves, seem to be a big deal, are rarely if ever used in isolation, and when added together the techniques have a significant impact. Second, even the strongest unionists can be moved (bit by bit) away from their traditional union values. In particular, lessons learned and behaviors practiced in seminar rooms tucked away from the real world, where they seem harmless, will often be carried back to the workplace without a re-evaluation of their impact on the members and on the strength of the union.

In this document we will look at some of the techniques used in involvement programs and evaluate the apparent lessons of the techniques (what they seem to be or are supposed to be teaching us), as well as at the deeper and more subtle lessons - the tricks and traps. It is important to understand that the facilitator or trainer using these techniques may not even recognize or understand these deeper lessons. But protests from a facilitator of: "That's not what I meant to do!" don't change the impact of these techniques on the union.

Our own members are even trained to use these techniques, and they use them without any sense of how they might affect the union and the members. In fact, their intention is to insert a union voice into the program. But remember, a union person using a technique with negative impacts on the union can be even more dangerous than a management person using the same technique because our members will tend to let their guard down with a union facilitator. They won't be as cautious as they
would with a management facilitator.

Isn’t the Real Problem "Bad" Management?

One thing that can leave unions un-guarded in dealing with involvement consultants is the fact that many of them are very critical of existing management practices. Their criticisms even match what union folks have been saying for years - that management has a short term view, that they focus too much on "getting it out the door", that they never listen to the workers who know the job, and that they want to blame everything on the workforce even though they are the ones who aren’t giving us the necessary tools, materials, training, time and support.

To the extent that management (the people or the system) is a barrier to the achievement of "management goals" of productivity, quality and competitiveness, the consultant will be glad to criticize them. W. Edwards Deming, one of the fathers of the quality movement, is well known for his attacks (often vicious) on management. The purpose of these attacks, however, was to build up, not undercut, the practice of management.

It is indeed tempting to believe that our problems are due to the failure of management to be good managers, and therefore that the consultants are "on our side." But as unionists, we are not just protecting our members from "bad" management. We also have to be concerned about "good" management – management that is using all of the latest techniques to de-skill us, speed us up, contract out our work, monitor us, and automate and eliminate our jobs. We should not let ourselves be fooled by consultants who undercut managers in order to achieve management goals.

Analyzing Involvement Techniques

We obviously cannot, in this pamphlet, talk about all of the techniques that involvement programs and consultants use. We will instead give some examples of techniques and discuss the problems they can create for the union. We will present a method for looking at consultant techniques and analyzing their impact on the union and the members. We will also make suggestions about how a union can respond to and disarm the techniques. The most important thing that a union can do is to get information about the tricks and traps into the hands of officers, stewards and members and to develop an organized response before management and the consultants have a chance to implement their plans.

In evaluating the impact of the techniques of involvement, it is important to look at least four
areas of concern:

1. **The impact of the technique on the role of the union as the representative of the members.**
   - Does the union have a significant place in the discussion of changes in the work process or are the techniques of involvement being used to bypass the union?
   - Does the technique displace or replace the union as the representative of the members?
   - Does the technique interfere in any way with independent (union-only) interaction between the members and the union?

2. **The impact of the technique on the member’s ability and willingness to act like a union – to act collectively with other members.**
   - Do union members get to meet separately from management on a regular basis?
   - Do union members get to work as a union group or are they pushed to act either individually or only in joint formations?
   - Is group activity directed toward achieving management’s goals?

3. **The values that are built into the technique and/or activity.**
   - Is cutting labor costs (and therefore cutting jobs) seen as a good thing?
   - Is conflict between labor and management seen as bad?
   - Are union values such as solidarity and independent, collective action anywhere to be found?

4. **The assumptions that the techniques bring with them.**
   - Do the techniques have built-in assumptions that "competitiveness" is always positive and is the over-riding goal of any workplace change?
   - Does training promote a view that "competitiveness" is the only real problem and that if we just help with competitiveness, we will be taken care of?
   - Do the techniques assume that what is good for management is necessarily good for the union and its members?
   - Do they assume that management should be able to make the final decisions?

The impact of any technique on the strength and role of the union is of course especially important to us. Questions that should be asked about any technique include:

- How does the technique impact the members’ sense of identity as union members and
their sense of solidarity with fellow members?

- Does the technique support or promote the idea that labor and management have the same goals and therefore undercut the concept of independent and separate union goals?

- How does the technique affect the members' and the union's sense of what the "problem" is that needs to be solved? Is competitiveness seen as the overriding issue? Do union issues, concerns and problems get on the table?

- How does the technique affect the union's and the members’ concrete ability to "act like a union" in its dealings with management?

- Does the technique promote judging people based on "merit," with merit defined by the needs of management?

- Does the technique undercut union activities and culture?

- Does the technique affect identification with other workers outside the union? For example, are people who work for competitors or suppliers seen as competitors? Will this affect peoples’ willingness to engage in organizing or solidarity activities? In other words, does the technique build a culture of “company unionism”?

Remember that the techniques described below can be used in involvement programs ranging from the most openly anti-union to the most "union-involved." While their power may be less where the union is active, their purpose and the threat they pose to the union remain the same.

The Techniques

In this section, we will discuss some of the techniques that are used in involvement programs and offer ideas for a union response.

1) Nine Dot Exercise

The Nine Dot Exercise is one example of a brain-teaser that is sometimes used at the beginning of an involvement session. There are many others that are very similar.
In the Nine Dot Exercise, participants are shown a flip chart (or given a hand-out) with nine dots arranged as below:

They are challenged to find a way to connect all nine dots by drawing four straight lines. They are told that they cannot lift their pens/pencils off the paper and they cannot re-trace over any line (although crossing lines is permitted).

Participants are given a few minutes to work on solving the problem. Generally, other than those who have seen the problem done before, no one will find a solution.

The instructor then shows the participants how to do the problem.
People are told that the reason that they couldn't find the solution was that they were "stuck in the box" formed by the dots. They failed to move outside the "boundaries," even though no one had told them they couldn't.

The lessons that consultants draw from this exercise are that:

1) "We" can solve problems even if they seem impossible;
2) The main barriers to solving problems are our narrow mindedness and traditional ways of thinking; and
3) The key to solving problems is to broaden our thinking, to not get "stuck inside the box."

The lesson that "just because you can't see a solution doesn't mean there isn't one" is a good one for us all to learn. And the idea that we often need to expand our thinking is certainly not wrong. But there are other more subtle lessons that are drawn from this exercise when it is done in (or applied to) a labor-management setting. It has the specific purpose and effect of softening people up for the “new ways” of thinking that will be introduced later.

The real lessons that management wants our members to take away from the exercise are that:

1) People should question the way that they have been thinking about the world and
2) If they don’t, they are to blame for the fact that things aren't working and problems aren't being solved.

In essence, people are accused of narrow thinking that is preventing them from solving problems. This sets the stage for telling our members that the problem that they are failing to solve is "competitiveness", that this failure is a result of narrow thinking on their part and that it is this failure that is creating all of our other problems, such as job loss, wage decline, insecurity, etc. We are supposed to believe that if only union people could change their way of thinking (not be stuck inside the box), they could solve the problem of competitiveness and at the same time create a better life for everyone. The box that people are caught in, the "old thinking" (or old paradigm) that is preventing solutions and that people need to get rid of, is of course their deep belief in seniority, decent wages, health insurance, job descriptions, work rules, and health and safety protections – in union goals and identity that are separate from management.

The key questions we need to ask are: “Who is being asked to get outside which box?” and
“Does ‘getting outside the box’ mean surrendering basic union values?”

A participant in a union-only training on the tricks and traps described how a consultant had used the nine dot exercise at their labor-management involvement training. The member had tried throughout the day to question the “solutions” that were being discussed, citing concerns about job security, seniority, etc., but he was consistently attacked by the other participants (both labor and management) for being "stuck inside the box." He eventually gave up raising the union issues because the pressure to conform (to get outside the union box) from the facilitator and from fellow participants (including fellow members) was too great.

Another impact of this exercise is to start the training session by making people feel stupid and incompetent, because they are unable to solve a “simple” puzzle. The facilitator, on the other hand, comes off as competent and bright because they can solve the puzzle (even though they never had to figure out the solution because someone told them how to do it). This helps create a situation where people tend to under-value their own ideas and instincts (which couldn't help them solve the nine dot problem) and overly rely on the knowledge of the facilitator.

Basically people are made to (subconsciously) feel: "Well, even though this (some idea that is being put forward) doesn't seem right to me, I couldn't do the 9 Dot exercise and the facilitator could, so maybe I'm just stuck in an old or narrow way of thinking." It makes them question their own instincts and gut feelings.

The final point to notice is that while the facilitator is telling your members to "get outside the box", get beyond the old rules and the old thinking, he or she is also imposing a new set of rules on the members: "you can't use more than four lines, you can't lift your pen off the paper, you can't retrace steps." They want us to drop our rules (get out of our box) but they also assume that we will accept theirs (get into their box).

Ideas for Acting Like a Union:

1. If someone knows the answer (or figures it out), they can go to all of the union members and show them the solution.
2. Everyone could use 5 lines instead of 4, or could pick their pencils up off the paper, and then challenge the facilitator's right to make the rules.

2) Lost in the Desert
Lost in the Desert is one of several "Lost..." exercises (Lost at Sea, Lost on the Moon, Lost on an Island, etc.), all of which follow the same basic outline. This exercise is designed to examine group functioning and to show the superiority of group processes over individual decision-making. But it is also an example of a technique where an ideal world scenario, with no labor-management conflict and no possibility of collective voice, is used to draw lessons that are then transferred to the real world, even though they are not applicable to the workplace reality. Other examples include manufacturing simulations like building paper airplanes, making toast, making peanut butter sandwiches or constructing paper fans.

The following is a standard Lost in the Desert exercise:

**Lost in the Desert**

You and your teammates are passengers in a small plane flying from Los Angeles to Phoenix. It is July 16, 1988 at nine a.m. Suddenly the pilot announces that the engines are losing power and he thinks the plane will crash. The radio is out and he is unable to notify anyone of your position. Immediately before you crash, he announces that you are 85 miles south-southwest of the nearest known inhabited site, and that you are about 50 miles off course from the flight plan that he filed with the airport on departure.

When the plane crashes, the pilot is killed on impact. Only the passengers survive. Luckily, no one is injured. The plane catches on fire; before it burns, you are able to salvage only the 15 items listed below. All are in good condition.

Besides the information that the pilot gave you, you know that you are in the Sonora Desert. The area is flat and barren except for a few cacti. The weather report said that the temperature would reach 110 that day, which means a ground level temperature of 130.

All the passengers are dressed in light weight clothing - street shoes and socks, pants and short sleeved shirts, a handkerchief. You pool your money and find that you have $103 in bills and $4.57 in change. One passenger has a pack of cigarettes, a lighter, and a ballpoint pen. You have all said that you will stick together.

Your task is to rank the items below according to their importance to your survival. "One" is the most important and "15" is the least important.

**Step 1:**

Each member of the team works alone to rank each item. You will have 8 minutes for this step. Do not discuss the problem among yourselves, and do not change your individual rankings once the 8 minutes are over.
Step 2:

The team as a whole will rank the items. You will have 20 minutes for this step.

The items are:

- large flashlight
- a small mirror
- pilot's air map of the area
- two fifths of grain alcohol
- plastic poncho
- cooking utensils
- compass
- silk parachute
- salt tablets
- gauze bandages
- gun and ammunition
- knife
- one quart of water per person
- one overcoat per person
- one pair of sunglasses per person

After participants have prioritized the items once as an individual and once in small groups, their responses are scored by comparing them to those given by desert survival experts. In practically all cases, the group response scores are higher than the individual ones. The clear lesson is that a group, working together, will do a better job of problem-solving and is more likely, by a significant margin, to "survive".

The implied lesson is that if only labor and management (or employees and management) would work together, all problems of the workplace could be solved and we could all survive in the desert (hostile environment) created by global competition.

It is important to see the power of the life and death images in the Lost in The Desert exercise. Think of it: "We are lost in the desert of ‘competitiveness’. If we don't cooperate and come to consensus, we will all die. And if anyone doesn't go along with the consensus, they are threatening the lives of the whole group." The message that cooperation is necessary in order to survive is clearly part of what your members are supposed to learn from this exercise.

This exercise operates with some important built-in assumptions - some of which are clearly stated and some of which are buried. These are critical to the message or lesson of the exercise and
* Success and failure are easily measured. In this case you are either dead or not, there is no such thing as partial success or partial failure.

* The measures of success and failure are agreed upon by all. Everyone thinks that living means success and dying means failure.

* There is no possibility of differential impact - everyone is affected the same. The possibility that some people might live while others die is not allowed for.

* Because everyone is affected the same, there is no possibility of betrayal (or incentive for betrayal). All members of the group are expected to only act in the interest of the group. The individual interest is the same as the group interest.

* There are no power relations within the group. No one can enforce their solution. Therefore individuals are forced to seek consensus or agreement.

Of course, none of these assumptions are true in real life. In the workplace (and especially in the changing workplace):

* Success and failure are not so easily measured in real life and especially are not clear cut for unions. Unions are constantly balancing a wide range of issues, including protecting the long term viability and strength of the union. Successes in one arena often come in conjunction with losses in another.

* Management measures success and failure differently than we do. For management, success is about profit and control, while we look at such issues as the quality of life for the members, job security and the strength of the union.

* There is always the possibility of differential impact. In fact, success for management often means failure for us. Management can be very successful at achieving their goals by moving work to another location, eliminating work through computerization or speeding us up.
* There is therefore significant incentive for betrayal. Management can be “nice” for as long as they think it will help them, and then change without warning.

* There are always power issues and relations between labor and management. They never go away.

Because the conditions are different in the workplace, the lessons of the Lost in the Desert exercise cannot (and should not) be simply transferred from the classroom into the real-life labor-management setting. This of course is never raised or discussed in the involvement session.

The exercise below is a rewrite of portions of Lost in the Desert that builds in the possibility of differential impact and therefore creates an incentive for betrayal. It also presents the possibility that power is significant within the group. By making relatively minor changes in the scenario (we’ve only changed the first and the last paragraph of the scenario), we greatly change the correct answers:

**Lost in the Labor-Management Desert**

You are on a small plane flying from Los Angeles to Phoenix. It is July 16, 1995 at nine a.m. With you is your spouse, your business partner and one other person who is a stranger to you but who seems to know your business partner quite well. Your business partner, who you know is a gambler and at times in debt, will inherit the whole business if you die. Your past history with your partner has been difficult at best and you suspect that he has stolen from the business and lied to you about expenses in the past. On this flight, he has been very friendly and talking a lot about building a trusting and co-operative relationship.

Your partner and the stranger have fallen asleep. You and your spouse (who you love and trust) are discussing which items are most important to your survival and what to do with them. Your task is to rank the items below according to their importance to your survival. "One" is the most important and "15" is the least important.

In the standard version of Lost in the Desert, when power relations are irrelevant and differential impact is not possible, the gun is near the bottom of the survival list. However, when the possibility of betrayal is introduced, many people move the gun up to number 1. Their first instinct is to protect themselves against their “partner” by securing the gun (although some people prefer the knife). Once self-protection within the group is achieved, people can then think about how to make sure that everyone survives in the desert.
In the workplace, where management can always use its power to against the members and where management is constantly thinking about how to increase its power, having a weapon, a source of power (in this case a strong, aware and united union) is crucial. Ignoring self-protection, ignoring union-building, can be a fatal mistake.

3) Consensus Decision Making

One of the lessons that is supposed to emerge from the “Lost in...” exercises is the importance of consensus decision-making and consensus-building. Many involvement programs use some form of consensus decision-making in joint labor-management deliberations. Although consensus decision-making is a very attractive process because it seems very democratic and seems to give union members veto power over any and all decisions, it can actually work to undermine collective action and weaken the union when used in a labor-management setting.

According to one labor-management booklet:

“Consensus has been reached when:

- All group members agree on the decision though it may not be everyone’s first choice.
- Everyone is committed to support the decision as if it were the first choice of all group members.
- Everyone agrees that he or she has had sufficient opportunity to influence the decision.”

One of the stated assumptions of the consensus process is that everyone enters the process as an equal, that everyone’s input is equally valid, that everyone has equal power. This leads directly to the unstated but crucial principle that everyone enters the discussion as an individual.

Because it treats all involved as individuals, the consensus process works against union members acting together, acting like a union. Unions get their strength from being a group, from sticking together. Consensus decision-making, like many other techniques discussed in this pamphlet, directly undercuts the union's cohesion, pushing people to speak and act as individuals. In limiting the members’ ability to "act like a union," consensus tends to undermine their strength.

Caucusing, a key union activity, is often discouraged, if not outright banned, in a consensus
process. If a member disagrees with or has concerns about the direction the discussion is taking, rather than having the opportunity to check their disagreement with their union sisters and brothers, they are subjected to intense pressure to fold or to come up with an "acceptable" alternative. Divisions within the union are exposed to management, weakening the union and undermining solidarity.

The idea that people ever enter into a discussion with management as equals is of course ridiculous. The idea that we can ever safely enter into discussions with management as individuals is destructive of the union. Because consensus decision-making implies that everyone, as an individual, is equal and equally powerful – it tends to move us away from paying attention to union-building.

Another problem with consensus (or any other joint decision-making process) as it is generally applied in the workplace is that the scope of decision-making is often not well defined. The company has a great deal of leeway as to what issues are brought into the process. Decisions that it wants to complete control over, or decisions where they don’t feel a great need for workforce knowledge and acceptance, can be kept to management alone.

Which decisions are presented to the consensus process and which are reserved for management may well be more important than how the process itself is run. Key questions that should be asked about the process include:

Can anyone bring an issue to the consensus process?

Must management bring all issues to the process (or can they pick and choose and invoke management rights when they want to control the decision)?

What happens if consensus is not achieved, or if management doesn’t get what they want?

Can the union insist that an issue be submitted to the consensus process (remember that even if we can bring an issue to the process, management has veto power)?

The appearance of democracy is used to cover up the reality of management control.

The way that consensus is applied in involvement settings often includes two other assumptions or operating principles that tend to undermine the union:
1) that everything that happens in the room is secret; and

2) that all communications about the results come from the group as a whole (no separate communication from the union).

Following these principles tends to build the relationship with management over the relationship with the union members and cede the union's specific role as representative of their members. Keeping secrets with management is not a good way to strengthen the union.

It also surrenders the union's ability to critique any agreement with management. The union members on the committee are supposed to sell it to the membership as the best approach, rather than the best they could get. This is an important difference between consensus decision-making and bargaining - a difference which can greatly undermine the union. Giving up the right to criticize is giving up the right to independent thought, independent action, and independent communication within the union.

Some people have begun to use a modified consensus process, where the union is well aware of the dangers and caucusing is actively used. The bottom line is that any decision-making process must be analyzed with an eye toward what it promises versus what it delivers, with an understanding of how the members' attachment to the union could be affected and with the question: Does it allow the union to "act like a union?"

**Ideas for Acting Like a Union:**

*Don't agree to consensus rules.*

*Caucus – no matter what the consultant or management says.*

4) Common Goals and the Rhetoric of Win-Win

As a couple of the examples above show, the rhetoric of “win-win” (the rhetoric says that if management and labor just work together, they can find a solution that is better for all) is a large piece of the involvement pie. Some programs just operate on a general assumption of win-win, while others specifically and aggressively promote it. Often the win-win argument boils down to trickle-down - we are supposed to assume that if management does well, the employees will also do well. This is the rhetoric of “mutual success through competitiveness”.
The fundamental concept behind win-win is that labor and management have common interests which can be met if only we can get beyond our "bickering" - if we can set adversarialism aside and focus on “moving forward” to meet the challenges of the “new economic reality.” Many win-win supporters argue that in fact the areas of common interest have grown because of increasing global competition, because of changing technology, because of an increased need for highly skilled workers, etc. They say that our common interests have grown because we have a common enemy – the competition. Issues that are described as common interests include a safe workplace, keeping the worksite open (a profitable company), better quality, satisfied customers, a satisfied workforce, etc.

Common interests are typically illustrated as overlapping circles:

![Common Interests Diagram](image)

While it may be true that, in certain situations, there are ways to achieve both management and union goals – for example increasing profits while improving job security and wages - this does not mean that there is a merger of interest between labor and management. Management continues to pursue profit (and more profit) while labor needs to watch out for wages and job security (and should be watching out for the strength of the union). If today they can increase their profit by being nice, that doesn’t mean that they won’t turn on you tomorrow. If union members become convinced that a merger of interest exists, they will naturally lower their defenses in dealing with management. They won’t pay attention to union-building. We have seen many cases where “mutual interests” are high on the agenda during the period when management needs to cooperation of the union and the members as they harvest worker knowledge and make the changes in the work process that give management more control. But once they have harvested the knowledge and increased control – watch out!

The bottom line is that in too many cases, particularly in the long run, so-called mutual interest really translates as management’s interest. Part of the problem is that our sense of our own interest, particularly in the arena of workplace change, is not well-developed. We often look at the short term
impacts of changes while ignoring longer-term impacts, and we fail to measure the impacts of change on the strength of the union and its ability to bargain in the future. We also have a tendency, because we have been on the defensive for so long, to evaluate the impacts of a change on the members and the union in relation to a "doomsday" scenario such as a plant shutdown or significant job loss. In this situation, if we come up with a “solution” that only cuts the workforce in half, we are supposed to see that as a win because there are still some jobs rather than none.

We should ask ourselves: To what extent does management ever give something up that the union doesn't somehow pay for? A wage increase funded by increased productivity through speed-up, for example, is not really a concession on the company's part (unless you assume that they could have gotten the exact same speed-up without any wage increase).

Workers compensation and safety is an area that is sometimes seen as fitting the Win-Win model. It is certainly true that high workers compensation rates are hurting companies, while workers are having their lives destroyed by injuries (and occupational illnesses that are rarely compensated). Presumably both labor and management have an interest in cutting accident rates. But we often see that companies try to cut the reporting of accidents rather than the accidents themselves, or they try to avoid spending money to improve conditions by blaming accidents on the workforce or they try to cut compensation rates by changing the law to lower benefits and tighten eligibility. The solutions that unions and management put forward are quite different because the problems they are trying to solve, and the underlying interests they are trying to serve, are really different.

Beyond the general ideology of win-win, there are a series of techniques that are used to promote the idea of mutual gains. These techniques were primarily developed to deal with international, stalemate bargaining, where either side can "blow up" the situation, but neither side can make a move. The idea is that the different interests of the parties can each be accommodated through a process of negotiation, and it assumes that neither side wants to use their power to blow things up (this is the real "common interest" that exists in this type of bargaining).

The union rarely these days has ultimate power in dealing with management. We are often forced into an accommodation of different interests because of our lack of power, but this is very different from the rhetoric of common interests which is so much a part of the win-win approach. The main impact of the common interest rhetoric is to undercut the members' sense of independent union identity and interests.

Many of the techniques associated with the win-win approach tend to break down the union's
ability to bargain, while they don't similarly hobble management. Joint investigation of issues, for example, can lead to a loss of clarity for the union about what the issue really is and also gets the union members of the bargaining team used to sharing thoughts with management rather than with each other. This has the effect of breaking down solidarity in practice. In some of the later sections you will see some of the other techniques used in win-win bargaining discussed.

_Ideas for Acting Like a Union:_

_Always have a clear discussion of union goals._

_Never agree to no caucussing._

5) The Rhetoric of "Empowerment" and Choice

Like the mother in the cartoon below, many involvement programs seem to offer increased choice and decision-making authority to members, often described by terms such as “empowerment” or self-direction, while they are actually moving the union in a very clear, management-dominated direction. Unfortunately, like in the cartoon, the choices offered tend to be pre-constructed to meet the needs and goals of management. Empowerment was defined by the CEO of a U.S. motorcycle company as, "Freedom within fences." Of course the fences are built by management.

FOR BETTER OR FOR WORSE by Lynn Johnston

A careful reading of the empowerment rhetoric shows that the level of empowerment or worker decision-making that workers are allowed varies greatly. The promise is that the employees can have as much “empowerment as they can handle.” But of course the way that you show that you can handle empowerment is by making decisions that meet management goals.

Questions that might be asked when confronted with the rhetoric of empowerment or choice
include:

How does the appearance of choice, offered by the company, affect the ability of the union to bargain?
How does it affect the members' view of the union as their representative and themselves as active union members?
How much choice is the union or are the members actually given?
Do you have the information you need to analyze the real situation?
Do you have the time and resources that are needed to be independently involved?
Do you have the larger perspective necessary to avoid being trapped in the company's view of the situation?

Ideas for Acting Like a Union:

One local union refused to accept the self-directed label – calling their teams “indirectly supervised” instead of self-direct.
Push the limit of “empowerment” (and expose the limits) by making decisions that you don’t think management will go along with. Don’t “bargain with yourself”, bargain with management instead.

6) Building Personal Relationships

Most involvement programs have a significant component of building personal relationships among the labor and management participants, directly connected to the common goals ideology discussed earlier. The argument goes: "We used to be them and us, but now the 'them' that we have to be concerned about, the larger enemy, is the outside competition and that means that labor and management together have to become an us." The techniques discussed below are designed to downplay the institutional and representational aspects of peoples’ social role (their role as union representatives), and have them enter into the discussion as individuals. They seek to build that feeling of “us” on a very personal level.

Loss of identification as a union representative undercuts union participants’ ability to represent the members’ interests and is often accompanied by an increase in identification with the company and therefore with management. Treating management participants as individuals rather than as representatives of management leads union participants to lower their guard and leave themselves more vulnerable.
Below are some examples of these personal relationship-building activities:

A) Getting to Know You Exercises

There are a whole series of exercises (often described as warm-up exercises or ice-breakers) that are used to promote individual and personal interaction. These often involve sharing personal insights, hobbies, family details, etc. While there is nothing wrong with knowing managers on a personal level, there is a problem when that personal knowledge gets in the way of union members recognizing managers as agents of management.

These exercises help disguise or bury the social and power relationships, and different goals, that exist in the workplace. They tend to make people forget who they represent and who and what management represents. When managers are dealt with as individuals, they become (symbolically) just another member of the problem-solving team, instead of direct representatives of the interests of management. The problem is that the real power relationships between labor and management are not changed. This leaves the union even more susceptible to management pressure.

_Ideas for Acting Like a Union:

_Union members should introduce union members._

_The focus of any introductions should be on peoples’ union roles and values._

B) Casual Clothing

Many consultants will suggest that everyone wear casual clothes to the sessions. The idea is that everyone can be more comfortable and the “artificial” divisions that are usually apparent due to differences in dress between labor and management will be “removed.” It is critical to understand, though, that getting rid of the trappings of power (the symbols of power) without changing the reality of power does not equalize the discussion. It only seeks to fool people about where power actually resides. For the union, this can lead to insufficient attention being paid to building the union.

A boss without a tie is no less of a boss.

Unity in the bargaining unit is in part created by common culture and experience in the workplace. This in turn stems from common social position. The fact that managers are referred to by their trappings (white hats, suits, ties, triangles, etc.) shows the importance of these as symbols of power and in creating a sense of unity within the union.
Ideas for Acting Like a Union:
Make sure that everyone from the union wears union insignia. Have people wear common clothes - all one color or the same union t-shirts.

C) No Titles

People are also often told not to refer to each other by titles. The elimination of titles is the same as the wearing of casual clothing. It is designed to give the appearance of equality and commonality, but again it does not change the substance of power relations.

Ideas for Acting Like a Union:
Have union folks refer to each other as sister and brother. Refer to company people by their titles.

D) Trust Building Exercises

At backwoods retreats, labor and management are sometimes asked to perform exercises designed to build team spirit and trust. An example is when participants are asked to fall backwards off a wall, to be caught by management and union working together. The image is pretty powerful and clear: Learn to trust management and learn to seek safety through that trust. Understand that if labor and management are busy fighting each other, you will fall and hurt yourself. These lessons, learned in safe (and completely unreal) circumstances, carry a great deal of power when union members return to the real world of the workplace.

Ideas for Acting Like a Union:
Remind managers of all the times they "dropped" union members in real life, and suggest that they are not ready for this exercise.

E) Seating

Many consultants will work to have union people sit at meetings interspersed with management. Sometimes you will walk into a meeting room and management has already taken seats spread throughout the room. Other times there will be assigned seats with union people alternating with management. This is, we are told, part of moving away from "adversarialism" and the "them and us mentality". It is making a statement that we are all in it together and have the same concerns and
It is supposed to remove artificial barriers to more natural interaction.

When union members are seated inter-mingled with management, it removes an important physical symbol of unionism and union identity. It makes interaction among union members more difficult. It makes impossible what might be called "mini-caucuses", when one union member leans over to another to ask a question or discuss a point. In these ways, it weakens the union members’ ability to act in unity and therefore undercuts union strength.

It is important to note that this inter-mingling (and the other techniques described in this section) do not weaken management in the same way they weaken the union. Management's power doesn't come from unity the way the union's does. Management power comes from ownership, from the law and from their ability to make unilateral decisions about operations and investment. Managers have to "unite" with upper management or lose their jobs. So what might seem like "equal treatment" on the surface, - both union and management are divided up - is really an attack on the core of unionism - unity.

Spreading union members around the room also visually removes the process from a bargaining context (it no longer looks like a bargaining session). This is important because the physical setup of the room provides important signals for behavior. In a bargaining session, or a meeting that looks like bargaining, the union does many things to protect itself, its identity and its strength that simply become less natural and more difficult when people are dispersed. When people are seated together, they are more likely to act together.

Another way to think of this is to ask: If a member were to walk by the room where a labor-management meeting is happening, what would they see? If the union members are interspersed with management, they would not see a union, and they might wonder what is going on. If they see union members sitting together on one side of the room, they are more likely to feel comfortable that they are being effectively represented.

Ideas for Acting Like a Union:

Change seats to make sure that union folks are sitting near each other and across from management.

Make sure you set the “ground rule” of separate seating early in the process.

7) Off-Site Meetings
Involvement programs often utilize off-site meetings where union members and management are taken away from the reality of the workplace. Getting away from the workplace removes union members from their fellow members, and from reminders of the real world of work – simple things like whistles and the noise of machinery. This helps move participants away from “adversarialism” and towards jointness or working together. Lessons learned and behaviors practiced in seminar rooms tucked away from the real world, where they seem safe and harmless, can have a disastrous impact when carried back into the workplace, where they can seriously undercut the strength of the union.

Ideas for Acting Like a Union:

Don’t agree to offsite meetings unless there is a specific advantage for the union

If you are at an offsite meeting, think of ways to remind participants of the real world – for example by sticking to the lunch and break schedule that people have to adhere to at work.

8) Language

Language is a powerful force in our lives. The language that is used to discuss a problem can have a big impact on the outcome of the discussion. Language has built-in values that may not be (and often aren’t) our values and these built-in values are often hidden from us. The words we use can have an important impact on how people react and how they behave.

Think about the following situation: A boss walks up to a union member and asks them to come to a process improvement session to discuss the work process - coffee and donuts, in the conference room, on work time. Many, if not most, union members would say “Sure, what kind of donuts?”

But what if the same manager offered the same deal but asked the member to come to a meeting to bargain over the work process. In this case, most members would at least hesitate and think that the union should be involved in any bargaining. Many members would simply say no.

While both bargaining and process improvement involve labor and management sitting down to discuss what the future will look like, the different labels lead to very different responses. There are several things (union-building things) that you would do (or should do) to get ready for a bargaining session that most people wouldn’t do to prepare for process improvement. Process improvement also implies that someone has already decided (they’ve defined improvement) what the goal is, while in bargaining both sides come to the table with different goals that they want to achieve.
"Joint decision-making" or "partnership" are also sometimes used instead of “bargaining” to describe the relationship between labor and management. These both carry with them a feeling of equality and equal power which rarely if ever exists. Sometimes they are even called "true" or "equal" partnerships. Using these words only serves to lull people into a false sense of security.

We might want to ask: “If management is offering to be our partner, are they willing to take the Management Rights Clause out of the contract?”

In addition to the examples above, there is literally a whole new language that comes with the involvement movement, including words like paradigm, empowerment, coaches, Self-Directed Work Teams, etc. Why do consultants use a new language to discuss the labor-management interaction? In addition to moving unions folks outside a bargaining context, speaking in a new "language" tends to make people feel lost, dis-empowered and separated from their own sense of reality. People who have been to a country where they don't speak the language will recognize the feelings. They welcome any guidance about how to get around in the new land and are apt to be more trusting of an "expert" who can “translate” for them. In labor-management programs, the expert just happens to be a management-paid consultant.

There are two categories of words that are used in involvement programs that carry with them specific powers to confuse. We call these smile words and frown words.

**Smile Words**

Words like quality, improvement, etc. are what might be called smile words. These are words that have a positive feel to them (that make you smile), but that often have a negative meaning (for the workforce or the union) as they are implemented in the workplace. We all, for example, believe in improvement. But in the workplace, for management, continuous improvement really means continuous speed-up, and continuously fewer workers - which aren’t good for us. The power of the smile words should not be underestimated. Salespeople are taught the importance of always asking a question so that the customer can answer yes. The positive feeling of saying yes flows over into the big question: Do you want to buy this?

**Frown Words**

Frown words are the opposite of smile words. They are words that carry with them an automatic negative feel. Waste is a good example. We all think that waste is a bad thing, right? But when we look underneath the surface, we find that waste is specifically defined as any time or activity that isn’t “adding value” to the product (meaning making money for management). This means that
waste as management defines it includes our coffee breaks, our lunch breaks and our ability to exert control over the pace of work. Waste means any downtime or recovery time that is built into the work process. Eliminating waste is a program that too many union people are lured into without a real understanding of what management means by waste.

In examining an involvement program, we must always look at the language that is used - looking for new words that are unnecessary and looking for smile and/or frown words that are designed to misdirect the activities of our members.

Ideas for Acting Like a Union:

Identify “smile words” and “frown words” and any other words with built-in values and discuss them with the whole union committee.

Ask specifically what the company means by the words they use. For example, ask what is meant by “improvement.”

Distribute flyers to the members that challenge the company’s use of words like improvement, empowerment, teams, etc.

Make up a buzzword bingo game card and have each member keep track of all of the buzzwords that management uses.

Write up a union glossary of management terms - giving the management meanings and the real meanings. Distribute it to all of the members.

9) No discussing collective agreement issues.

This is an example of what we call a false security - a "protection" which is negotiated into ground rules or joint agreements, sometimes even at the suggestion of management. It is agreed that the collective bargaining agreement shall not be discussed in involvement sessions. Sometimes a person is appointed as the “contract monitor” to make sure that this is adhered to.

It is, of course, very important that joint committees not venture into contractual issues (although it is already true that they can’t – only the union’s bargaining committee can discuss modifying the contract with management). But the implication of this ground rule is that anything that isn't specifically covered by the contract is open game for discussion within a team or committee. This means that management can have discussions of mandatory subjects of bargaining, issues that should

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4 For more information on and other examples of “False Security”, see the Labor Extension Program’s Fact Sheet Avoiding False Security.
only be discussed with the union, with individual members on involvement committees, members that may have been chosen by management. This is a fundamental threat to the role of the union as sole collective bargaining representative.

Nothing in the work process can be changed without having some impact on the members, on the union and on bargainable issues. To say that there are changes that the union doesn’t have to pay attention to is frankly ridiculous. Pace of work, skills, health and safety, work load, job descriptions and a wide range of other issues that are important to the union and the members can be brought into teams or committees that are essentially controlled by management without violating the “no discussion of contractual issues” rule.

Ideas for Acting Like a Union:

Train union members about mandatory subjects of bargaining and about the union’s role in bargaining over any changes in the work process.

10) Setting Ground Rules: Sticking to the Agenda - Using a Parking Lot

One of the key goals for an involvement facilitator is to maintain control over the discussion. One technique that is used to do this is putting a great deal of emphasis on sticking to the agenda and following "good meeting rules or ground rules." Since in many cases the involvement facilitator (with the help of management) has created the agenda, this ensures that the meeting moves in a certain direction.

Another technique is to create what is called a Parking Lot where issues that arise that aren't on the agenda or that cause dissension between labor and management can be placed (often written on a flip chart). This mechanism allows the facilitator to defer issues that they don’t want to deal with until some later time when the discussion can be more effectively controlled. It also allows the facilitator to simply drop the issue (many parking lot issues never get back on the agenda) or deal with it with other people.

Ideas for Acting Like a Union:

Don’t let issues that are important to the union be put in a Parking Lot.

Don’t accept the need to stick to the agenda when important issues arise or issues need more discussion.

11) Showing you a little bit at a time
A favorite trick of involvement consultants and management is to only reveal their plans a little bit at a time. This helps them maintain control, allows them to adjust to new conditions and prevents the union from discussing the program based on an overall understanding of what it includes. This approach is also often used when new technologies, particularly new computer systems, are introduced. At first, only a few of the capabilities are used – allowing everyone to get used to the system. Later on down the road, other capabilities are turned on that have a more significant impact on the union members. This approach has been compared to a salesman trying to sell you a car by only showing you the hub cap.

The incremental (only a little at a time) approach lets management introduce a program or a technology in steps, none of which is large enough that they raise a flag for the union. This approach also counts on the early steps softening people enough that they will be more accepting when the later steps are unveiled. Yet at the end, the union may come to realize (like the little girl in the cartoon shown earlier) that they have been tricked.

*Ideas for Acting Like a Union:*

*It is important that the union ask to see the whole picture from the beginning. Submit a formal information request to management, using your rights to information under the National Labor Relations Act or relevant state labor law.*

12) Emphasis on Facts and Data

Much of the rhetoric of work restructuring and involvement builds on the idea that facts and/or data are the only right way to make good decisions. W. Edward Deming, considered by many to be the father of the quality movement, is quoted as saying "In God we trust, all others must bring data."

We are told never to decide based on gut feelings or emotion, but only on data. But in many cases the data that is collected and presented tends to support (or push people to focus on) management goals. We rarely see management asking us to collect data on how much more workers make in many European countries or how long their vacations are or how much better their health coverage is. They don't ask us to collect data on how stress at work makes family life difficult and how forced overtime is affecting our kids. On top of this, many of the things that unions fight for, like respect and dignity, are human emotions and feelings which cannot be easily measured but are nevertheless important. The focus on data therefore tends to exclude the issues that may be important to us.
The focus on data, and on the process of collecting data, is also designed to ease the transfer of knowledge and power from union to management. The key difference, from our perspective, between skill and data is that skill is something we control and data is something they control. The implications of this for the strength of the union should not be ignored. Once they have gathered information about how our processes work, they no longer need us as much, which takes away from our leverage.

**Ideas for Acting Like a Union:**

Make the consultant use union issues when talking about data. Make graphs of how many times people have to go the medical department, how often vacation requests are denied, how many times people miss seeing their children because they are working excess overtime, etc.

13) Brainstorming

As discussed earlier, brainstorming sets up a situation where ideas (proposals) are put on the table before a union analysis of the idea can be made. While you may not be legally bound to respond to a proposal that has been brainstormed, the fact that an idea has been put on the table by a union member makes it harder to walk away from.

When a union bargains, issues are often packaged together in order to watch out for the whole workforce and for both long and short term and in order to win things that management doesn’t want to give in on by linking them to things that management wants - basically saying to management: "You can't have this without that."

In a brainstorming session none of the packaging can take place. Ideas are presented before they are evaluated from a union perspective.

But the most important problem with brainstorming is that it encourages (and in fact requires) participants to act as individuals — it takes aim straight at the heart of solidarity and collective action.

**Ideas for Acting Like a Union:**

Don't agree to brainstorming.

Call a caucus before any brainstorming session and come up with a set of union suggestions.

Repeat ideas that other union members have made.

14) The Power of the Magic Marker
A flip chart and magic marker are often used to record issues and points made during discussion. But the facilitator has the ability to reinterpret ideas as they are written down. The person doing the writing has a great deal of control over what is written. This is a significant trap of involvement programs. One example we were told about: When people were asked about their concerns and one union member responded, “Job security,” the facilitator wrote down “competitiveness” and explained that competitiveness was the real route to job security.

Another problem with the flip chart is that it can become the “official” record of the discussion. This makes it even more important that the union participants make sure that their comments are properly recorded and that someone from the union is keeping an independent set of notes.

**Ideas for Acting Like a Union:**

- Make sure that things you say are properly recorded.
- Ask that a flip chart not be used or that a union member be allowed to do the recording.
- Keep a separate set of notes for the union.

The above are only a few of the tricks used by facilitators and the traps that the union can fall into in a labor-management/involvement program. Management consultants are coming up with new ones all the time.

There are several key lessons to remember. First and foremost - when discussing any kind of change in the workplace, **Treat It as Continuous Bargaining.** Do the preparation necessary for successful bargaining, including:

1) Make sure you select the Union's bargaining representatives and train them (in union-only sessions) for their roles;
2) Understand the members' issues and concerns using surveys, planning meetings, one-on-one information gathering, etc.;
3) Organize and activate the members to defend their interests and the union's strength in the bargaining process;
4) Analyze the union's (and management's) strengths and weaknesses given the current bargaining environment;
5) Prepare proposals and positions as a committee and approach management as a united and organized voice;
6) Develop a clear bargaining strategy;
7) Caucus regularly to maintain unity, to develop a common strategy and to formulate
responses to management proposals;

When confronting the Tricks and Traps:

Always know what the union stands for and wants (and make sure everyone in the discussion knows)
Always look carefully at the "problem" they want you to solve and make sure that the union’s and the members’ problems are on the table
Always questions the assumptions that are being made
Always challenge the language that is being used
Always find ways to act like a union.

Make it clear what the expectations are of anyone who is involved in a labor-management discussion. Develop a code of conduct for members that helps them understand how they can be strong union members within any involvement/change process.

And finally two key pieces of advice:

1) Never ignore your gut reaction to something an involvement facilitator is doing. If it feels wrong, it probably is. You should at least raise it with other union participants.
2) Caucus early and caucus often.
Please send comments and suggestions to Charley Richardson

Telephone: 508-277-9466
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Asking the Right Questions:

Submitting Information Requests about Changes in Technology and New Forms of Work Organization

New technologies, new forms of work organization and new management policies implemented during the period of the contract are significantly changing conditions of work for our members. Even as they follow the written contract, management can be breaking the implicit contract by changing the conditions of work for our members without bargaining with the union. Pace of work, health and safety, skills, advancement, seniority and a wide range of other critical issues can all be affected by these changes. The union can also be harmed by changes that undercut solidarity, isolate members from each other, eliminate management reliance on workforce skills or simply make the union look ineffective when it can’t control the negative impacts of changes on the members.

What’s a Union to Do?

According to the National Labor Relations Act (NLRA), even if management claims “management rights,” the union has the right to bargain over mid-contract changes in **wages, hours and conditions of employment, unless that right has clearly and unmistakably been waived in the contract.** Many state laws covering public sector workers provide the same right. But this right to bargain only kicks in if the union recognizes that a change is taking place and demands bargaining over the change and/or its impacts.

One of the first steps in asserting the right to bargain mid-contract can be submitting a formal demand to bargain along with a request for information. An information request starts the bargaining process, is a good way to get more information about management’s plans, can slow down implementation and give the union a chance to develop a strategy, and communicates to management that the union is not going to sit idly by while significant changes are made. **So just ask!**

Below is a list of general questions about new technologies, new forms of work organization and involvement programs. These questions will, of course, need to be adapted, and added to, to meet the particular situation you are facing.

Some things to remember:

- **Ask, always ask!**
- **Ask in writing.** Make sure that your information request is dated and has the name of the person it is being sent to. Follow-up with another written request with a deadline if you don’t get a response.
- **Ask for information that will be useful,** but don’t hesitate to push the envelope a little. While the National Labor Relations Board (NLRB) requires that requested information be relevant to the bargaining process, the burden is on the company to prove otherwise. And asking one question that “goes too far” doesn’t undercut the validity of your other questions. Include in your request information that supports the relevance of your questions. For example, if a
consultant is claiming that they have worked at many other union workplaces, quote him or her when you ask for a list of those workplaces and for contacts at each.

- **Ask for specifics.** General questions can be generally answered – and you may be left without the information you need. Ask for concrete information that will help the union formulate a bargaining strategy and bargaining demands.

- **Ask questions even if you already know the answers.** It can be important to get the information directly from the company, and this is also a way to check up on the information that management is giving you – is it complete and is it accurate?

- **Ask questions that are reasonable and make sense.** If the company doesn’t give you the information you are asking for, you may at some point want to pass out copies of the information request to your members with a headline like: What doesn’t management want you to know? or What is management hiding?

- **Be ready to ask follow-up questions.** Every time management gives you some information, it should trigger more questions about what their plans are.

- **Ask for supporting documentation, reports or studies.** You want more than management’s opinions. Supporting documents will often have information that you didn’t even know to ask for.

**Preparing an Information Request**

A good way to prepare an information request is to gather all the information you already have and set up a session with a combination of officers, stewards and other members who might be directly involved or affected. Looking at what you already know will help you think about the information that is missing. Using a flip chart to gather everyone’s ideas, brainstorm a list of all of the things that you might want to know about the new system or program. Then have a couple of people write your list up and turn it into a formal information request.

This approach will not only provide you with a great set of questions, it will get you questions that speak directly to the concerns of your members and it will begin the process of involving your members in the discussion of and activities around the change that management is implementing.

Although the list below is divided into two sections – questions about new technologies and questions about new work systems and involvement programs – reading both sections will help you develop a list of questions that will fit your particular situation.

**Questions about new technologies:**

Although we often think of computers or computer-based equipment when we hear the words “new technology”, new technologies can also include new equipment, new communications systems, new software systems and new materials – all of which can have a significant impact on our members and our unions. Computer-based technologies can be standalone pieces of equipment like a PC, but more often these days they are part of a larger technology system that needs to be analyzed and understood. Below are some questions that can help.

**The System**

What is the full name of the new technology or system that is being purchased?
What is its primary purpose?

What are the names of the company or companies that are providing the hardware, software, installation services and maintenance services?

If a company has not yet been chosen, please provide a list of the companies that have submitted bids or are planning on submitting bids.

Provide a copy of any documents that were used in soliciting bids from system vendors.

Provide a copy of the specifications for the system.

Provide a copy of any contract that has been signed between the company and the system provider(s).

Provide a copy of service contract and/or warranty agreement between the company and the system supplier. (Note: this is relevant to sub-contracting issues.)

What ongoing maintenance/upkeep will the system require and who will be doing it?

What system upgrades or enhancements are currently available and what system upgrades or enhancements you expect to be available in the future?

Other Examples

Identify other locations where this or similar systems have been implemented. Please provide a complete listing.

The Financials

What is the total cost of the system (broken down by hardware, software, technical support and training costs)?

What is the economic justification for the system (including ROI calculations)?

What cost savings are expected due to the system?

Where will cost savings be achieved and how much will be saved?

The Data

What are the data-gathering and data storage capacities of the system?
Where will the data be stored?

What are all the ways in which data can be gathered by or entered into the system?

What types of information or data are actually collected at this point or could be collected in the future by the system?

How is data transmitted to other computers and/or storage devices and is data transmitted to or available to off-site computers?

What data is stored and in what format is it stored?

What plans are there for expanding the data collection activities of the system?

Who will have access to the data and what data will they have access to?

Who will have the ability to make changes in the data?

What kind of security system will be in place to protect the data?

Is there an audit trail of changes that are made in any data stored by the system?

For data that is tracking or could track the performance of individual employees, what kind of protections are there against the data being altered after the fact?

What employees will be or could be monitored by this system, either directly or indirectly? Please provide a full list of all information that will be monitored.

Will any training/notification be provided to those who will be monitored?

If yes, what will the nature of the training/notification be and to whom will it be provided?

**The Skills/Training**

What new skills will be required for those who are interacting with the system? Identify all new jobs or tasks and the specific skill and training requirements connected with them.

How will the workforce be trained to take on new roles and responsibilities?

Who will provide the training?

How long will the training be?

How will those who will receive the training be chosen?
If any “aptitude” or skill tests are anticipated, provide copies of the tests as well as any studies that prove the relevance and appropriateness of these particular tests to the new jobs/roles.

The Jobs

Provide a list of all jobs that have been or will be created by this system including a description of the duties connected with each.

Provide a list of all jobs that you anticipate will be directly or indirectly affected by this system including a description of the anticipated impacts.

What programming functions are connected to this new technology and who does the company propose will perform those functions?

What is the anticipated impact of the new system on health and safety including impacts on stress-related illness, ergonomic injuries, chemical exposures and any other hazardous exposures? What information did you use to reach this conclusion? Please provide a copy of any reports or studies that were done.

What ergonomic assessments were performed to ensure that the new technologies are ergonomically sound? Please provide a copy of any reports or studies that were done.

The Interconnections

Provide a description of the interconnections among this system, its supporting computer systems and existing or planned information systems at the company, including a description of any and all data that will be shared between systems.

Accuracy  *(These questions are particularly relevant for systems which monitor or collect data on individuals like Global Positioning Systems (GPS), barcode tracking systems, active badge systems, etc.)*

What is the accuracy of the system as currently configured and what accuracy upgrades are planned or might be implemented in the future?

How will the accuracy of the system be ensured?

How often will the system be recalibrated or checked?

Provide any studies that you have which indicate the accuracy of the system and the reliability of the system over time.
Questions about New Work Systems and Involvement Programs:

About the Program

What is the date of the start-up of (name of program)?
Provide copies of any presentations or explanatory materials on the program.

Provide descriptions and timetables for any and all phases of the program.

Where else within our company/organization is this program occurring?

What measures of success will be used to evaluate progress in the program?

What is the proposed schedule for employees to learn the process and begin participation?

About the consultant

What consultants has the company utilized in preparing for and developing this program?
Please provide a complete description of the consulting firm.

What are the consultants’ specific areas of expertise?

Provide copies of all studies, reports, etc. performed or produced by the consultants connected with this program.

What will the role of the consultant be going into the future?

How much is the consultant being paid?

What is their scope of services? Provide a copy of the contract between the consultant and the company.

Provide a list of facilities where the consultant has worked, as well as the names of the local unions representing their employees (along with a phone number and a contact person at each one).

If the consultant has worked at non-union locations, how does their approach differ at a non-union location?

Training

What training will be provided to bargaining unit members in conjunction with the program?
Provide a copy of all training curriculum, materials, handouts, etc. – including any facilitator/training guides.

What new skills does the company anticipate will be needed as a result of changes in the production or service delivery process?

To whom will training be provided?

Who will provide the training? What are their experience and qualifications? Who else have they provided training to?

What plans does management have for ensuring that employees will be sufficiently trained to be able to safely perform any new duties assigned? Provide supporting documentation or studies.

What types of testing will be used to ensure that workers will be sufficiently prepared for their new duties? Provide supporting documentation or studies.

**Impacts**

What changes in duty assignments, work processes or job descriptions are anticipated?

What is the anticipated impact of the changes in duty assignments on pace of work? What information did you use to reach this conclusion? Please provide a copy of any reports or studies that were done.

What is the anticipated impact of the changes in duty assignments on output per employee? What information did you use to reach this conclusion? Please provide a copy of any reports or studies that were done.

What plans does management have to increase wages to match any increases in productivity and/or the intensity of work?

What is the anticipated impact of the changes in duty assignments on health and safety including impacts on stress-related illness, ergonomic injuries, chemical exposures and any other hazardous exposures? What information did you use to reach this conclusion? Please provide a copy of any reports or studies that were done.

What ergonomic assessments were performed to ensure that newly defined jobs will be ergonomically correct? Please provide a copy of any reports or studies that were done.

What is the anticipated impact of the changes in duty assignments on skill requirements? What information did you use to reach this conclusion? Please provide a copy of any reports or studies that were done.
What is the anticipated impact of the changes in duty assignments on seniority? What information did you use to reach this conclusion? Please provide a copy of any reports or studies that were done.

What is the anticipated impact of the changes in duty assignments on the number of employees and therefore on job security for current employees? What information did you use to reach this conclusion? Please provide a copy of any reports or studies that were done.

What will the policy be for employees who are not able to perform work that has been added to their normally assigned job?

How will rights under the Americans With Disabilities Act be affected by the changes management is anticipating?

What will happen to persons with disabilities who cannot perform newly formulated jobs?

Quality

The union is concerned that the quality of service not be compromised by the restructuring initiative. How will the implementation of restructuring affect our service delivery and quality?

What is the anticipated impact of any changes in duty assignments on product quality? What information did you use to reach this conclusion? Please provide a copy of any reports or studies that were done.

This fact sheet was produced by the Labor Extension Program at the University of Massachusetts Lowell. Please send comments or suggestions to Charley Richardson, Labor Extension Program, University of Massachusetts, Lowell, MA 01854. Telephone: 508-277-9466 E-Mail: Charles_Richardson@uml.edu
Activity Handout
ATTITUDES ABOUT WORKPLACE INJURIES, ILLNESSES AND HAZARDS
Option 1

PURPOSE

To explore causes of workplace injuries and illnesses.

TASKS

- In your small group, have each person take a few minutes to individually read the statement below and decide if you agree or disagree with it.

- After a few minutes, call the group together to discuss ideas. Try to come to a group agreement on whether you agree or disagree, and the reasons for selecting that answer. Select a reporter who will record and share your group’s responses with the large group.

- If your group cannot come to agreement, the reporter may present a “majority” and “minority” (or “divided house”) report.

1. Most accidents happen at work because workers are careless or accident-prone.

   _______ Agree  _______ Disagree

   Reasons for Agreeing or Disagreeing:

   _________________________________________________________________
   _________________________________________________________________
   _________________________________________________________________
   _________________________________________________________________
   _________________________________________________________________
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PURPOSE

To explore causes of workplace injuries and illnesses, and to look at how concerned workers are about safety and health on the job.

TASKS

- In your small group, have each person take a few minutes to individually read the two statements below and think about his or her response.

- After a few minutes, call the group together to discuss ideas. Try to come to a group agreement on whether you agree or disagree with each statement, and your reasons for selecting that response. Select a reporter who will record and share your group’s responses with the large group.

- If your group cannot come to agreement, the reporter may present a “majority” and “minority” (or “divided house”) report.

1. Most accidents happen at work because workers are careless or accident-prone.

   ________Agree ________Disagree

   Reasons for Agreeing or Disagreeing:

   _________________________________________________________________
   _________________________________________________________________
   _________________________________________________________________
   _________________________________________________________________
   _________________________________________________________________
Often the main problem with safety and health at work is that workers do not take the subject seriously enough. They just do not seem to care enough when it comes to health or safety on the job.

_______Agree          _______Disagree

Reasons for Agreeing or Disagreeing:

________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
Resource Handout

WHY DO WORKPLACE INJURIES AND ILLNESSES HAPPEN?

Are Most Injuries Caused By Workers’ Unsafe Acts Or By Hazardous Conditions On The Job?

Employers often identify “worker error” as the cause of workplace injuries and accidents – a worker failed to follow a safety rule, committed an unsafe act, acted carelessly or otherwise did something he or she should not have done. Unfortunately, the idea that worker mistakes are the main cause of job injuries and accidents is promoted by many employers and consultants.

However, every workplace injury, accident or incident has “root causes” which do not have to do with worker behavior. Some of these root causes may not be readily apparent. They often involve elements of management safety systems that were non-existent or that failed. The following case is an example of why we have to look for root causes.

The Acid Burn

A worker was burned when sulfuric acid splashed on him while he was drawing a routine sample from piping in a chemical plant. Management blamed the worker for failing to wear a face-shield, acid suit and other personal protective equipment (PPE). Management then issued a bulletin threatening to discipline anyone not wearing proper PPE.

In this case, the union requested that the joint labor-management health and safety committee do further investigation of the accident. The committee found that there was more going on than a failure on the part of a worker to wear PPE.

The procedure for collecting sulfuric acid samples was to hold an open cup under a bleed valve on a pressurized line in the acid pumps. The acid sometimes splashed out of the cup, which made wearing PPE necessary. The committee realized that the “root cause” of the incident was the procedure for taking acid samples. The committee recommended that acid sampling points be redesigned to eliminate the potential for splashing altogether. A simple way to do this was to sit the sample container in an enclosed sample box with a glass door, where the valves could be operated from outside of the box. This eliminated the hazardous exposure and the need for workers to wear the most cumbersome PPE.

The health and safety committee expanded their investigation to look at all of the sample points in this plant. They discovered that the sampling points for dozens of different hazardous materials were unsafely designed and were unnecessarily exposing workers. The committee started a new program to have sample points throughout the plant redesigned to eliminate or minimize exposures. This also eliminated the need for workers to wear much of the formerly required PPE.
What Is The Most Effective Way To Protect Workers From Hazards?

As can be seen from the above example, the redesign of jobs can protect workers from hazards much more effectively than personal protective equipment, which is often hot, cumbersome and does not fully protect against hazards.

Changing worker behavior is one of the least effective methods for accident prevention. Workers make occasional errors because they are human. There is a natural error rate for even the most highly trained and skilled workforce.

Employers, however, often focus their safety efforts on changing worker behavior. Many employers find that blaming workers for injuries and accidents is easier and less costly than evaluating and changing management systems. But effective prevention of accidents, incidents, and near misses requires redesign of jobs and processes so that they will be safe even when a worker makes a mistake. The ability and responsibility to design jobs safely in the first place, or redesign them when a problem is detected lies with management.

Good occupational safety and health practice involves identifying and controlling hazards. Proper methods for hazard control follow what is known as the “hierarchy of controls.” According to this hierarchy of controls, the best way to control a hazard is to eliminate it. If a hazard cannot be eliminated all together, there are several other ways to limit worker exposure to the hazard, including: substitution of something non-hazardous or less hazardous; engineering controls which keep the hazard from reaching the worker; and administrative controls which involve changes in certain workplace policies and procedures. The least effective control method is personal protective equipment.

“Blame The Worker” Or Fix The Workplace?

Despite all we now know about workplace safety, a “blame the worker” approach to workplace safety – blaming workers who are involved in injuries, accidents and “near misses” – is becoming increasingly popular with many employers. So-called “behavior-based safety” programs claim that 80-96% of worker injuries are caused by workers’ unsafe acts. Elaborate mechanisms are established to check, inspect, coach, reward and discipline workers for complying with or ignoring “safe behaviors.” While workers and/or supervisors are kept busy policing worker behavior, management avoids being scrutinized and held accountable for their actions, which have a much greater impact on workplace and worker health and safety.

A blame-the-worker approach to accidents provides little opportunity for effective accident prevention. Employers who take a “blame the worker” approach ignore the “hierarchy of controls” and the need to change management systems. In many instances, they do not eliminate hazards or address them by designing engineering controls. When
workers are blamed for workplace injuries, accident prevention focuses on the least effective methods of hazard control. Workers are blamed for not wearing personal protective equipment or for not following safety procedures.

Behavior-based safety programs undermine health and safety by excusing management’s past and current shortcomings. These programs focus attention on workers, who in most cases had little or nothing to do with the selection of machinery, equipment, work processes, work organization, materials or methods of safeguarding.

When workers believe they will be blamed for an accident or injury, and may face some type of inquisition or discipline, accidents and injuries go unreported. Problems that go unreported will not get addressed, and will certainly result in future injuries and even tragedies.

Regarding “accident-proneness,” every one of us is “Accident-Prone Andy” at various times in our lives. We are distracted by family issues and relationship problems. We may not have gotten a good night’s sleep. We may be having medical problems. Or sometimes we just have a bad day. All these conditions are absolutely normal. Safe design of machinery, equipment, work processes and work organization assumes that workers will have occasional bad days and will make mistakes. When a workplace is designed and maintained safely, workers do not need to be blamed, fixed or fired. It is the workplace that gets fixed, not the workers.

**Questions To Ask When An Injury, Incident, Accident Or Near-Miss Occurs**

To get to the root cause of a problem, and get past efforts to pin the blame on “worker carelessness” or “accident-proneness,” make sure that questions get asked about why a worker did or did not do a certain thing.

*“But Why?”*

An effective method for getting to the root cause of injuries, incidents and accidents in the workplace is to ask the question “but why?” as follows:

Carol got something in her eye at work.
But why?
Because a metal chip went flying through the air and landed in her eye.
But why?
Because there was no enclosure around the machine to contain the metal chips.
But why?
Because the company didn’t want to spend the money on this kind on this kind of engineering control.
But why?
Because the company knows it costs less to have workers wear PPE than to fix the problem machine by enclosing it.
In any investigation of an injury, incident, accident or near-miss, asking “but why?” (often repeatedly) will help get to the root cause of the problem.

“The Utility Lineman”

For example, there was a tragedy that involved a utility lineman in a northeastern state. Around noon he climbed a 30-foot pole, hooked on his safety straps and reached for a 7,200-volt cable without first putting on his insulating gloves. There was a flash, and the worker hung motionless from his safety straps. He was dead.

The employer blamed the worker. According to the company, this worker knew the importance of the insulating gloves, he was not a new worker, and he had been adequately trained. Therefore, his failure to put on gloves was his fault. The employer never asked, “But why didn’t the worker put on insulating gloves?” Had that question been asked, a whole new picture would have emerged.

In this particular case, the utility worker had five hours of sleep in the last two and one-half days. The rest of the time he was working. It had been a stormy weekend. The utility worker worked two back-to-back shifts on Friday, went to bed at 10:30 p.m., and was called back to work at 1 a.m. Saturday. He took a quick nap at dawn and went back to his job climbing up and down utility poles for almost 24 more hours. When he took a breakfast break Sunday morning he was called back to work. It was noon on Sunday when he made that final climb up the pole.

Extended work hours – being on the job for 55 out of 60 hours -- was definitely one of the root causes of this tragedy. But why was this worker working so many hours? The utility company had laid off 37 linemen in the past several years, and was in the process of timing the performance of those who remained. Another root cause was downsizing/short staffing, and yet another was production pressure. In order to assure that this type of accident did not occur again, attention had to be paid to creating reasonable work schedules with reasonable work hours, adequate staffing levels, and an absence of production pressures that caused workers to take short cuts.

Specific Questions to Ask

Specific questions that should be considered in any accident/incident investigation include:

- Was there a way the job could have been re-designed that would have prevented that accident?
- Was the correct equipment available and accessible?
- Was there adequate training and/or supervision?
Were there time pressures or a “push for production” that encouraged workers to take short-cuts?

Had the worker’s job been changed in ways that intensified their work (speed-up, added work load or work duties, increased work pace, etc.)?

Was the worker on a 12-hour shift or working large amounts of overtime such that fatigue was a factor?

Was there adequate staffing?

**Conclusion: Hazards Cause Injuries -- And Work Organization Matters**

All work-related injuries and illnesses are the result of exposure to hazards – there are no exceptions. If there were no hazards, there would be no job injuries or illnesses. The goal of workplace safety and health efforts must be to identify and eliminate or reduce hazards.

Given that for the foreseeable future, many workers will still be exposed to some level of hazard in their work environments, the way in which jobs are designed and work is organized has serious implications for workers’ ability to work safely and be healthy. How work is organized influences workers’ exposure to psychological stress and to physical hazards, and affects the rate and severity of work-related injuries and illnesses.

Finding and fixing hazards, and paying attention to work organization factors such as work load, work pace, staffing levels, hours of work and production pressures, are essential ingredients in creating work environments that minimize the possibility of job-related injuries, illness and stress.
CONTROLLING HAZARDS

Once hazards have been identified, the next step is to control the hazards. Hazard controls are methods used to eliminate or limit workers’ exposure to a hazard. While there are many different types of hazards (such as toxic chemicals, unguarded machinery and equipment, working in high places), there are certain principles guiding hazard control that apply to all hazards.

The Hierarchy of Hazard Controls

The best way to control a hazard is to eliminate it. If a hazard can not be eliminated all together, there are several other ways to limit worker exposure to the hazard. Some of these ways are more effective than others. When all of these different hazard control methods are put in a chart, going from the most effective to the least effective way to control the hazard, the chart portrays the "hierarchy of hazard controls." It is considered good occupational safety and health practice to follow the hierarchy of controls.

HIERARCHY OF HAZARD CONTROLS

Most Effective  
1. Elimination  
2. Substitution  
3. Engineering Controls (Safeguarding Technology)  
4. Administrative Controls (Training and Procedures)  

Least Effective  
5. Personal Protective Equipment

Examples of Each Step in the Hierarchy of Hazard Controls

1. Elimination

The best way to control a hazard is to eliminate it and remove the danger. This can be done by changing a work process in a way that will get rid of a hazard; substituting a non-toxic chemical for a toxic substance; having workers perform
tasks at ground level rather than working at heights; implementing needle-less IV systems in health care facilities to eliminate needles; and other methods that remove the hazard all together.

2. **Substitution**

The second best way to control a hazard is to substitute something else in its place that would be non-hazardous or less hazardous to workers. For example, a non-toxic (or less toxic) chemical could be substituted for a hazardous one.

3. **Engineering Controls (Safeguarding Technology)**

If a hazard cannot be eliminated or a safer substitute cannot be found, the next best approach is to use engineering controls to keep the hazard from reaching the worker. This could include methods such as using noise dampening technology to reduce noise levels; enclosing a chemical process in a Plexiglas "glove box"; using needles that retract after use; using mechanical lifting devices; or using local exhaust ventilation that captures and carries away the contaminants before they can get in the breathing zone of workers.

4. **Administrative Controls (Training and Procedures)**

If engineering controls cannot be implemented, or cannot be implemented right away, administrative controls should be considered. Administrative controls involve changes in workplace policies and procedures. They can include such things as:

- Warning alarms,
- Labeling systems,
- Reducing the time workers are exposed to a hazard, and
- Training.

For example, workers could be rotated in and out of a hot area rather than having to spend eight hours per day in the heat. Back-up alarms on trucks that are backing up are an example of effective warning systems. However, warning signs used instead of correcting a hazard that can and should be corrected are not acceptable forms of hazard control. For example, it is neither effective nor acceptable to post warning signs by an unguarded machine cautioning workers to work carefully.

5. **Personal Protective Equipment**

The use of personal protective equipment (PPE) is a way of controlling hazards by placing protective equipment directly on workers' bodies. Examples of personal protective equipment include: respirators, gloves, protective clothing, hard hats, goggles, and ear plugs.
Personal protective equipment is the least effective method for protecting workers from hazards. PPE should be used only while other more effective controls are being developed or installed, or if there are no other more effective ways to control the hazard. This is because:

- The hazard is not eliminated or changed.
- If the equipment is inadequate or fails, the worker is not protected.
- No personal protective equipment is fool-proof (for example, respirators leak).
- Personal protective equipment is often uncomfortable and can place an additional physical burden on a worker.
- Personal protective equipment can actually create hazards. For example, the use of respirators for long periods of time can put a strain on the heart and lungs.

While there are some jobs, such as removing asbestos, where wearing adequate personal protective equipment is absolutely essential, there are many jobs where employers hand out personal protective equipment when in fact they should be using more effective hazard control methods.

**A Word of Caution**

When planning for hazard controls, remember that the control selected must not eliminate one hazard while creating another. For example, it is not acceptable to remove air contaminants from one area by venting them to another area where another group of workers will be exposed. Hazard control measures should eliminate or reduce hazards for all who are potentially exposed to them.

**Hazard Control: Whose Responsibility?**

The ability and responsibility to design jobs safely in the first place, or redesign them when a hazard is detected, lies with management. It is the role of workers and unions to promote the use of the "Hierarchy of Controls," making sure that employers are providing the most effective methods for hazard control possible. Remember: fix the workplace, not the worker!
DO WORKERS CARE ABOUT JOB SAFETY AND HEALTH?

Some people think that one of the main problems with job safety and health is that workers do not take the subject seriously enough: “Workers just don’t seem to care enough when it comes to health and safety on the job!” “Workers just want to get the job done!” “Workers are just apathetic – they’re not interested in safety!”

The reality is that workers care very deeply about job health and safety – they want to go to work and come home safe and sound. But many workers are discouraged about their workplaces ever being different from what they are now: unsafe and unhealthy work environments. They feel powerless to change things.

Sometimes it takes some planning to get workers actively involved in health and safety and the union’s efforts to address problems. Often what is necessary is to remove barriers and obstacles that get in the way of worker involvement. Here are some things to think about:

1. **People generally get involved in trying to change something or make it different or better if they believe they can be successful.**

   If they do not think they and/or others have the power to change something, they often will not participate in what they see as useless efforts.

   **Example -- Using the “Right-to-Know” law to get information on chemical hazards and health effects:**

   In 1983 in Massachusetts, a state law was passed that gave workers the right to know the chemical names (rather than just the “brand” names) of the chemicals they were exposed to at work (this was before OSHA’s Hazard Communication Standard). The Massachusetts Right-to-Know law also gave workers the right to see chemical factsheets (“Material Safety Data Sheets”) on those chemicals. These factsheets included hazard information about the substances, including short and long-term health effects of the chemicals.

   In 1984, after the law had been in effect for six months, a study was done to see how well the new law was working and how many workers were actually using their new rights. The study showed that very few workers and unions were making use of the Right-to-Know law.
Some people thought that this proved that workers were “apathetic” when it came to their health and safety. But not everyone agreed. Another study was done including a survey of those who were not using the new law, asking them “why not?”

The most frequent response to that question was: “What good will it do to find out what we’re exposed to if we can’t do anything about it?” In this case, workers were not apathetic -- they were feeling powerless to make any changes. They did not want to know that something they were exposed to could cause cancer, since they felt they could not change the situation even if they knew.

This second survey led to a decision to begin a second phase of the “Right-to-Know” campaign, called the “Right-to-Act.” In order to protect their health, workers needed real rights to act on what they would come to know.

It is important to demonstrate that things can change – they do not always have to be “business as usual.” Sometimes that means tackling the health or safety problem that is easiest to fix, to show that improvements can happen. That way confidence and momentum are built, and more difficult problems can be tackled with the greater involvement of increasing numbers of active workers.

2. Some workers appear not to care about workplace hazards because they have never been informed about the true nature (like long term health effects) of the hazards.

In this case, what is needed is information and education -- through factsheets or newsletter articles or presentations at union membership meetings. Materials, information and education should be in the languages and literacy levels of the workforce.

3. If workers believe they can get in trouble for raising health or safety concerns or for being involved in efforts to improve health and safety conditions, many will stay silent rather than put their jobs or livelihoods at risk.

Employer policies, programs and practices that blame workers when they report injuries or illnesses tend to discourage reporting of injuries, illnesses and hazards. Examples of this are safety incentive programs that deny prizes to workers who report injuries, or injury discipline policies that provide counseling and “progressive” discipline to workers who report injuries. Employers who retaliate against workers when they raise health and safety issues also actively discourage workers from getting involved in improving conditions at the job.

Unions should identify and work to eliminate any and all employer practices that discourage injury/illness reporting and worker involvement in health and safety.
Section 11(c) of the Occupational Safety and Health Act makes it illegal for employers to discriminate against workers who report injuries, complain about job safety, or get involved in other ways in occupational safety and health.

4. **If workers think negative job changes will occur if they get involved in health and safety activities, many of them will not get involved.**

If taking the time to do a task safely is seen by workers as jeopardizing their jobs, then safety will have a very low priority.

Example -- Protecting against trench cave-ins seen as jeopardizing jobs:

Workers for a municipal water company often dug trenches to put in or repair water lines in a town. They knew that cave-ins, which could cause serious injury or death, could be prevented by trench shoring and trench boxes. They also knew that the town they worked for was very interested in cutting costs.

Management officials never stressed the importance of protecting against cave-ins. However, they did stress the importance of doing work rapidly and they let it be known that if work was not done in the fastest, least expensive way possible, the town would privatize the work.

Private contractors rarely used trench shoring devices. In order to be “competitive,” workers believed that they must not demand these protective devices nor the time to install them when they dug and worked in trenches. If they did, they believed the town would privatize their jobs and give the jobs to outside contractors.

In this case, in order to get workers involved in demanding protection against trench cave-ins, workers needed to believe that such demands would not drive them out of a job.

Since it is a violation of the Occupational Safety and Health Act to work in improperly shored (or unshored) trenches of a certain depth, one idea was to have all workers call OSHA when they saw contractors working in unshored trenches. If contractors felt that they needed to spend the time and money properly shoring trenches, they would not be able to underbid town employees who demanded proper protections.

5. **Some workers do not get involved because they have never been asked or have never been given a role that they think they can play.**

Sometimes the way to start getting workers involved is by asking them to do something. That “something” could be filling out a short union survey about the hazards, problems or health and safety concerns on their jobs. It could be asking them to a meeting to help
design a simple health and safety survey. It could be going on the internet to find out some specific information about a hazard or problem. Take a larger project and break it down into discreet tasks that specific workers or groups of workers can be asked to take on. Thank workers for their help, however big or small it happens to be.

Workers and unions should look for ways to identify what may be getting in the way of co-worker involvement in workplace health and safety issues. Do workers feel powerless to change anything? Have they received information and education on the hazards? Do workers believe they can get in trouble by identifying hazards and asking for their elimination or correction? Do they believe their jobs could be contracted out or privatized if they demand job safety improvements? If any of these situations are occurring, there should be a plan for removing these barriers.
GOALS FOR WORKPLACE HEALTH AND SAFETY PROGRAMS

Option I

PURPOSE: To identify, compare and contrast management goals and union goals for health and safety in your workplace.

TASKS:

1) At your table, take a few minutes to discuss and note down the following:

   a. some goals that management has for its policies and programs regarding workplace health and safety (why is your management involved in health and safety – what are their goals for this involvement?)

   b. some goals that the union has for our involvement in workplace health and safety.

2) From your brainstormed lists of management and union goals, as a group, decide on a list of three (3) KEY management goals, and three (3) KEY union goals for involvement in workplace safety and health.

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<th>Management Goals</th>
<th>Union Goals</th>
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3) Select a reporter who can share these goals with the large group.
**ACTIVITY HANDOUT**

**GOALS FOR WORKPLACE HEALTH AND SAFETY PROGRAMS**

*Option II*

**PURPOSE:** To identify, compare and contrast management goals and union goals for health and safety in your workplace.

**TASKS:**

1) Take a few minutes to **individually** note down (in the space provided below):

- Several goals *management* has for its policies and programs regarding workplace health and safety (why is your management involved in workplace health and safety – what are their goals for this involvement?); and

- Several goals the *union* has for our involvement in workplace health and safety.

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</table>

2) Next, share your responses with those in your small group. Together, decide on a list of **three (3) KEY management goals** and **three (3) KEY union goals** for involvement in workplace safety and health.

3) Write out each of the three **management goals** and the three **union goals** in the space below:

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<th>Management Goals</th>
<th>Union Goals</th>
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</table>

4) Select a reporter to share these goals with the large group.
Activity Handout
GOALS FOR WORKPLACE HEALTH AND SAFETY PROGRAMS
Option III

PURPOSE: To identify, compare and contrast management goals and union goals for health and safety in your workplace.

TASKS:

1) Take a few minutes to individually note down (in the space provided, below):

- Several goals management has for its policies and programs regarding workplace health and safety (why is your management involved in occupational safety and health –what are their goals for this involvement?); and

- Several goals the union has for our involvement in workplace health and safety.

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2) Next, share your responses with those in your group. Together, decide on a list of three (3) key management goals and three (3) key union goals for involvement in workplace safety and health.

3) Each group has been given three pieces of blue paper and three pieces of yellow paper. Your group’s reporter should write out each of these three management goals on a separate piece of blue paper (one goal per piece of paper), and write out each of these three union goals on a separate piece of yellow paper (one goal per piece of paper.)

4) During the report-back session, your group will be asked to post these pieces of paper on the wall.
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Treat It As Continuous Bargaining:
Representing Members on Workplace Health, Safety and Environmental Issues

While most Steelworker local unions have contract language on health and safety, and seek better and stronger language each contract; no contract language can be relied on to solve all the union's health, safety and environmental problems. New information on old hazards, recognition of additional hazards and perhaps most importantly, new hazards created by workplace changes (such as work restructuring and new technologies), constantly challenge a union's ability to represent its members on health, safety and environmental issues.

The contract usually creates important mechanisms such as joint labor-management health and safety committees that allow for ongoing communication on health, safety and environmental issues. In some cases management would like the union to treat the safety committee meetings as pleasant discussions amongst friends. Often management tries to limit the involvement of the union in health and safety only to the monthly joint committee meeting. In actuality every time union and management representatives come together to discuss health, safety and environmental issues, a form of bargaining is taking place. Continuous bargaining is a powerful tool for the union to make needed improvements in health and safety conditions in the workplace.

While on one level labor and management's health and safety goals may seem similar (e.g. management wants fewer accidents; the union seeks a safe workplace); the reality is that union and management approaches to achieving those goals can be very different (e.g. management's implementation of policies and practices that discourage workers from reporting injuries vs. the union's emphasis on eliminating hazards that cause injuries and illnesses).

In general, neither party thinks of these labor-management discussions as "bargaining." But some local unions are beginning to see improved results from their joint labor-management interactions on safety and health and other issues when they think of these discussions as ongoing or continuous bargaining, and prepare for them as bargaining sessions.

When unions prepare for contract bargaining, they engage in certain essential activities including:

1) Selecting the Union's bargaining representatives and training them (in union-only sessions) for their roles;
2) Understanding the members' issues and concerns using surveys, planning meetings, one-on-one information gathering, etc.;
3) Organizing and activating the members to defend their interests and the union's strength in the bargaining process;
4) Analyzing the union's (and management's) strengths and weakness given the current bargaining environment;
5) Preparing proposals and positions as a committee and approaching management as a united and organized voice;
6) Developing a bargaining strategy;
7) Caucusing regularly to maintain unity, developing a common strategy and formulating responses to management proposals;
8) Demanding that any agreements reached are written, clear and enforceable.

Preparation for a joint labor-management health and safety meeting is just as important as preparing for contract bargaining. The union should be as well-organized and just as inclusive of members' concerns as preparation for contract bargaining.

A key difference between contract bargaining and many joint labor-management processes is the role that union-only meeting time plays in setting the union's agenda, developing priorities and goals and planning strategies for obtaining those goals. While contract bargaining involves regular union-only meeting time before and during negotiations; many unions involved in joint labor-management health and safety committees or teams often meet only with management and rarely or never as a union-only committee. Local unions should find ways for the union side of joint labor-management health and safety committees to meet independently, regularly, to prepare for joint meetings.

In the course of continuous bargaining on health, safety and environmental issues, it is crucial to:

- build involvement and unity within the union;
- build the identity of the union;
- pay attention to your instincts; and
- Caucus with your union sisters and brothers before, during and after joint meetings.

Union health and safety committee members or representatives can support continuous bargaining on health, safety and environmental issues by:

- surveying members regarding their health and safety concerns;
- developing fact sheets and newsletter articles on particular issues to keep members informed;
- making presentations at membership meetings;
- having one-on-one conversations with members;
- analyzing data like the company’s injury and illness logs to identify injury/illness trends, hazards and priorities;
- obtaining and reviewing materials on particular hazards from sources such as the USW Health, Safety and Environment Department, the AFL-CIO, the Canadian Labour Congress, the Occupational Safety and Health Administration (OSHA), the Mine Safety and Health Administration (MSHA), and the National Institute for Occupational Safety and Health (NIOSH), the Canadian Centre for Occupational Health and Safety,
the Ontario Workers Health and Safety Centre (www.whsc.on.ca), and the Environmental Protection Agency (EPA);

- identifying and documenting health, safety and environmental impacts resulting from workplace changes (e.g. increased injuries or illnesses from downsizing, speed-up, 12+hour shifts, mandatory overtime, job combinations, new technologies, work restructuring, etc.) Unions may be able to formally bargain over these changes and/or their impacts.

- identifying strengths and weaknesses of current health and safety training programs; developing union priorities for type and content of training and determining who should provide the training; and

- developing and undertaking strategies that involve our local union members, build the union and make health, safety and environmental improvements.

Of course there is much more information about this issue than can fit onto a few page fact sheet. If your Local Union needs assistance or would like additional information about continuous bargaining or other health and safety issues there are several ways to get help. First, the USW can provide assistance to your local union through your Staff Representative, District Health and Safety Coordinator, District Director, and the Health, Safety and Environment Department. Your Local Union President should contact the Staff Representative with your concerns. You can also obtain additional information from the USW website at www.usw.org and www.usw.ca; the AFL-CIO’s website at www.aflcio.org/safety and the Canadian Labour Congress website. These websites have links to a number of other useful internet websites including the websites of the organizations referenced in this fact sheet.

This material was adapted from a fact sheet developed by the Massachusetts AFL-CIO and materials developed by the Technology and Work Project, University of Massachusetts – Lowell. For further information, contact the USW Health, Safety and Environment Department.
United Steelworkers  
Health, Safety & Environment Department  

**Fifteen Things**  
Every Union Leader Should Know About Safety and Health

1) The twin goals of a union safety and health program are to improve working conditions and to build the union. They are equally important. In fact, you can’t do either one well unless you do both.

2) Management has different goals for health and safety than the union does, even enlightened management. They may care about safety in its own right, but are probably more concerned about things like workers comp costs. And building the union is never one of management’s goals.

3) What you do regularly with your employer on safety and health is a form of bargaining – called “continuous bargaining.” Management comes in to joint labor-management health and safety committee meetings prepared to meet their goals; we need to come in just as prepared to meet our goals.

4) Safety and health isn’t a technical issue. Technical knowledge helps. But there are plenty of places to get technical information. Strategy and organization are much more important in winning the improvements we need.

5) Every local union needs a union safety and health committee. You should set one up even if you don’t have a joint safety and health committee. You don’t need an employer’s permission to establish a union committee.

6) It’s also good to have a joint safety and health committee, with representatives from the union and from management. The joint committee can be important in resolving health and safety problems.

7) Even if you have a joint committee, you still need a union committee. The union committee can be the union reps on the joint committee or a larger group.
8) The union members of the joint committee should meet by themselves at least as often as they meet with management. You need separate meetings to set union priorities and plan strategy. Can you imagine what would happen if your bargaining committee met only with the employer at contract time, and never by itself?

9) You should never, ever allow the employer to appoint your safety and health reps, to veto the union’s choices, or dismiss your reps from their union positions. Never. Ever.

10) Union safety and health reps should think of themselves as organizers, promoting health and safety in a way that builds the involvement – and the loyalty and commitment -- of your membership. That means involving the membership whenever you can in the union’s health and safety activities. And it means good communication with your membership, both written and by word of mouth such as “one-on-one’s”.

11) Workers’ injuries and illnesses are caused by exposure to hazards on the job. The hazards can be unsafe equipment or toxic chemicals. Hazards also include things like lack of training, fatigue from extended working hours and shifts, downsizing/understaffing, work overload (too few people, too much work, job combinations, etc.), and production pressures.

12) A good safety and health program focuses on finding and correcting hazards. Employers’ safety programs that focus on “worker behavior,” workers’ “unsafe acts” and blaming workers are hazards in and of themselves. They focus attention away from the real hazards that put our members’ health and lives at risk.

13) “Blame-the-worker” safety programs tell our members that they are the problem. In fact, our members and their union are the solution.

14) The best way to find hazards is for union health and safety reps to talk to every worker about his or her job, and how to make it safer, healthier and easier. It’s even better to enlist that member in pushing for improvements. That helps build involvement of members in safety and health, and build the union!

15) You’re not alone. You have lots of resources though the USW. Every district has a safety and health coordinator, and USW safety and health advisors. Our International’s Health, Safety and Environment Department is available for help via phone (412-562-2581), fax (412-562-2584), email (safety@usw.org) or mail (USW Health, Safety and Environment Dept., United Steelworkers, 5 Gateway Center, Pittsburgh, PA 15222)
SECTION II:

Identifying and Controlling Health and Safety Hazards
<table>
<thead>
<tr>
<th>Color</th>
<th>Description</th>
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</thead>
<tbody>
<tr>
<td>Red</td>
<td>heat burns, heat stress, flash burns</td>
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<tr>
<td>Orange</td>
<td>back or repetitive strain (ergonomic) injury</td>
</tr>
<tr>
<td>Yellow</td>
<td>stress/stress-related health effects</td>
</tr>
<tr>
<td>Dark Blue</td>
<td>workplace violence-related injuries (physical and/or emotional)</td>
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<tr>
<td>Dark Green</td>
<td>chemical exposure/health effects from chemicals</td>
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<tr>
<td>Light Green</td>
<td>all other occupational <em>diseases</em> (like skin rash, sinus infection, occupational asthma, hearing loss, work related cancer)</td>
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<tr>
<td>Light Blue</td>
<td>all other occupational <em>injuries</em> (like cuts, bruises, broken or fractured bones, eye injuries, electric shock)</td>
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<tr>
<td>Color</td>
<td>Hazard Category</td>
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<tr>
<td>Red</td>
<td>heat, hot objects (e.g. sparks, flame), welder’s arc</td>
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<tr>
<td>Orange</td>
<td>ergonomic hazards (hazards that result in back or repetitive strain injuries)</td>
</tr>
<tr>
<td>Yellow</td>
<td>stressors/work design hazards (like understaffing, work overload, mandatory overtime/extended working hours/shifts, shift work, production quotas, problematic management techniques, threat of or actual harassment or violence)</td>
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<tr>
<td>Dark Blue</td>
<td>physical hazards (like noise, vibration, radiation, poor lighting, lack of ventilation)</td>
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<tr>
<td>Green</td>
<td>chemical hazards (like solvents, asbestos, silica, latex, formaldehyde, cleaning chemicals, metal dust, diesel fumes, copier or printer fumes)</td>
</tr>
<tr>
<td>Light Blue</td>
<td>safety hazards (like unguarded or unsafe machines or equipment, confined spaces, electrical hazards, fall hazards, slippery floors, lack of training)</td>
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Activity Handout
COLOR-CODE FOR BODY MAPPING
Of Your Work-Related Injuries, Illnesses and Exposures
(Option II - for health care/non-industrial settings)

Red exposure to someone else’s blood/body fluid (like needlestick injury, blood splash)

Orange back or repetitive strain (ergonomic) injury

Yellow stress/stress-related health effects

Dark Blue workplace violence-related injuries (physical and/or emotional)

Dark Green chemical exposure/health effects from chemicals

Light Green all other occupational diseases (like skin rash, sinus infection, occupational asthma, hearing loss, work related cancer)

Light Blue all other occupational injuries (like cuts, bruises, broken or fractured bones, eye injuries, electric shock)
Activity Handout
COLOR-CODE FOR WORKPLACE HAZARDS MAPPING
(Option II - for health care/non-industrial workers)

Red  biological hazards (like blood, mold, fungus, infectious diseases)

Orange  ergonomic hazards (hazards that result in back or repetitive strain injuries)

Yellow  stressors/work design hazards (like understaffing, work overload, mandatory overtime/extended working hours/shifts, shift work, production quotas, problematic management techniques, threat of or actual harassment or violence)

Dark Blue  physical hazards (like noise, vibration, radiation, poor lighting, lack of ventilation, extreme temperature)

Green  chemical hazards (like solvents, asbestos, silica, latex, formaldehyde, cleaning chemicals, metal dust, diesel fumes, copier or printer fumes)

Light Blue  safety hazards (like unguarded or unsafe machines or equipment, confined spaces, electrical hazards, fall hazards, slippery floors, lack of training)
Resource Handout
MAPPING ACTIVITIES: TECHNIQUES FOR WORKERS TO IDENTIFY INJURIES, HAZARDS, AND PROBLEMS

What is hurting workers on the job? What symptoms, injuries and illnesses are workers experiencing? What and where are the hazards that are causing (or could cause) problems? How is on-the-job stress affecting workers’ lives? How can unions involve members and develop strategies for solving health and safety problems?

Unions across the country and around the world are using “mapping” techniques to help answer these important questions. Mapping techniques provide a way for workers to use their own experiences to document workplace health and safety problems. These techniques are participatory methods by which workers gather and analyze their own knowledge and experiences. With the information gained, workers and unions can develop strategies to eliminate or reduce workplace hazards and to improve health and safety on the job.

Mapping techniques are effective because:
- they involve workers,
- they use visual images and do not rely on ability to read or write,
- they get people thinking about their workplaces in a new way,
- they show that workers are not alone, that the problems are collective problems, and
- they help point to collective solutions.

This handout explains how to lead three mapping techniques:
- **Body Mapping** is an activity that identifies workers’ job-related injuries, illnesses and stresses and demonstrates patterns and trends.

- **Hazards/Risk Mapping** is an activity that identifies and locates the hazards which are causing injuries, illnesses and stress on the job.

- **Life Mapping** is an activity that looks at the effect of job injuries, illnesses and/or job stress on workers’ personal lives.

**Body Mapping**

Body mapping allows workers and unions to identify the particular symptoms, injuries, illnesses and stresses that workers are experiencing. From this information, patterns and trends can emerge. This can lead to identification of jobs, areas, conditions and tasks that are putting workers at risk for particular injuries, illnesses and stresses.
To create a body map, you need the following materials:
- Flip chart paper,
- Flip chart markers,
- Pages of colored “sticky dots” in seven different colors,
- Tape,
- Color code for body mapping of injuries/illnesses (this could be a flip chart page, a handout, or both – see attached example at end of handout).

Tell participants that a body map is a picture that identifies the various injuries, illnesses and stresses workers have experienced from the work they do or have done in the past. Body mapping is a tool that can be used by unions and workers to identify trends in injury/illness experience and develop priorities for hazard correction.

Divide participants into small groups of four to six people. Once participants have been assigned to small groups, have each small group gather around a table or a section of a table.

Distribute the following to each small group:
- A flip chart page,
- A flip chart marker,
- A set of “sticky dots” in 7 different colors, and

Ask each group to identify an artist in the group. Remind groups that every group always has an artist! That person will draw a large outline of a body on the flip chart page with the magic marker. Artists should feel free to draw a “front” and a “back” if they choose.

Read aloud the “color code for body mapping,” the color-code for their job injuries and illnesses.

Ask each participant to recall his or her own particular work-related injuries, illnesses and stresses from the past and present. Explain that each participant will put the appropriate color dots on the map on the body parts affected. Remind participants that the body map must reflect their own job-related injuries, illnesses and exposures, not those of co-workers or others in their workplaces.

For example, a participant who inhaled a chemical that made him/her ill might put a dark green dot near the nose, where the chemical was inhaled; or, s/he might put the dark green dot in the lung area if his/her lungs were affected by breathing in the chemical. For occupational stress, some participants might put a yellow dot on the body’s head; others might put it in the neck/shoulder area if that is where they experience tension; still others might put it in the stomach area to show stomachaches.

Give small groups about 10 minutes to do their body maps.
After 10 minutes, ask someone from each group to explain their body map. Each group should tape their map to a wall where it can be seen by all participants.

Ask participants if they notice any patterns of injuries or illnesses emerging – either on a particular group’s body map or on all of the body maps taken together. Have them identify the kinds of injuries and illnesses that appear to be the most common.

Tell participants that behind every dot is a hazard or condition that needs to be fixed. Ask participants to think about the hazards and workplace conditions that caused these injuries and illnesses. The next step is to identify those hazards and conditions, and their location in the workplace. Then a plan can be made to get these problems corrected.

**Hazard/Risk Mapping**

A hazard/risk map is a drawing of a workplace or a part of a workplace on which workers and unions identify the hazards and unsafe and unhealthy conditions that are causing workers’ symptoms, injuries, illnesses and stresses. The union is then able to identify priorities for correction. There is no one who knows more about the hazards and concerns on a job than the workers who confront them every day. This mapping activity gathers that important experience together.

To create a hazard/risk map, you need the following materials:
- Flip chart paper,
- Flip chart markers,
- Pages of colored “sticky dots” in six different colors,
- Tape, and
- Color code for hazard mapping (this could be a flip chart page, a handout, or both – see attached example at end of handout).

Tell participants that a hazards/risk map is a map of a workplace or section of a workplace which shows the location of particular hazards and conditions that are causing (or could cause) workers to be injured, made ill or stressed on the job. Hazards/risk mapping is a tool that can be used by unions and workers to identify hazards for correction.

Divide participants into small groups based on their department, workplace or industry. If participants are all from the same workplace, you can ask participants from the same or similar departments or job classifications to group together. Or, if participants include people from the same or similar types of workplaces/industries, they can be grouped together. Once participants have been assigned to small groups, have each small group gather around a table or a section of a table.

Distribute the following to each small group:
- A flip chart page,
- A flip chart marker,
A set of “sticky dots” in 6 different colors, and
Activity Handout: Color Code for Workplace Hazards Mapping.

If participants are from more than one workplace, ask each group to choose one of the workplaces represented in the group to map. If participants are all from one workplace, have each group draw a particular department or area.

Explain that one participant should draw a floor-plan or map of the workplace or department or section of a workplace, noting the following:

- different areas or sections,
- major pieces of machinery and equipment,
- workstations and furniture,
- storage areas,
- doors and windows, and
- where workers are located.

Next, hazards should be noted on the map by using the sticky dots according to the color code. Read aloud the color code. Participants should think of all the injuries/illnesses and stresses workers are experiencing, and identify the hazards causing those problems on this map. Remind participants that hazards are anything in the workplace that can cause or contribute to worker injury, illness or stress. Tell other participants in each group they can help by asking questions about particular hazards that may be present.

Give small groups about 10 - 15 minutes to do their hazards/risk maps.

Then each group should tape their map to a wall where it can be seen by all participants.

Ask groups, one at a time, to summarize the range of hazards identified on their maps.

After each group has explained their map, ask them:
- what are the main health and safety concerns?
- where are people most injured or in pain?
- where have there been changes in work process (in how the job is done)?
- what are the concerns that affect the most people on the worksite?

Ask participants how they might go about prioritizing hazards for attention and correction.

Once effective strategies are put in place to get a particular hazard eliminated, the associated “sticky dots” can be removed from the map; as new hazards are identified, “sticky dots” can be added to the map. The review and updating of the map is very important as it allows workers to see the progress, or lack of progress, in correcting hazards.
Life Mapping

Life mapping allows workers and unions to identify the effects of work-related injuries, illnesses and/or stress on their lives outside the workplace. Too often, job injuries, illnesses and stress are thought of just in terms of what it means for workers’ abilities to do their jobs. The fact is that when workers are stressed at work, this can have significant impacts on many different aspects of their lives.

A “life map” also helps to show that workers are not alone in their suffering; that many of their experiences are shared experiences rather than individual problems. And collective problems have collective solutions. This understanding can help to build involvement in action to get the hazards and the sources of stress on the job eliminated or reduced.

To create a life map, you will need the following materials:
- Flip chart page on which you have drawn a small picture of a worker in the middle of the page (this can be a stick figure!) – tape this to a wall where there is space around the page,
- Flip chart markers (enough for one marker per participant),
- Colored 8 ½ x 11 paper, enough for one sheet per participant, and
- Tape.

Distribute the following materials to each participant: a piece of colored 8 ½ x 11 paper and a flip chart marker.

Ask participants to think about the injuries, illnesses and/or stresses they experience on the job, and then think about the effects of these problems on their personal lives – their lives outside of work. Ask each participant to draw a picture that represents one of the ways that job stress, injuries and/or illnesses are affecting their life outside of work.

You can give several examples, such as:
- If someone is too tired to walk the dog, she could draw a stick figure of herself and the dog with a line through it;
- If someone is having trouble sleeping, he could draw himself in bed with his eyes wide open;
- If someone is so stressed she is yelling a lot at family members, she can draw a mouth yelling at stick-figure children.
- If someone does not have time or energy for a love life, he can draw a heart with a diagonal line through it.
Ask participants to come to the area of the room where you have hung your flip chart page with the stick figure in the middle, and using pieces of tape, hang their pictures around the picture of the “worker” in the middle.

Once all the pictures have been hung, ask for volunteers to describe what they have drawn.

After everyone who wants to share their drawing with the group has told about their picture, ask participants if they see similarities or common themes in the drawings participants have created on the “life map.”

Explain that this activity helps to show a broad range of effects that our jobs are having on our lives.

Ask participants to identify some of the sources of stress on their jobs. List these on a flip chart.

Ask participants how such a “life map” could be used by a health and safety committee or union.

Explain that life mapping can make the “harder to see” workplace hazards more visible. Hazards at work can involve problems we can see or identify fairly easily, such as: a broken ladder, an unguarded machine, noxious fumes that are making workers sick. But there are hazards that are not so easily seen: fatigue from 12+ hour shifts; exhaustion from “continuously improved” production processes that have reduced staffing and increased workload; and mandatory overtime. All hazards can have negative impacts on many aspects of our lives including our lives outside of work.

Explain that once we can identify a problem – including conditions on the job that can lead to stress or fatigue – we can begin to think about what needs to happen to eliminate or reduce those problems.
<table>
<thead>
<tr>
<th>Color</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Red</td>
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</tr>
<tr>
<td>Orange</td>
<td>back or repetitive strain (ergonomic) injury</td>
</tr>
<tr>
<td>Yellow</td>
<td>stress/stress-related health effects</td>
</tr>
<tr>
<td>Dark Blue</td>
<td>workplace violence-related injuries (physical and/or emotional)</td>
</tr>
<tr>
<td>Dark Green</td>
<td>chemical exposure/health effects from chemicals</td>
</tr>
<tr>
<td>Light Green</td>
<td>all other occupational <em>diseases</em> (like skin rash, sinus infection, occupational asthma, hearing loss, work related cancer)</td>
</tr>
<tr>
<td>Light Blue</td>
<td>all other occupational <em>injuries</em> (like cuts, bruises, broken or fractured bones, eye injuries, electric shock)</td>
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</tbody>
</table>
## COLOR-CODE FOR WORKPLACE HAZARDS MAPPING

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<th>Hazards Description</th>
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<td>Ergonomic hazards (hazards that result in back or repetitive strain injuries)</td>
</tr>
<tr>
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<td>Stressors/work design hazards (like understaffing, problem with work load or work pace, overtime, shift work, production quotas, problematic management techniques, threat of or actual harassment or violence)</td>
</tr>
<tr>
<td>Dark Blue</td>
<td>Physical hazards (like noise, vibration, radiation, poor lighting, lack of ventilation, extreme temperature)</td>
</tr>
<tr>
<td>Green</td>
<td>Chemical hazards (like solvents, asbestos, silica, latex, formaldehyde, cleaning chemicals, metal dust, diesel fumes, copier or printer fumes)</td>
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Activity Handout

DESIGNING AND CONDUCTING A WORKPLACE HEALTH AND SAFETY SURVEY

PURPOSE

To understand the steps to consider when designing and conducting a workplace health and safety survey.

TASKS

You are your local union’s health and safety committee. Your task is to develop a plan for the union to conduct some type of health and safety survey at the workplace. As a group, review the questions below and discuss and decide on answers to them. Select a reporter/recorder to take notes on your group’s answers and be prepared to share them with the larger group at the end of approximately 30 minutes.

1. What issue(s) will be the focus of your health and safety survey?

   ____________________________________________
   ____________________________________________
   ____________________________________________

2. Why did you choose this issue or issues to focus on?

   ____________________________________________
   ____________________________________________
   ____________________________________________

3. Who is to be included in the survey? [For example, is this survey for the whole facility? Certain department(s)? Only members of one local union?]

   ____________________________________________
   ____________________________________________
   ____________________________________________
4. Why did you choose this particular population to survey?

5. What information will you need prior to designing your survey?

6. How is this information going to help you?

7. From where could you get this information?

8. What specific questions might you want to include in your survey? (You will not have time or perhaps the necessary background information to completely design all the questions in your survey. Think of some sample questions that give a range of issues that you want to cover in the survey.)

9. How will you pre-test your survey?
10. How will you conduct or distribute your survey?

_________________________________________________________________
_________________________________________________________________
_________________________________________________________________

11. Why did you choose these methods?

_________________________________________________________________
_________________________________________________________________
_________________________________________________________________

12. Who will compile survey results and draft a report?

_________________________________________________________________
_________________________________________________________________
_________________________________________________________________

13. Who should get the results of this survey and how will the results be shared with your members?

_________________________________________________________________
_________________________________________________________________
_________________________________________________________________

14. How will the union use the results of this survey?

_________________________________________________________________
_________________________________________________________________
_________________________________________________________________

15. What support will you need from your union and/or others to develop and conduct this survey?

_________________________________________________________________
_________________________________________________________________
_________________________________________________________________

16. How will you get this support?

_________________________________________________________________
_________________________________________________________________
_________________________________________________________________
_________________________________________________________________
Resource Handout

WORKER AND WORKPLACE HEALTH AND SAFETY SURVEYS

Surveying members on health and safety issues can give unions and health and safety committees valuable information about hazards and problems that need to be corrected. Surveys are also a way of involving workers and members in the union’s health and safety efforts. They not only gather important information, but let workers and members know the union cares about their experiences and what they think.

Surveys can be in the form of written questions that get distributed and collected. Or they can be in the form of a few questions that health and safety committee members, stewards or others ask people and record their responses (an oral survey/interview).

You do not need to be an expert to design a useful survey. You can start by thinking about the surveys that you have answered, and those that you chose not to answer. In general, surveys have a better chance of being answered if they are:

- **Short** – If a written survey takes hours to fill out, it is less likely to get answered.

- **Easy** – On a written survey, it is faster to check boxes that are provided than to write long essay answers to every question.

- **Subject is of interest** – The more people care about a subject, the more likely they will be to answer questions about it.

- **Filling it out will make a difference** – The answers are not going to be thrown away or ignored. Whoever is asking the questions really cares about the answers and will do something with them.

The following are some suggestions on designing a survey that has two goals: getting information from workers/members about specific or general health and safety concerns, symptoms or issues; and showing that the union cares about its members and their concerns.

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STEP #1: IDENTIFY THE SURVEY TOPIC AND WHO WILL BE SURVEYED

A survey might be designed to answer questions such as:

- What symptoms, health effects or illnesses are workers experiencing that could be related to exposure to toxic chemicals, poor indoor air quality, poor ergonomic job design, work overload, or long working hours?
- What unsafe or unhealthy working conditions have workers observed or experienced?
- What should union priorities be in efforts to improve workplace health and safety?
- Are employer policies, practices or programs discouraging workers from reporting work-related symptoms, injuries or illnesses?
- What ideas do workers have for short or long-term solutions to health and safety problems they are experiencing?

You also want to decide who you are surveying: one area or department of the workplace? All union members in that workplace? All bargaining unit members regardless of their membership status in the union?

STEP #2: DESIGN THE SURVEY

Here are some issues to consider:

- **Oral or written survey:**
  Will this survey be conducted by health and safety representatives, stewards or others asking questions and recording the answers (an oral survey), or will you be designing a written survey to distribute and collect?

- **Language:**
  What languages should the survey be conducted in? (this needs to be answered for both oral and written surveys)
• **Literacy level:**
  How will you make certain that the literacy level of the questions in your survey will match the literacy level of those you will be surveying?

• **“Closed” or “open” questions:**
  The difference between a closed question and an open question is basically the same as the difference between a multiple choice question and an essay question. Closed questions are questions to which only a limited number of answers are possible. Open questions are questions to which you could end up with many different answers.

  **Example of closed question:** Are you provided with non-powdered, non-latex gloves on your job – yes or no?

  **Example of open question:** Are you provided with any gloves on your job? If yes, please describe them.

  Another example of “closed” vs. “open” questions:

  **Closed question:**
  Which health and safety issue is of most concern to you? Check one:
  ___ poor indoor air quality
  ___ repetitive and heavy lifting
  ___ work overload (too much work, too few people to do it)
  ___ mandatory overtime

  **Open question:**
  What health and safety issue is most important to you?
  ____________________________________________________________
  ____________________________________________________________
  ____________________________________________________________
  ____________________________________________________________

  The advantage of the closed question above is that the answers are easier to tabulate. If the open question is asked to 200 different people, it is possible to get 200 different answers.

  The disadvantage of the closed question is that the union would only know which of those four issues – indoor air quality, lifting, work overload or mandatory overtime – is of most concern to the worker. If
those being surveyed care about another issue altogether, the union would not find that out.

The advantage of open questions is just the opposite. The union gets a tremendous amount of information from the people who respond. The disadvantage is that the answers may be all over the map and difficult to compile and use.

One compromise is to include a combination of the two types of questions: use closed questions with specific choices for answers as well as an “other” category that can be filled in. The survey could also include one or two very open-ended questions to give workers a chance to explain specific or overall concerns in more detail.

These combination questions can be designed in a number of different ways:

**Multiple Choice:**
Regarding workplace health and safety on my job, I am most concerned about (check one):
- ___ toxic chemicals
- ___ unguarded machinery
- ___ lack of training
- ___ fatigue from long work hours
- ___ pressure from employer not to report job injuries
- ___ other:_________________________________________________

**Scale:**
Health and safety training that I have received on this job has been (check one):
- ___ always valuable
- ___ sometimes valuable
- ___ rarely valuable
- ___ never valuable
- ___ I have never gotten any health or safety training on this job
Other comments:_______________________________________________

**Rank order:**
Rank the following job-related health and safety issues in order of importance to you Number 1 should be the most important and number 5 the least important:
___ toxic chemicals
___ unguarded machinery
___ lack of training
___ fatigue from long work hours
___ other: ____________________________________________

Simple Yes/No:
“Have you ever had a job-related injury or illness that you did not report to management?” ___Yes     ___ No
Comments:_________________________________________________
________________________________________________________________________

• **Number of questions:**
  Remember to keep your survey short – or as short as you can to still meet your goals.

• **For written surveys: should workers/members sign the survey?**
  Those completing a written survey may be more willing to give honest answers to certain questions if they think their privacy is protected. On the other hand, it might be useful to know who has what concerns. There are a few ways to deal with this. You could include a question on the survey about the worker’s department or job title to get an idea of what concerns are arising in which departments or job classifications. You could also give people the opportunity to sign the survey if they want to.
  The survey might conclude with something like:
  “Optional:    Name: ________________________________
               Phone Number:__________________________”

  An oral survey is not anonymous. At least the person conducting the survey will know who said what. However, an oral survey has some advantages. It provides “one-on-one” communication that is very effective in involving members.

• **Collecting demographic information:**
  Should your survey collect information on workers’ ages, gender, race, length of time in this workplace, length of time on their particular job, etc.? The advantage of collecting this type of information is that it allows the union to become more aware of whether certain hazards are affecting women more than men, older workers more than younger workers, those new to the workplace rather than those who have been around a long
time, and so on. These are considerations the union might want to think about in its efforts to improve workplace health and safety, so that divisions are not created when determining which issues to address. Education may be needed on particular issues so that the entire membership can support an action plan for improving health and safety in the workplace.

- **Why is the union conducting this survey?**
  Include some statement that explains why the survey is being done and how the information will be used. This may be in the form of a letter from the local leadership or union health and safety representatives. Members may be suspicious about giving out information about health symptoms, work-related injuries, illnesses or concerns – especially if this is the first time the union is conducting a health and safety survey. This explanation about the purpose of the survey might ease some of those concerns.

**STEP #3: PRE-TEST THE SURVEY**

Before you actually distribute or conduct your survey, you may want to “pre-test” it. Give it to a small group of people and have them fill out the questionnaire (if it is a written survey) or answer questions orally (if it is a survey where participants will be interviewed). By trying out the survey questions, you can make sure they are clear and participants understand the questions in the way in which they were meant. Have the pre-test group report if the survey was easy to answer, etc. Make corrections to survey questions as needed.

**STEP #4: DISTRIBUTE/CONDUCT THE SURVEY**

After the pre-test is done and necessary corrections are made, distribute or conduct the survey. If using a written survey, it is better to have union safety reps, stewards or others distribute the survey than to mail it out. Completed surveys can be returned to the same safety rep or steward who distributed it. There can also be some type of easy, central place where surveys can be dropped off. You may get the most responses if those who hand out the survey can wait while it is filled out, or arrange a time and place to collect it the next day.
STEP #5: TABULATE AND DISTRIBUTE THE RESULTS

It is important to distribute survey results back to members. People are more likely to participate in future surveys if they know how this one turned out. While workers often experience health and safety problems as individual problems, a report or survey results show that many people are experiencing similar problems. The message comes across loud and clear: these are collective problems that need collective solutions.

Results can be reported on at a union meeting, in the union’s newsletter, or in a special report distributed to the membership. It is best to choose some or all of these methods to reach as many workers as possible.

It is also important to include not only the results of the survey, but what the union now intends to do, based on what was learned from the survey. An action plan of some sort can be presented, along with ways in which members can be involved in the tasks identified.

Progress reports can be distributed to keep the membership informed on progress in accomplishing the goals and objectives included in the action plan.
SECTION III:

Legal Rights to Workplace Health and Safety
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There are many ways workers and their unions can use safety and health information to improve conditions at the workplace, including:

- To identify and document workplace hazards;
- To identify how many workers are getting injured or made ill at the workplace; what kinds of illnesses and injuries workers are suffering from; and which workers have similar injuries or illnesses; and
- To get hazards corrected.

There are several laws that give workers and their unions the right to safety and health information from their employers. The main law is the Occupational Safety and Health Act (OSH Act). Collective bargaining law and the Freedom of Information Act also provide some important rights.

**THE OCCUPATIONAL SAFETY AND HEALTH ACT**

Under the OSH Act, workers have the legal right to obtain safety and health information from employers, such as:

- Records of work-related injuries and illnesses,
- Results of workplace monitoring for health hazards (like chemicals, noise, and radiation),
- Workers’ medical records maintained by the employer, and
- Information about chemicals in the workplace.

In addition, employers have a legal responsibility to conduct worker safety training programs about chemical hazards.

There are three major standards that deal with the right to information under the OSH Act:

- **Hazard Communication** (1910.1200): employers must provide information on toxic or hazardous chemicals to which workers are exposed.
• **Access to Exposure and Medical Records** (1910.1020): employers must provide workers and union representatives with results of exposure testing and workers’ medical records.

• **Recordkeeping, 300 Log – Record of Injuries and Illnesses** (1904): employers must keep certain records on worker injuries and illnesses and make these records available to workers and union representatives.

These standards (as well as all other OSHA standards) can be found in Volume 29 of the Code of Federal Regulations (CFR). For example, the Hazard Communication Standard can be found at “29 CFR 1910.1200” (meaning the regulation starts at section 1910.200). However, the best way to get the standards is to get them from OSHA, either in hard copy or from the OSHA website (www.osha.gov).


This standard, also known as HAZCOM, requires that employers provide information and training to workers who may be exposed to toxic or hazardous chemicals at work. The standard requires employers to communicate with employees about hazardous substances in four ways:

• **Material Safety Data Sheets (MSDS):** Employers must keep information sheets called “Material Safety Data Sheets” on each hazardous chemical used or stored at the worksite.

  ♦ MSDSs must be available in the work area on all shifts for the hazardous materials used in the area.

  ♦ Employers must make these chemical fact sheets immediately available to workers on request. Employers must provide a union (and other worker representatives such as doctors and lawyers) with a requested MSDS within fifteen working days from the date of the request.

  ♦ A MSDS is usually provided to the employer by the manufacturer of the chemical.

  ♦ A MSDS should be current.

  ♦ OSHA only requires that MSDSs be in English.

  ♦ Unfortunately, many MSDSs have incomplete information, especially in the section on long-term health effects. It is important to get additional information when investigating chemical hazards.
There are alternative versions of MSDSs on the internet. Some are available in Spanish. Some sites to check are:

New Jersey Hazardous Substance Fact Sheets –
www.state.nj.us/health/ehr/rtkweb/rtkhsfs.htm

Safety Information Resources – siri.org/msds/index.php

Where to Find MSDSs on the Internet – www.ilpi.com/msds/index.html

A MSDS must provide detailed information about the chemical (or chemicals if the material is a mixture). MSDSs must include the following information:

- product name and ingredients;
- physical and chemical characteristics (such as vapor pressure and flash point);
- safety hazards, including potential for fire, explosion, and reactivity;
- health hazards, including signs and symptoms of exposure, and any medical conditions which are generally recognized as being aggravated by exposure to the chemical;
- primary route(s) of entry (such as from breathing, skin contact, or eating);
- OSHA permissible exposure limit, ACGIH (American Conference of Governmental Industrial Hygienists) threshold limit value, and any other exposure limit used or recommended by the chemical manufacturer;
- whether the chemical is a carcinogen or potential carcinogen,
- precautions for safe handling, including appropriate hygienic practices and protective measures;
- applicable control measures such as engineering controls, work practices, or personal protective equipment;
- emergency and first aid procedures;
- date of preparation of the MSDS; and
- name, address and phone number of the chemical manufacturer or other party who prepared the MSDS.

*Labeling:* Employers must label all containers of hazardous chemicals at the workplace. Labels must give the chemical name of the material used and appropriate hazard warnings. OSHA only requires that labels be in English.

*Worker Training:* Employers must conduct training for workers exposed to chemical hazards.

- This training must be done at the time of workers’ “initial assignment” and whenever any new chemical is introduced into their work area.

- If workers do not understand English, then the training must be conducted in a language the workers understand.

- The training must explain:
- The names of chemical hazards in the work area,
- Where hazardous chemicals are located,
- Methods that may be used to detect the presence or release of a hazardous chemical in the work area,
- Safety and health hazards of the chemicals,
- Specific procedures the employer has implemented to protect employees from exposure to hazardous chemicals (such as appropriate work practices, emergency procedures, and personal protective equipment),
- Material safety data sheets and where they are available in the work areas,
- The labeling system, and
- The OSHA standard and the employer’s written “hazard communication program”.

**Written Hazard Communication Program:** Employers must develop a written hazard communication program and make it available to employees and their union representatives (and other representatives such as doctors and lawyers) within fifteen working days from the date of a request. This plan must explain how the employer will meet each of the requirements of the standard, including warning labels, employee training, and collection and distribution of MSDSs. A list of all hazardous materials on site or in the work area is also a required part of the written plan.

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**Sample Request Letter to Employer Requesting Hazard Communication Program**

*Date*

*Dear (employer representative),*

*This letter is to request a copy of your written hazard communication program. OSHA Standard 1910.1200 requires that you provide us with this information.*

*We expect to receive this within fifteen working days as required by the OSHA Standard.*

*Thank you.*

*Yours truly,*

*(Your name and title)*
Access to Employee Exposure and Medical Records (29 CFR 1910.1020)

Under this standard, employers must provide workers and their union (and other representatives such as doctors and lawyers) with copies of employee exposure and medical records when requested:

- **Exposure records**: If the employer, OSHA or someone hired by the employer tests the air to measure toxic chemicals, noise, heat, radiation, or other hazardous exposures in the workplace, the results of this testing must be made available under this standard. Results of biological monitoring (measuring actual levels in workers’ bodies, such as lead in blood) must also be made available.

- **Medical records**: Workers have the right to ask for and get any of their own medical records kept by the employer. For unions or other designated worker representatives to have access to medical records they must have specific written consent from the affected worker. However, union representatives are entitled to “summary data” from the medical records of workers they represent and consent of individual workers is not required. For example, the union representative can obtain information on how many workers suffered hearing loss if hearing tests were done.

This standard does not require an employer to do any exposure monitoring or medical examinations; but once an employer does such tests, the standard requires that the test results must be made available to workers and their union (and other representatives such as doctors or lawyers). The employer must provide a worker and/or the union copies of requested records within fifteen working days of the request, or provide a reason for the delay and the earliest date when the record can be made available.

Test results and medical records covered by this standard must be kept by the employer for thirty years.

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**Sample Written Consent Letter for Union or Other Representative to Get Access to Employee Medical Records**

*I, (worker name), hereby authorize (employer who has the records) to release to (union or other representative) the following information from my medical records: (briefly describe the information to be released).*

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(print worker’s name)       (worker’s signature)       (date)
Sample Request Letter to Employer for Employee Exposure Records

Date

Dear (employer representative),

This letter is to request copies of all records of exposure testing (including biological monitoring) conducted in the last five years. OSHA Standard 1910.1020 requires that you provide us with this information.

We expect to receive this within fifteen working days as required by the OSHA Standard.

Thank you.

Yours truly,

(Your name and title)

Recordkeeping – Recording and Reporting Occupational Injuries and Illnesses (29 CFR 1904)

This standard, known as the “Recordkeeping Rule,” requires most employers to keep injury and illness records, and make these records available to workers and union representatives upon request. Revisions the Recordkeeping Rule created a new set of employer record-keeping requirements as of January 1, 2002.

The recordkeeping rule covers most employers who have more than ten employees. Certain employers in “low hazard industries” such as some retail stores, doctors’ offices, and educational institutions (schools) are exempt (although they are still covered by all other applicable OSHA standards).

An employer is required to keep three kinds of records: OSHA 300 Log of Work-Related Injuries and Illnesses; Form 301, Injury and Illness Incident Report; and Form 300-A, Summary of Work-Related Injuries and Illnesses.

- **OSHA 300 Logs**: An employer is required to keep a record of all recordable work-related injuries/illnesses called an OSHA 300 Log. The recordkeeping rule specifies what injuries/illnesses must be recorded and what specific information must be recorded. An employer must provide workers and their union a copy of the Log by the end of the next business day following a request. The employer may not remove the names of the employees before giving workers or their union a copy of the Log – the names must be left on the Log (with the exception of “privacy concern” cases which are: recorded injuries and illnesses where the injury or illness occurred to an intimate body part or the reproductive system; sexual assaults; mental illnesses; HIV
infection, hepatitis, or tuberculosis; needlestick injuries and cuts from sharps where the objects are contaminated with another person’s blood; and other illnesses if the employee “independently and voluntarily requests his or her name not be recorded.”).

- **OSHA Form 301, Injury and Illness Incident Report**: An employer must complete an OSHA Form 301, Injury and Illness Incident Report, for every injury/illness recorded on the 300 Log. This form provides detailed information on the particular case. Employees must be given a copy of a Form 301 by the end of the next business day following the request. However, unions are only entitled to receive the part of the form that contains information about the case, with all personal information about the employee removed. A union must be given a copy of a Form 301 within seven calendar days following a request.

- **OSHA Form 300-A, Summary of Work-Related Injuries and Illnesses**: At the end of each calendar year, the employer must complete Form 300-A, a summary of all the recordable injuries and illnesses for that year. This form is required to be posted for three months from February 1 through April 30.

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**Sample Request Letter to Employer for OSHA 300 Log**

Date

Dear (employer representative),

This letter is to request a copy of the “OSHA 300 Log of Injuries and Illnesses” (OSHA 300 Log) covering the last two years. We are requesting the entire Log with names of workers (not just the summary).

OSHA Standard 1904 requires that you provide us with this information.

We expect to receive these records by the end of the next business day, as required by the OSHA Standard.

Thank you.

Yours truly,

(Your name and title)

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**How to Request Safety and Health Information Under the OSH Act**

When asking an employer for any safety and health information, keep a “paper trail” by putting the request in writing (like above examples) and keep a copy. Always include the specific information you want, the date by which it should be provided, and the name and number of the OSHA standard which gives you the right to this information.

If you have a union, the union can file a written request with the employer for any health or safety information.
Workers and/or unions who request information from employers, but do not receive the information, can file a formal OSHA complaint. It is against the law for employers to refuse to provide this information.

RIGHT TO SAFETY AND HEALTH INFORMATION UNDER COLLECTIVE BARGAINING LAW

In addition to individual and union rights to safety and health information under the OSH Act, unions have rights to this information under collective bargaining laws.

Under most bargaining laws (the National Labor Relations Act in the private sector, the Federal Labor Relations Act in the federal sector, and state bargaining laws for state, county and municipal employees) safety and health is one of the issues that employers have to bargain over.

As part of the employer’s bargaining obligation, the employer must supply the union with requested safety and health information within a “reasonable” period of time. Note that this right to information is for unions, not individual workers.

Information an employer must provide includes information also available under the OSHA standards (so that the union has rights under bargaining law and under the OSH Act to the same information).

In addition, the union is entitled to receive information related to safety and health not specifically covered under the OSHA standards, such as:

- Accident reports, results of accident or incident investigations, company manuals and guides, and health and safety inspection records,
- Minutes of safety and health committee meetings,
- Disability and compensation cases,
- Insurance claims information, such as the number, type and cost of workers’ compensation or disability claims, and
- Copies of any reports or studies by the employer or outside agencies or consultants (insurance inspectors, safety consultants, etc.)

As with a request for information under the OSH Act, the request should be in writing. Employer refusals to provide safety and health information, or unreasonable delays in providing the information, are violations of bargaining law. Workers and/or unions can file a charge with the agency that enforces the law (for example, the National Labor Relations Board for private sector workers).
Sample Safety and Health Information Request Letter to Employer Under the National Labor Relations Act (NLRA)

Date

Dear (employer representative),

In order to fulfill the union’s contract administration and bargaining responsibilities, we request the following information:

1. All employer safety and health inspection records and records of accident/incident investigations for the last two years.
2. A list of all claims for workers’ compensation for the past five years.
3. All information regarding any safety program currently in use, including but not limited to a description of the program, instructions to supervisors, instructions to employees, training manuals, and names of employees who have been trained in this program.

[Note: The above list is an example of some kinds of safety and health information that can be requested under bargaining law.]

Please provide this information by (date).

This request is made pursuant to the union’s right to information under the National Labor Relations Act [substitute name of applicable bargaining law if you are not covered by the NLRA].

Yours truly,

(Your name and title)

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RIGHT TO SAFETY AND HEALTH INFORMATION UNDER THE FREEDOM OF INFORMATION ACT

The Freedom of Information Act (FOIA) also provides some rights to safety and health information.

Records and files are created when federal OSHA or a state OSHA agency inspects a workplace. These include the inspection report, field notes and work sheets of the inspector, photographs and diagrams, monitoring results and measurement of exposure levels, citations for violations of OSHA standards, and letters between the employer and OSHA. This information can be valuable to workers and their unions at the same or similar companies.

The FOIA gives workers and unions the right to request copies of these files. The OSHA office which did the inspection will provide copies in response to a written request.
There can be a charge for these copies and large files can become expensive. However, OSHA can waive this charge and provide the information free of charge if: 1) the information requested will “contribute to the public interest” and 2) if the information will not be used for “commercial gain.” So your request should say something like: “This information is important in order for us to represent our members on health and safety issues and to improve safety and health in the workplace. None of this information will be used for commercial gain.”

The OSHA website (www.osha.gov) currently has inspection results by employer name. This information includes the date of the inspection, the standards that were violated, and related penalties. To get the full inspection file requires a FOIA request.

Sample “FOIA” Request Letter to OSHA Office for Copies of OSHA Files

Date

Regional Administrator
OSHA Region _____
Address

Dear (Regional Administrator),

We request, under the Freedom of Information Act, a complete copy of the OSHA files on any inspections conducted in the past five years at the following employer premises:

_____________________________________________________________________________________
Employer Name
_______________________________________________________________________

Employer Address

This information is important in order for us to represent our members on health and safety issues and to improve health and safety at the workplace. None of this information will be used for commercial gain.

Yours truly,

(Your name and union title
Address
Telephone Number)
Collective bargaining laws give workers the rights to organize, bargain, and act collectively to improve workplace conditions. Workers and unions have certain safety and health rights under these laws in addition to the rights they have under the Occupational Safety and Health Act (OSH Act).

Who Is Covered by Collective Bargaining Law

Most private sector workers are covered by the National Labor Relations Act (NLRA), except for airline and railroad employees who are covered by the Railway Labor Act.

In some states, employees of state, county, municipal governments are covered by state collective bargaining laws that have provisions similar to those in the NLRA (while some states have no collective bargaining laws for public employees).

Federal employees (with the exception of employees of the U.S. Postal Service who are covered by the NLRA) are covered by the Federal Labor Relations Act which has provisions similar to those in the NLRA.

Each of these laws is administered and enforced by a government agency. For instance, the NLRA is administered and enforced by the National Labor Relations Board.

Right To Bargain Over Workplace Safety and Health

Under most bargaining laws, workplace safety and health is a “mandatory subject of bargaining”. Employers have a duty to bargain with unions over mandatory subjects of bargaining. This means that the union has the right to bargain over safety and health matters. The union must request bargaining, or it may give up its right to bargain. The request should be made in writing. The employer must bargain with the union over safety and health and cannot make unilateral changes in anything having to do with safety and health. This right to bargain applies during the term of the contract as well as during contract negotiations. If the employer refuses to bargain, then the union can file a failure to bargain charge with the agency that enforces the bargaining law.

Right for Unions to Get Health and Safety Information

One of the most useful tools provided by bargaining law is the right of unions to obtain information from employers, including health and safety information. An employer is
required to provide the union with information it requests concerning “mandatory subjects of bargaining.” Since health and safety is a mandatory subject of bargaining, an employer must provide a union with requested safety and health information. Note that this right to information is for unions, not individual workers. Information an employer must provide includes information also available under OSHA, and in addition includes any other safety and health information the union feels it needs to represent workers (like accident/incident reports, first aid reports, health and safety inspection records, and information on workers’ compensation claims). The law requires that the employer provide the information within a reasonable period of time. If the employer refuses to give the union requested information, or unreasonably delays in providing the information, then the union can file a failure to bargain charge with the agency that enforces the bargaining law. Charges regarding an employer’s failure to provide information are generally settled much faster than other charges.

**Rights for Worker Involvement in Health and Safety Activities**

Workers who participate in health and safety activities can be protected against employer retaliation under bargaining law. In order to be protected, the health and safety activity has to be “concerted,” meaning the activity involves two or more workers who are in agreement and act together. The right to participate in “concerted activity” is not limited to workers who belong to labor unions. This protection applies to all workers covered by the bargaining law, whether or not they are represented by a union. Some examples of protected concerted activity are distributing leaflets, participating in rallies, and filing and pursuing group grievances.

If an employer retaliates against workers engaged in concerted activity, workers can file a charge claiming discrimination based on union or collective activity.

It is important to document the retaliation and what led up to it. Affected workers should write down:

- What was the health or safety problem?
- What did workers ask for or do?
- Who was involved in the activity?
- How did the employer know of the activity?
- What was said and/or done by the employer to retaliate?
- Were there witnesses to the health and safety activity and/or the retaliation?

Workers who are retaliated against should inform and involve their union, if they have a union. The best protection workers have against employer retaliation for health and safety activities is a union contract. Specific contract language can give workers much stronger protection against employer retaliation for health and safety activities than the protections offered under the law.
Right To Refuse Unsafe Work

Bargaining laws generally include limited protections against employer retaliation for workers who refuse to do unsafe work. For example, under the National Labor Relations Act, a worker may be protected if the worker in good faith believes the work is dangerous; the work refusal is concerted (involves more than one worker); and the work refusal does not violate a “no strike” clause in a union contract (under the NLRA, brief work stoppages to avoid a particular job hazard are allowed even if a contract has a non-strike clause). However, it can take years for a work refusal case to be litigated; and there are no guarantees that workers will win their jobs back and/or win back pay. Specific language in a union contract can give workers much stronger rights to refuse unsafe work than the rights offered under the law.

Enforcement of Bargaining Law Rights

If an employer violates any of these worker or union rights, then a charge can be filed with the government agency that enforces the law. There are time limits for filing a charge. For instance, a charge under the National Labor Act must be filed within six months of the employer’s action or inaction. Unfortunately, it can take years to resolve a case.

Workers and unions should always also file OSHA Section 11(c) charges in the case of retaliation for involvement in safety and health activities or discipline for refusing dangerous work. And if there is union contract, it may also be possible to file a grievance for violation of any of the rights discussed above.
Legal Principles Concerning
Mid-term Collective Bargaining and Union Representation

The National Labor Relations Act Section 7 - Right to Organize and Collectively Bargain
“Employees shall have a right to self-organization, to join, form, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid and protection.”

Note: The duty to bargain and the union’s rights under bargaining law, exist at all times, not only at contract time. The Supreme Court has ruled in Conley v. Gibson 355 U.S. 41 that: “…collective bargaining is a continuing process, involving day-to-day adjustments in the contract and other working rules, resolution of new problems not covered by existing agreements, and the protection of employee rights already secured by contract...” In NLRB v. Acme Indus. Co. 385 U.S. 42 the court stated: “Similarly the duty to bargain unquestionably extends beyond the period of contract negotiations and applies to labor-management relations during the term of the agreement.” Section 8(a)(5) of the NLRA makes it an Unfair Labor Practice (ULP) for the employer “…to refuse to bargain collectively with the representatives of his employees…”

The Duty to Bargain
- What it is
- The employer and the union must “meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment.”
- The terms of the union contract are fixed for the duration of the contract; there is no duty to bargain over these terms until the contract is due to expire.
- The employer has a continuous duty to bargain over any wages, hours, and other terms and conditions of employment that are not covered by the contract.

- Mandatory and non-mandatory subjects
- ”Mandatory subjects” of bargaining are any " wages, hours, and other terms and conditions of employment.” The parties must be willing to bargain over these issues in good faith.
- A “non-mandatory subject” is anything else, such as matters concerning those concerning the nature and direction of the business or internal union affairs. There is no duty to bargain over such subjects under the law.

- No unilateral changes
- The employer must give the union adequate notice and an opportunity to bargain.
- If the union demands to bargain, the employer may not make a change without either gaining agreement from the union or reaching a good faith impasse in bargaining.
- If the employer makes a change without meeting one of these conditions, it has made a “unilateral change”, and the union may file an unfair labor practice charge.

- Management rights and deferral to arbitration
- Management rights clauses may waive the union’s right to bargain
- The NLRB only finds a waiver when it is “clear and unmistakable”
• The NLRB usually defers to the arbitration process to decide disputes over the interpretation of management rights clauses.

NLRB Remedies
• Cease and desist
• Restore status quo ante
• Make whole
• Order to bargain in good faith
• Post a notice to employees

The union's right to information
• The union has a right to most information that the employer has which is relevant to bargaining over mandatory subjects.

Few exceptions
• No deferral to arbitration if employer fails to provide
• No impasse if request has not been met
• When connected with unilateral change, NLRB may refuse to defer both charges

Exclusive Representation

• Once employees have chosen a union to represent them, no other organization can represent the members of the bargaining unit.
• Any committee on which bargaining unit members serve, that in any way deals with mandatory subjects of bargaining, is legally an extension of the union.

No Employer Domination of a Labor Organization

• Any committee or organization of any kind that deals with mandatory subjects of bargaining is considered a labor organization under the law.
• Management may not dominate or interfere with a labor organization.
• If management sets up a committee without full agreement of the union, and if that committee deals with any issue concerning wages, hours, or other terms and conditions of employment, then that committee is illegal.
• A committee set up by management is illegal even if it doesn’t engage in actual bargaining. Even if all the committee does is to discuss issues, the committee is illegal.

The "Equality Principle"
• Under the law, anyone who represents the union in any way is considered to be the equal of management when engaged in representational activity.

No Retaliation or Threats
• It is illegal for employers to "interfere with, restrain, or coerce employees" in the exercise of their rights as employees and union representatives.
Resource Handout
THE OSHA INSPECTION

This handout explains your rights to request and participate in workplace inspections conducted by the Occupational Safety and Health Administration (OSHA), an agency of the U.S. Department of Labor. Much of the information in this fact sheet is from Chapter 2 of OSHA’s Field Inspection Reference Manual (FIRM), the instruction book for inspectors. The FIRM is available on OSHA’s web site: www.osha.gov.

If your employer is covered by the Occupational Safety and Health Act, you have the right to request an OSHA inspection. OSHA also may make unrequested inspections. Inspections can cover the entire workplace or just a few operations. OSHA calls its inspectors “compliance officers.” Some are trained about safety hazards; some are trained about health hazards (industrial hygienists); a few are trained about both.

Deciding To File A Request For An Inspection

Deciding to file a request for an OSHA inspection is an important decision. When a specific OSHA standard applies to a clear hazard, it may be the right decision. However, OSHA does not have standards for every hazard, and some current OSHA standards are not fully protective of workers’ health or safety. While it is possible to OSHA to issue a “General Duty Clause” citation for hazards not covered, or not covered sufficiently, by OSHA standards, the requirements for issuing such a citation are very strict and OSHA may not be able to issue one. Because of this, there are cases in which calling OSHA may not be the best way to get management to fix a problem. In fact, if OSHA inspects and decides not to issue a citation, a workforce may be at more of a disadvantage with management waving their “clean bill of health” inspection report. Unions should consider a range of options, including telling management that they will call for an OSHA inspection if management does not fix the problem. In certain situations, this could get a more effective and quicker response than actually calling for an OSHA inspection.

Involvement Of The Union In The Inspection

If you have a union, it should be involved in all aspects of the inspection. Although employer retaliation against individuals for safety and health activity is illegal under Section 11(c) of OSHA, having your union file the complaint may offer better protection against retaliation. The USW Health, Safety and Environment Department can assist your local union, staff representative and others in your District with advice about filing OSHA complaints: safety@usw.org or 412-562-2581.
Calling For An Inspection

If you want an OSHA inspection, complete the official OSHA complaint form and attach additional information (see Resource Handout: How To File A Complaint With OSHA). Mail, fax, or deliver the complaint form to the OSHA Area Office. Consider scheduling a meeting of your union representatives and co-workers with OSHA staff to review your complaint when you file it. If there is an imminent danger, in addition to any other action you take, you should telephone OSHA.

Your Right To An Inspection

Often, OSHA prefers to “investigate” complaints by faxing a letter to the employer asking about the hazard, rather than by conducting an on-site inspection. The employer is required to respond back to OSHA within five working days. However, if you give OSHA a written, signed complaint that documents a hazard or an OSHA violation, **OSHA must do an on-site inspection.**

Sometimes OSHA’s fax policy can be helpful when a written inquiry is better than an actual inspection. For example, if there is no OSHA standard that covers the hazard, a letter of inquiry may prompt management action. An actual OSHA inspection – and no citation – may encourage management not to fix the problem.

If OSHA decides not to inspect, they must notify you in writing and give reasons. You may question this decision with the OSHA area director and regional administrator.

Advance Notice

OSHA will give employers advance notice of an inspection only under four conditions:

- In cases of apparent imminent danger, to try to get management to fix the condition immediately.
- When the inspection must be after regular business hours or when special preparations are necessary.
- If management and worker representatives are not likely to be on-site unless they have advance notice.
- In other circumstances where the OSHA Area Director thinks a more complete inspection would result, such as a fatality investigation.

OSHA rarely gives advance notice. When OSHA does give advance notice of an inspection to management, they must also inform the union. If there is no union and no safety committee with a worker representative, OSHA only has to inform management.
Workers sometimes think that management knows about an OSHA inspection in advance. However, it is a crime for OSHA employees to give unauthorized advance notice of an inspection. Sometimes a delay between the inspector’s arrival at the workplace and the beginning of the inspection allows time for employers to change conditions.

Note that employer may legally require OSHA to go to court to seek an inspection warrant before allowing entry. This can delay the inspection.

**Preparing For The Inspection**

Once you file a complaint, be ready for an inspection. For complaints that OSHA considers “serious,” the inspection should occur within thirty days. If it does not, call and ask about the delay.

You may want to tell co-workers and union activists that you filed a complaint, so they have time to prepare their comments to the inspector. Review your completed complaint form and the relevant OSHA standards. Keep notes on new problems or workplace changes. Review your facility’s OSHA 300 Log of Work Related Injuries and Illnesses; 301 Injury and Illness Incident Reports for every injury and illness recorded on the 300 Log; and Form 300-A, Summary of Work Related Injuries and Illnesses, the yearly summary of the OSHA 300 Log.

**Designate An Employee Representative**

The law says that a representative authorized by workers has a right to accompany the inspection. This applies to an inspection you requested or to an OSHA scheduled inspection. Under no circumstances may the employer choose the workers’ representative. The OSHA complaint form does not include a line to indicate who this representative is (or who an alternate is for other shifts or days off). Make sure you provide this information with your complaint.

OSHA finds it easier to identify an employee representative in union workplaces, where the union picks the representative. This representative must be an actual employee. In a non-union workplace, the inspection is often unaccompanied. The inspector is required to talk to a reasonable number of employees.

The OSHA inspector can decide disputes about designation of employee representatives and can include others, such as union staff and technical experts. The FIRM includes more details on employee representation.

Employers are not required to pay employees while they serve as employee representatives on inspections unless the employer agrees to do this or contract language
requires it. In practice, most employers do not dock pay from employees serving in this capacity.

The Inspection

The inspection includes an opening conference, a “walkaround” of all or part of the workplace, and a closing conference. This may take a few hours or several weeks, depending on the number of hazards, workplace size, and other factors. Take notes throughout the process.

The Opening Conference

On the day of the inspection, the inspector arrives and asks to meet with representatives of management and employees to explain the inspection’s purpose. FIRM says that “The opening conference shall be kept as brief as possible.” However, make sure that the inspection will cover the hazards in the complaint. If either party objects to a joint opening conference, the inspector will conduct separate opening conferences for labor and management.

During the opening conference, the inspector will determine whether employees of other employers are also working at the site. If the inspection affects them, the inspector may include other employee representatives.

After the opening conference, but before the inspector walks around the facility, the inspector usually checks the OSHA 300 Log and may examine other OSHA required records.

The Walkaround

After the opening conference, the inspector, accompanied by management and employee representatives, will check the safety and/or health hazards in the complaint. The inspector may decide to check for other hazards or even to expand the inspection to cover the entire workplace.

Make sure that the inspector talks to affected employees. Inform co-workers that the inspection is in progress and that they have a right to talk privately and confidentially to the inspector and to make their own verbal or written complaint to OSHA at anytime. The inspector may also conduct private interviews outside the workplace.

Workers should be encouraged to point out hazards and to describe past accidents, illnesses, and worker complaints.
FIRM says that the OSHA inspector must bring “apparent violations” to the attention of employer and employee representatives at the time they are documented. Make sure that conditions are typical and that management has not shut down equipment, opened windows or changed other conditions. The inspector may have to return on another shift or operation. If the inspector does not observe hazards alleged in the complaint, the employee representative should explain how employees were or could be exposed.

The inspector may be using equipment to measure noise, dust, fumes, or other hazardous exposures. Watch these tests. If you do not understand what the inspector is doing, ask. Request summaries of the sampling results, which OSHA must provide to the requesting party as soon as practicable. Take notes.

The Closing Conference

The inspector is required to have a closing conference, jointly or separately, with company and employee representatives at the end of the inspection. If management wants separate closing conferences, OSHA will hold the employee representative conference first to allow for any more employee input.

OSHA will discuss “apparent violations” and ways to correct hazards, deadlines, and possible fines. A second closing conference may be held if needed information, such as sampling results, was not initially available.

The inspector will also advise the employee representative that:

- The employer must not discriminate against employees for health and safety activity.

- If the employer contests an OSHA citation, the employees have a right to elect “party status” at the Occupational Safety and Health Review Commission (an independent agency).

- Employees have a right to contest the time OSHA allows the employer for correcting a hazard (the “abatement period”). Employees, unlike employers, cannot contest other aspects of the citation before the Review Commission. A contest of the abatement period must be in writing and must be filed within 15 working days after receipt of the citation.

- Employees must be notified by the employer if the employer files a notice of contest or a petition for modification of an abatement date.
OSHA Citations

OSHA may choose to issue citations and financial penalties to the employer for violating specific OSHA standards or regulations or for violating the “general duty clause” of the Act. OSHA does not cite employees for violation of their responsibilities.

OSHA must generally issue any citations within six months of the occurrence of any violations. FIRM says, “Citations shall be mailed to employee representatives no later than one day after the citation is sent to the employer. Citations shall also be mailed to any employee upon request.”
Resource Handout

AFTER THE OSHA INSPECTION:

A Union Guide for Participation in the OSHA Process

An OSHA inspection can be a very important tool to help you make your workplace safe. Other USW fact sheets have dealt with how to file a complaint and what to do during an inspection. This fact sheet goes a step further: what happens after the inspection and what rights and opportunities workers have to participate in the process.

Among the rights workers have to participate in the post-inspection process are these:

- right to know the results of the OSHA inspection, what violations have been identified, and when they will be corrected;
- right to ask for a review of any decision not to issue a citation;
- right to file a formal protest if OSHA gives the employer too much time to correct a dangerous hazard;
- right to contest any effort by your employer to delay correcting the hazard;
- right to participate in any informal conference or negotiations between your employer and OSHA;
- right to initiate your own informal conference with OSHA to discuss any matters related to its inspection or findings;
- right to participate fully in hearings and pre-hearing settlement negotiations that ensue when an employer contests the citation.

The sections that follow provide more detail on the post-inspection process and your rights to play an active role in it.

I. THE CITATION

If the OSHA inspector finds one or more violations, a "Citation and Notification of Penalty" will be sent to your employer. The citation includes a brief description of the violation, a timetable for correcting the hazard, and the penalty. The person who filed the complaint resulting in the inspection, and the Union, will also be sent copies. Management must post the citation notice in a conspicuous place near each cited hazard for 3 working days or until the hazards are taken care of, whichever is longer. Any documents related to the abatement, such as an abatement plan, also must be posted. The employer does not have to post the penalties. To ensure that the Union receives a copy of the citation and penalty notification, you can send the OSHA Area Director a letter right after the inspection letting him/her know of your request. At the same time confirm your
desire to participate in any formal or informal conferences, and to elect party status if the
citation is contested.

Most violations are classified as either 'serious,' 'willful' 'other than serious' or 'repeated.'

**Serious violation** occurs when there is a substantial probability that the hazard could
cause death or serious physical harm. Penalties can range between $1,500 and $7,000 for
each violation classified as 'serious'. They are often toward the low end, however,
because the OSHA Area Director can adjust the fines downward by as much as 95%,
based on the employer's good faith efforts (whether they have a written health and safety
program and generally "clean" workplace), history of previous violations, and size of
business (smaller businesses can get large reductions).

**A willful violation** occurs when the employer is aware of the hazard, knows that it
violates OSHA standards, but still makes no reasonable effort to eliminate it. A willful
violation is "intentionally and knowingly" committed. Penalties range from $5,000 to
$70,000 for each willful violation. An employer whose willful violation results in the
death of an employee is subject to **criminal prosecution**, and up to six months in prison
and $250,000 fine (or $500,000 if a corporation) if found guilty. Criminal prosecutions
are rare, but can be very effective tools for mobilizing workers and deterring other
employers. Unions should aggressively pursue prosecution where a death occurs.

**An 'other than serious' violation** applies to a safety hazard that is unlikely to cause
death or serious physical harm. Penalties up to $7,000 may be imposed but are
discretionary. Usually no penalty is assessed.

**A 'repeated' violation** is a violation that is substantially similar to one the employer was
already cited for, even if at a different facility, in the previous three years. It carries a
fine up to $70,000 for each violation.

Employers can also be cited and fined for **falsifying records, reports or applications**,,
and for **violating posting regulations**, including not posting the OSHA Notice, the
Annual Injury/Illness Summary, or a Citation.

**The Citation: What You Can Do**

_If no citation is issued_, meaning OSHA did not identify any violations, and you think
this is wrong:

Contact the OSHA Area Director and request an informal review of the
decision not to issue a citation. You can include the reasons you think their
decision is wrong. You can request to see the inspection file, including the
inspector's notes, test results, and closing conference report, to see if there
are any errors. Only the worker whose complaint initiated the inspection,
or the Union or other authorized employee representative, can request a
review.
A citation is issued, but you think OSHA has given the employer too long to clean up the hazard (abatement date):

File an appeal with the OSHA Area Director. You must do this within 15 days of the time that management receives its notice of citation. In your letter of appeal state which abatement period you wish to appeal (if there were multiple violations), and send it registered mail/return receipt requested. The OSHA area office will quickly consider your appeal. If it does not agree with you, your appeal will go to the Occupational Safety and Health Review Commission, which operates independently of OSHA. The three commissioners have the power to uphold, change or overrule any action OSHA takes, but it may take months to act. In the meantime, OSHA’s original abatement period stands.

A citation is issued, but you are unsatisfied with how the inspection was conducted, the severity of the citation, some hazards were not cited, the penalty is too low, or other matters:

You can only file a formal appeal on the abatement period, but you may request an informal conference with OSHA to discuss any issues raised by an inspection, citation, notice of proposed penalty, or the employer’s notice of intention to contest, or abatement period. Your employer will be notified of your request and invited to participate in the conference.

II. THE “INFORMAL SETTLEMENT AGREEMENT”

Within 15 working days of the citation, your employer can set up a meeting with the OSHA Area Director to negotiate an "informal settlement agreement" seeking to modify or withdraw the penalty or citation, have the violation reclassified (“willful” to "serious", for example) or abatement date changed. The OSHA Area Director has the authority to agree to a settlement - revising citations, penalties and abatement downward - to avoid prolonged legal disputes and ensure speedier abatement.

The "Informal Settlement Agreement": What You Can Do

Your Union or affected employee will be notified of this informal conference and offered the opportunity to attend and to provide an opinion. You should plan on attending, and prepare your arguments/position in advance. Try to convince the area director to include the inspector in the conference since he or she is probably more on top of actual in-plant conditions than the area director. You can raise whatever objections you like, and participate fully in the negotiations, which is what this often is. If you choose not to participate, you forfeit your right to be consulted prior to any future decision related to the citation. If the employer objects to your presence, a separate meeting can be held for
you with OSHA. Separate or private discussions are also permitted at the informal conference.

III. THE FORMAL APPEAL

If your employer is not satisfied with the OSHA Area Director's response to its informal appeal, it can file a formal appeal. (A formal appeal can also be filed immediately without going through the informal process first.) This "notice to contest" must be written, clearly identify the employer's basis for contesting, and sent within 15 days of receiving the citation. A copy of the Notice must be given to the Union, if there is one. If not, it must be posted or given to each unrepresented employee. The company does not have to comply with any contested part of the citation - fix the hazard, for example, - until its appeal is considered and a final decision is issued, unless it is an imminent danger situation. (If it is just contesting the penalty, it must abate (fix) the hazard.) An Administrative Law Judge employed by the Review Commission, will hold a hearing on the appeal and make a decision. An OSHA attorney will represent the agency and oppose any employer appeal.

The Formal Appeal: What You Can Do

You can participate fully in the hearings on the company's appeal of the citation, but to do so you must write a letter to the Review Commission informing them of your desire to "elect party status," or participate in the case. It is very important to do this, and do it as soon as your employer files its formal challenge. Actively participating in the case gives you the opportunity to argue against employer efforts to lengthen the abatement period or reduce the severity of its violation. You can even push for more severe sanctions. Your views will be seriously considered, and if the employer knows you will participate, they may even think twice before contesting. The Union, as the "authorized employee representative," can declare party status, or, if there is no union, any worker exposed to the hazards in the complaint can elect party status "on behalf of affected employees." In either case, besides informing the Review Commission of your desire to elect party status, you should send a copy to the OSHA Area Director and the employer (certified mail/return receipt requested).

With party status you:

- receive copies of all documents filed in the case;
- can request additional information from your employer;
- can participate in conferences and pre-hearing settlement negotiations between OSHA and your employer;
- can argue for a more serious violation, stiffer penalties, shorter abatement
- can present witnesses and evidence at the hearing, and cross-examine company witnesses;
- can make oral and written statements;
• can appeal an adverse decision by the judge to the full Review Commission, or beyond, to the US Circuit Court of Appeals, if necessary.

Even with party status, don't assume that you will be completely included without further action on your part. Contact the OSHA Area Director and the Review Commission attorney and tell them you want to fully participate. Remember, too, that the vast majority of cases are settled prior to a formal hearing. Make sure the OSHA attorney knows what you want out of the negotiations and be prepared to argue for your position during the negotiations.

IV. ABATEMENT

Safety or health hazards which lead to OSHA citations must be speedily corrected. This is called abatement, and the citation identifies a date by which the employer must abate each hazard. Employers are responsible for fixing the hazard, certifying to OSHA that they have done so, and informing workers and their Union about this. In some cases, OSHA requires additional documentation, including written abatement plans, progress reports, and proof of abatement, such as pictures or work orders. Unless the abatement period is contested, your employer must take steps to correct the hazard.

Even if management fails to contest an abatement date, it can still delay fixing the problem. As late as the day after the abatement "deadline," it can file a petition with the OSHA Area Director seeking a modification or extension of the abatement date. This is known as a Petition for Modification of Abatement. The petition must be posted at the workplace and the union notified. The petition must state what steps have been taken to comply, why full compliance is impossible, how much additional time is needed, and how workers will be protected in the interim.

Abatement: What You Can Do

You should first review the citation and note abatement requirements, including dates, hazards that need correction, and any additional documentation requirements. Make sure any movable equipment that has been cited is immediately posted with a warning about the hazard, and that a copy of the citation is post in the vicinity of any violation. If you think OSHA has given your employer too much time to correct the hazard, creating an unacceptable safety risk, you can file a formal complaint with the OSHA Area Director (see above, for more information on this).

If your employer files a Petition for Modification of Abatement, and you disagree or feel the employer has not made a good faith effort to correct the hazard, you can object to the petition. You do this by writing to the OSHA Area Director, within 10 working days of the posting of the petition, or within 10 working days after an employee representative has received a copy. The petition, your objection, and other documents then go to the Review Commission for an expedited hearing process. If the Union does not object,
OSHA has 15 days to grant or deny the petition. (It does not go to the Review Commission).

Finally, since the procedure used by OSHA to verify whether an employer has abated the hazard usually relies on accepting the employer's word - no follow-up inspection occurs in most cases - workers should verify abatement themselves. Keep on top of what is happening, and notify OSHA immediately if you think the workplace changes have not really removed the hazard (for example: installation of ventilation equipment does not help air quality), or if your employer has not adhered to the abatement timetable.

The USW Health, Safety and Environment Department can assist local unions with any and all of these activities: safety@usw.org ; 412-562-2581.

This factsheet was adapted from material originally developed by the National COSH Network.
Resource Handout

EMPLOYER RECORDKEEPING REQUIREMENTS UNDER OSHA

How many workers are getting injured or made ill at your workplace?

- What kinds of injuries and illnesses are they suffering?
- In what departments or on what jobs are the most severe injuries/illnesses occurring?
- Based on this information, what hazards should be priorities to eliminate or control?

Workers and union representatives can find answers to these and other questions about work-related injuries and illnesses in their workplaces by getting and analyzing employer-kept injury and illness logs.

The Occupational Safety and Health Act (OSH Act) requires many employers to prepare and maintain records of work-related injuries and illnesses for their facilities.

Workers and union representatives have legal rights under the OSH Act, and under OSHA’s recordkeeping regulation, to see and obtain copies of these documents from their employer.

OSHA’s current recordkeeping rule, 29 CFR (Code of Federal Regulations) 1904, became effective January 1, 2002. The rule was issued on January 19, 2001 (as a revision of a prior recordkeeping rule) and was then modified several times. Under the rule, employers are required to record work-related injuries and illnesses on an OSHA 300 Log.

This resource handout will:
- review regulations regarding OSHA 300 Logs,
- highlight the main provisions in OSHA’s recordkeeping rule, and
- identify some key uses and limitations of employer-kept injury and illness information.

RECORDKEEPING REQUIREMENTS

Which Employers Are Covered By The Rule? [1904.1 and 1904.2]

Employers covered by OSHA who have more than 10 employees in the entire company are required to keep records of injuries and illnesses. Employers in certain “low hazard” industries such as service, offices and clinics of medical doctors, finance, insurance, real estate, and some retail industries are exempt from these recordkeeping requirements (see list of exempt industries at the end of this Resource Handout).
What Injuries/Illnesses Must The Employer Record? [1904.4 - 1904.12]

Employers must record all new cases of work-related fatalities, injuries, and illnesses if they involve:

- death,
- days away from work,
- restricted work or transfer to another job,
- medical treatment beyond first aid,
- loss of consciousness, or
- a significant injury or illness diagnosed by a physician or other licensed health care professional.

According to OSHA, the category of “a significant injury or illness diagnosed by a physician or other licensed health care professional” includes only diagnosed cases of injuries/illnesses involving work-related cancer, chronic irreversible diseases such as silicosis, a fractured or cracked bone, and a punctured eardrum.

According to the rule, “first aid” cases do not have to be recorded on the OSHA 300 Log.

The rule establishes criteria for recording: needlestick and sharps injury cases where objects are contaminated with another person’s blood or other potentially infectious material; tuberculosis cases; occupational hearing loss cases; and medical removal cases under OSHA standards.

Musculoskeletal disorder (MSD) cases must be recorded even though the rule contains no definition of an MSD and there is not a specific place on the 300 Log to designate a case as an MSD.

The rule also identifies certain injuries and illnesses that, while they may occur at work, do not have to be recorded on the OSHA 300 Log. These include situations such as an injury that occurs as a result of an employee choking on a sandwich while at work; an injury/illness resulting from voluntary participation in a wellness program or recreational activity; and an injury caused by a motor vehicle accident in a company parking lot while the employee is commuting to or from work. The rule also clarifies what injuries and illnesses are recordable and non-recordable when they occur to workers who are on work-related travel assignments.

Forms Used For Recording Injuries And Illnesses [1904.29]

The following are the forms used to record work-related injuries and illnesses:

- **OSHA 300 Log** of Work-Related Injuries and Illnesses on which the employer must report injuries and illnesses;
- **Form 301**, Injury and Illness Incident Report, on which the employer must record detailed information on how each injury or illness case occurred; and
- **Form 300-A**, Summary of Work-Related Injuries and Illnesses for a calendar year, which the employer must post in the workplace annually.
Each recordable injury or illness case must be recorded on the OSHA 300 Log and the Form 301 Incident Report within seven (7) calendar days after the employer receives notice that the injury or illness occurred.

The OSHA 300 Log asks where the event (injury/illness) occurred and what was the object/substance that directly injured or made the worker ill.

The OSHA 300 Log requires employers to check one of 6 boxes to categorize the injury/illness. These 6 categories are:
1. injury,
2. skin disorder,
3. respiratory condition,
4. poisoning,
5. hearing loss (added to the 300 Log on January 1, 2004), and
6. all other illnesses.

Employers are required to record hearing loss with a recording criteria of 10 decibels. As of January 1, 2004, a specific box is listed for “hearing loss”. Prior to January 1, 2004, employers still had to report hearing loss and check the “all other illnesses” box.

There is no specific box on the OSHA 300 Log to check for cases of musculoskeletal disorders (MSDs), and the rule does not include a specific definition of a MSD. However, employers must still report MSDs, include a description of the disorder in Column F, and check one of the boxes (either “injury” or “all other illnesses”). MSDs include work-related injuries and illnesses involving muscles, nerves, tendons, ligaments, joints and spinal discs. MSDs, like other workplace injuries/illnesses, must be recorded if an “event or exposure in the work environment either caused or contributed to the resulting condition or significantly aggravated a pre-existing injury or illness.”

For each case, employers must record the number of days involving job transfer or work restriction, as well as days away from work. Calendar days (rather than scheduled work days) are used for recording days away from work. If an injury or illness causes a worker to miss work, the employer must now record weekend days, holidays and other days that the worker might not have been scheduled to work. However, employers are not required to count days away from work or days of restricted work activity beyond 180 days.

Form 301, the Injury and Illness Incident Report, provides detailed information on each recorded case. It also requires employers to state the time the employee began work and the time of the event or incident. This information can be useful to a union that is tracking health and safety problems relating to extended work hours and/or mandatory overtime.

Summary Form 300-A includes total workplace injury/illness information for a calendar year and must be posted annually. It also contains information on the total hours worked by all employees during the year, which can be used to calculate injury and illness incidence rates.
Privacy and Recording Injuries and Illnesses [1904.29]

The rule prohibits the employer from entering an employee’s name on the OSHA 300 Log to protect the privacy of the injured or ill worker only in the following situations: where the injury or illness occurred to an intimate body part or the reproductive system; sexual assaults; mental illnesses; HIV infection, hepatitis, or tuberculosis; needlestick injuries and cuts from sharps where the objects are contaminated with another person’s blood; and other illnesses if the employee “independently and voluntarily requests his or her name not be recorded”. In these privacy concern cases, a separate confidential list of employee names must be kept. Employers also have the right to use discretion in describing the sensitive nature of an injury where the worker’s identity would be known.

Which Employees Are Covered By The Recording Requirements? [1904.31]

The employer is required to record on the OSHA 300 Log the recordable injuries and illnesses for all employees on its payroll, including hourly, salaried, executive, part-time, seasonal, and migrant workers. The employer must also record injuries and illnesses that occur to workers who are not on the employer’s payroll if the employer supervises these workers on a day-to-day basis, including employees of temporary help services, employee leasing services, personnel supply services, and contractors.

However, the recordkeeping rule does not require a “site log” of all the injuries and illnesses on a job site. For example, on a construction site, contractors and subcontractors record injuries and illnesses on their own individual logs, but there is no “site” log of all injuries/illnesses occurring at that worksite.

The Annual Summary [1904.32]

At the end of each calendar year, Form 300-A, a summary of the total recordable injuries and illnesses for that year, must be completed and certified by a company representative as “true, accurate and complete.” Company representatives include the owner, officer of the corporation, highest ranking company official working at the establishment, or the immediate supervisor of that highest ranking establishment official. The annual summary must be posted in the workplace where notices to workers are usually posted. This summary of the previous year’s recordable injuries and illnesses is required to be posted for three months beginning on February 1 through April 30.

Keeping The Injury and Illness Records [1904.33]

The employer must save the OSHA 300 Log, Form 300-A Annual Summary, any privacy case list, and Form 301 Incident Report forms for five (5) years. The stored OSHA 300 Logs must be updated by the employer to include any newly discovered recordable injuries or illnesses.
Employee and Union Rights to Records [1904.35]

Under the rule, employers are required to inform workers how to report injuries or illnesses. Employers are required to set up a way to receive these reports promptly. The employer must also provide workers, former workers, their personal representatives, and their authorized employee representative (union representative) with access to injury and illness records, including a copy of the OSHA 300 Log. Copies must be provided by the end of the next business day following a request. The names of employees must be left on the OSHA 300 Log unless they are “privacy concern cases.”

Employees, former employees, or personal representatives must be given a copy of a requested Form 301 Incident Report by the end of the next business day following a request. However, when an authorized employee representative (union representative) asks for a copy of the Form 301 Incident Report, the employer is only required to provide copies of the part of the form that contains information about the case, with all personal information about the employee removed, within seven (7) calendar days.

Employers must provide copies of the OSHA 300 Logs and Form 301 Incident Reports free of charge the first time they are requested.

No Discrimination Allowed [1904.36]

The rule notes that Section 11(c) of the OSH Act prohibits the employer from discriminating against a worker for reporting a work-related injury, illness or death; filing a safety and health complaint; asking for access to injury and illness records; or for exercising any other rights under the OSH Act.

Many employers have “safety incentive” and/or “injury discipline” programs that may violate OSHA’s Section 11(c) anti-discrimination provisions. Under these incentive and discipline programs, workers who report injuries may be denied some type of reward or may be automatically placed on a discipline track or drug-tested. Workers may want to consider filing OSHA 11(c) complaints of discrimination if they have suffered such discrimination after reporting an injury or illness. OSHA 11(c) complaints of discrimination must be filed within 30 days of the employer’s discriminatory action.

Reporting Fatalities, Injury and Illness Information [1904.39]

Within eight (8) hours after a work-related death of an employee or the hospitalization of three or more employees from a work-related incident, the employer must report the fatality or multiple hospitalizations by phone or in person to the nearest Area Office of OSHA. Employers can also use OSHA’s toll-free number, 1-800-321-6742, to make the report.
USES AND LIMITATIONS OF OSHA 300 LOGS

OSHA 300 Logs are valuable tools for workers and unions to use in evaluating the types, frequency and severity of workplace injuries and illnesses. This information, in turn, is invaluable in identifying the location and nature of workplace hazards that should be eliminated or controlled.

However, OSHA 300 Logs do not provide a complete and accurate accounting of all the injuries and illnesses experienced in a workplace. Not all injuries and illnesses are required to be recorded. In addition, injuries and illnesses that may be required to be recorded under the recordkeeping rule are, in fact, not recorded by some employers. The following are examples of injuries and illnesses that may not be recorded on an OSHA 300 Log:

- an assault on a worker by a patient or client that does not result in treatment of more than first aid,
- musculoskeletal disorders that an employer does not accept as work-related,
- early signs and symptoms of some musculoskeletal disorders,
- many occupational illnesses (cancer and other illnesses) that an employer does not accept as work-related,
- work-related stress,
- needlestick injuries occurring to workers employed in doctor’s offices (an exempt industry), and
- injuries which result in lost time or restricted activity only for the day of the incident.

In addition, employer policies, programs and practices may discourage workers from reporting injuries and illnesses. Safety incentive programs that offer prizes to workers who do not report injuries, and injury discipline policies that threaten discipline to workers who do report, have both been shown to decrease the reporting of workplace injuries and illnesses.

Unions should use additional methods to identify symptoms, injuries and illnesses that are occurring in the workplace. These methods include (but are not limited to) worker surveys, body mapping, and requesting additional information (such as workers compensation data, data from medical clinic visits, and results of hearing tests). Workers and unions can use their rights to information under the OSH Act and unions can use their rights to health and safety information under Section 8(d) of the National Labor Relations Act (or other applicable collective bargaining law) to obtain some of this information and data. Worker surveys and body mapping in particular are effective methods for identifying workers’ symptoms before full-blown injuries or illnesses develop. Hazards can then be identified and targeted for correction, and more serious injuries and illnesses prevented.
## Industries Exempt From OSHA’s Recordkeeping Rule

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<td>Hardware Stores</td>
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<td>Shoe Repair and Shoeshine Parlors</td>
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<td>724</td>
<td>Barber Shops</td>
<td>899</td>
<td>Services, not elsewhere classified</td>
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Activity Handout

ANALYZING YOUR OSHA 300 LOG
(or an OSHA 300 Log from a Workplace You Represent)

PURPOSE

To use OSHA injury and illness logs to identify workplace health and safety problems; to develop activities aimed at getting further information; and to develop strategies to eliminate/control hazards.

TASKS

Review the OSHA Log from your workplace (or a workplace you represent) and answer the questions based on your preliminary analysis of the Log.

1. What are three (3) issues, problems or concerns that you can identify from your preliminary analysis of your OSHA injury/illness Log?
   (1) ___________________________________________________
   (2) ___________________________________________________
   (3) ___________________________________________________

2. What further information would you want to get on the three issues/problems that you have identified?
   Issue #1: _______________________________________________
   _______________________________________________________
   _______________________________________________________
   _______________________________________________________
   Issue #2: _______________________________________________
   _______________________________________________________
   _______________________________________________________
   _______________________________________________________
   Issue #3: _______________________________________________
   _______________________________________________________
   _______________________________________________________
   _______________________________________________________
3. How could you go about getting this information?

Issue #1: ____________________________________________
____________________________________________________
____________________________________________________

Issue #2: ____________________________________________
____________________________________________________
____________________________________________________

Issue #3: ____________________________________________
____________________________________________________
____________________________________________________

4. If you have not already addressed this in your earlier answers, how could you involve members/co-workers in your exploration of the problems you identified and in trying to get these problems resolved?

Issue #1: ____________________________________________
____________________________________________________
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SECTION IV:

Effective Health, Safety and Environment Committees
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Activity Handout
YOUR JOINT LABOR-MANAGEMENT HEALTH AND SAFETY COMMITTEE

PURPOSE

To think about various features or characteristics of a joint labor-management health and safety committee, and determine which characteristics or features are likely to improve the effectiveness of the committee.

TASKS

Think about your own joint labor-management health and safety committee and answer the questions below with your committee in mind. If there are others in your group from your union/workplace, discuss and answer the questions as a group.

If there is no joint committee in your workplace at this time, answer the questions based on the elements or characteristics of a committee that you think would be most effective in addressing health and safety problems and concerns in your workplace.

Select a reporter to report back on your group’s responses to the questions.

1. **Does your local have a joint labor-management health and safety committee?**  
   _____Yes _____No _____Don’t Know

   If you *do* have a joint labor-management health and safety committee, review and answer the following questions based on your experience with this committee.

   If you *do not* have a joint labor-management health and safety committee at this time, review and answer the following questions based on your understanding of what could make a joint committee most effective.
2. **Number of labor and management representatives on the committee:**

   a. How many union representatives serve on this committee (or should serve on this committee, if there is no committee at your workplace at this time)?

   b. Are there the same number, more or fewer management representatives than union representatives on your joint committee?

   c. What might be the optimal or best situation regarding the number of labor representatives and management representatives on joint committees, and why?

3. **Selection of union representatives:**

   a. Who selects the union representatives on your joint committee (or, in the absence of a current committee, who should select these representatives)?

   b. Why would who selects committee representatives be important or make a difference?

4. **Training of committee members:**

   a. What health and safety training do committee representatives now receive (or, in the absence of a current committee, what training is the committee likely to receive)?

   b. Would additional training be helpful? If so, training on which topic or topics, and provided by whom?
c. Why is the issue of training important?

5. **Joint labor-management health and safety committee meetings:**
   
a. Who sets the agenda for the committee meetings (or, in the absence of a current committee, who should set the agenda)?

b. Why is it important for the union representatives on the joint committee to have a role in setting meeting agendas?

6. **Correcting hazards:**
   
a. Does the committee set timetables for implementing hazard controls (or, in the absence of a current committee, should the committee set timetables)?

b. Are people identified to be responsible for implementing hazard controls (or, in the absence of a current committee, should people be identified to be responsible for hazard control)?

c. Does the committee identify follow-up actions if there is a failure to control hazards scheduled for correction (or, in the absence of a current committee, should follow-up actions be identified)?

d. Why might establishing timetables, designating responsible individuals, and identifying follow-up actions be important?
7. **Preparing for joint labor-management health and safety committee meetings:**

   a. Do union representatives on the joint committee prepare for the joint meetings prior to those meetings (or, in the absence of a current committee, should union representatives prepare for the joint meetings)?

   _____ Yes  _____ No  _____ Don’t Know

   b. How might this preparation help the joint committee be more effective in addressing health and safety problems in the workplace?

8. **Action planning for improving the effectiveness of your joint labor-management health and safety committee:**

   a. What are three things that would make your joint labor-management health and safety committee more effective (or, in the absence of a current committee, what are three things that you believe would make a joint committee most effective)?

   (1)

   (2)

   (3)
EFFECTIVE SAFETY AND HEALTH COMMITTEES

Today’s workers and unions are confronted daily with many health and safety issues and hazards. These range from exposure to toxic chemicals, poor indoor air quality, and unguarded machinery, to problems associated with work organization and work restructuring: understaffing, mandatory overtime, overwork, stress and fatigue. In addition, workplaces often lack comprehensive worksite health and safety programs aimed at identifying and eliminating hazards.

Many unions have formed health and safety committees to help the local union deal with health and safety issues in an on-going and effective way. There are two basic types of health and safety committees:

- **Local union health and safety committees**, composed exclusively of union members, and

- **Joint labor-management health and safety committees**, composed of representatives from union and management.

These are two different kinds of health and safety committees. Both can be very important in efforts to improve workplace health and safety committees.

LOCAL UNION HEALTH AND SAFETY COMMITTEES

Local union health and safety committees primarily investigate health and safety conditions and issues on behalf of the union. They also communicate with the union membership and leadership on health and safety matters, and recommend strategies and actions to improve conditions. A local union does not need contract language to establish a union-only health and safety committee.
Who Serves on Local Union Health and Safety Committees?

Members of the local union health and safety committee are generally appointed by local union officers or elected by the membership. Committee members often represent different departments and/or shifts in a workplace. Some unions have a representative from the local’s negotiating committee and/or a local union officer serve on this committee as well. Local unions that have negotiated joint labor-management health and safety committees frequently have their members who serve on the joint committee also serve on the local union’s health and safety committee.

Functions of a Local Union Health and Safety Committee:

The local union committee should be involved in several main activities:

1. Identifying current and potential health and safety hazards and problems,
2. Identifying appropriate measures to eliminate or control hazards and problems,
3. Identifying effective union strategies for improving conditions,
4. Assisting the union representatives on a joint labor-management health and safety committee (if such a committee exists) in identifying union concerns for discussion and resolution by the joint committee,
5. Evaluating the effectiveness of control measures put in place,
6. Communicating with and educating union leadership and membership, and building member involvement in the union’s health and safety efforts.

With this in mind, some of the specific activities that local union committees can undertake to accomplish these functions include:

- Surveying the membership regarding their health and safety concerns as well as work-related symptoms, injuries, illnesses and stresses.
- Conducting body mapping, hazards mapping and other activities with members to identify and track workplace hazards and their impacts on the membership.
- Conducting investigations of incidents, accidents, illnesses and near-misses.
• Reviewing health and safety-related grievances

• Developing health and safety contract proposals

• Identifying opportunities for mid-term bargaining over safety and health. (Note: Under the National Labor Relations Act and other labor law that tracks the NLRA, unions have rights to bargain during the life of the contract over certain changes management wants to implement, if these changes involve or impact “conditions of work” – including health and safety.)

• Participation in any monitoring of workplace conditions performed by the employer, a consultant or an OSHA inspector.

• Accessing and regularly reviewing information on hazards, monitoring data, incident reports, OSHA 300 logs of injuries and illnesses, workers’ compensation records, health and safety complaints, and summary data from workers’ medical examinations (such as hearing test results).

• Accessing and reviewing information on contemplated workplace changes for the presence of hazards. This would include reviewing plans for new equipment, new work processes, new technologies, work restructuring (changes in how work is organized), etc., to see if changes need to be made to protect workers’ health and safety.

• Engaging in regular two-way communication with union leadership and membership on health and safety issues.

• Educating union membership and leadership about particular health or safety issues and concerns.

• Identifying priority health and safety issues and recommended solutions to raise with management.

• Assisting with the development of strategies for getting priority health and safety issues addressed.
- Identifying and communicating with area unions, community-based organizations and/or other allies who may be able to support specific campaigns the union undertakes to improve workplace health and safety conditions.

- Filing and following up on health and safety complaints with government agencies. (Note: Some unions, when filing OSHA complaints, involve their members by asking those who are exposed to the hazards specified in the complaint to sign the complaint. Local union health and safety committee members can help collect those signatures.)

- Participating in informal conferences with OSHA and management following a citation for an OSHA violation.

- Following up on any OSHA citation formally contested by management. (Note: The union should file for “party status” with the Occupational Safety and Health Review Commission to give the union rights to be involved in the proceedings. For more information on filing for party status, contact your staff representative and the USW Health, Safety and Environment Department at safety@usw.org or 412-562-2581.)

- Tracking members’ experiences with workers’ compensation and return-to-work, and assisting as needed. (Note: Some locals have workers compensation committees that do this. If this is the case, there should be regular communication between the union’s health and safety committee and their workers’ compensation committee. This is important to assure that the hazards that caused members’ injuries and illnesses in the first place are adequately controlled and do not go on to re-injure the worker or injure others.)

- Preparing for joint labor-management health and safety committee meetings.

**Resources Needed by a Local Union Health and Safety Committee**

To be effective in their roles on local union health and safety committees, committee members need several things: time, access to the workplace, resources and training.
Time: Union health and safety committee members need time to engage in the activities listed above. Some unions provide lost-time to committee members in order to complete these duties; other unions have negotiated contract language providing time to union health and safety committee representatives to engage in these functions. Unions that are just starting a union-only committee may begin by encouraging committee members to meet at lunch or break time to discuss ideas and begin a planning process for investigating and solving problems.

Access To The Workplace: Ideally, union health and safety committee representatives should have regular access to the workplace (on all shifts) to speak with members about health and safety issues and concerns, investigate problems, and conduct incident and accident investigations. Some unions have secured such access via contract language.

Access to Resources: In order to stay on top of legal, technical and strategic information regarding workplace health and safety, local union health and safety committee members should have a basic library of health and safety texts and materials, access to the internet and to a list of resource individuals and organizations to help understand problems, solutions and strategies. Some union halls have set aside a space with a library and computer for use by the union’s health and safety representatives. (Note: the USW Health, Safety and Environment Department can help identify specific resources for the library, internet resources and other information.)

Access to Training: Union health and safety committee members need access to health and safety training, including union-only training and education. Local unions can arrange this training though their District and the USW Health, Safety and Environment Department. The training should cover issues related to “traditional” hazards (for example, toxic chemicals, unsafe equipment); hazards associated with how work is organized or being restructured (like hours of work, staffing levels, work load, work pace); and strategies for building leverage and winning improvements.

JOINT LABOR-MANAGEMENT HEALTH AND SAFETY COMMITTEES

Joint labor-management health and safety committees are most often established by contract language. They provide a forum for unions and management to interact on health and safety issues and problems and to
work on improving safety and health conditions at the workplace. These committees include representatives from both labor and management, and usually meet on a regular basis (such as monthly).

Some joint labor-management committees have been very effective in identifying and addressing certain health and safety problems on an ongoing basis. Other joint committees are less effective in solving health and safety problems.

The next section includes a list of questions regarding joint labor-management health and safety committees. The more “yes” answers, the more likely a committee is to be effective in addressing health and safety problems in a workplace.

Questions to Ask About Joint Labor-Management Committees:

1. Does the union have at least as many members serving on the joint committee as management?

2. Does the union have the sole right to select the union members of the joint committee? (Note: Under the National Labor Relations Act and labor law that tracks the NLRA, it is unlawful for an employer to “dominate” a joint labor-management health and safety committee where there is back-and-forth “dealing” and discussion of health and safety issues. Among other things, employers are prohibited from selecting bargaining unit members to serve on workplace or departmental health and safety committees or teams.)

3. Are there union and management co-chairs of the committee?

4. Are the management members of the committee senior enough to make real decisions that cost money?

5. Can the committee make decisions and put them into effect?

6. Does the union have an equal say in establishing the joint committee’s agenda and priorities?

7. Can the committee make inspections of the workplace?
8. Can the committee shut down unsafe jobs?

9. Does the local union regularly monitor the effectiveness of the committee in dealing with the issues raised by the union?

10. Does the committee have regular access to information on safety and health kept by the employer (such as OSHA 300 Injury and Illness Logs; records of medical testing and exposure monitoring; material safety data sheets; proposed or planned changes in technologies, work processes or work organization that could impact job safety and health)?

11. Do committee members have the right to take samples in the workplace and carry out simple monitoring?

12. Do union members of the committee receive lost-time pay for carrying out their functions and for receiving union-selected training?

13. Do the union representatives serving on the joint committee meet prior to each joint meeting to review and prioritize concerns, plan for the joint meeting and identify leverage (including member-involving strategies) that will encourage management to address particular issues they may be reluctant to address?

14. Has the union been able to negotiate contract language that mandates the employer to pay lost-time for these regular, union-only meetings?

15. Do joint committee agendas regularly include time to identify current (or continuing) problems, appropriate solutions, who will be responsible for implementing the solution, and deadlines for action to be taken on each problem?

16. Are union members serving on the joint committee involved in planning and/or presenting in-service health and safety education for workers, including health and safety orientation of new workers?

Sometimes specific contract language can be developed and negotiated to ensure a “yes” answer to the questions above.
Some joint labor-management health and safety committees have established sub-committees to deal with specific issues such as ergonomics. It is important that the union view these sub-committees in the same way they view the larger joint labor-management health and safety committee and apply the same guidelines for ensuring these sub-committees’ effectiveness.

To increase the effectiveness of a joint labor-management health and safety committee, it is important for the local union’s own health and safety committee (which in most cases will include the union’s representatives to the joint labor-management committee) to:
- meet regularly to plan for the joint meetings,
- be in regular contact with the local union leadership and membership,
- involve members in strategies to improve workplace health and safety.

Functions of a Joint Labor-Management Health and Safety Committee

A joint labor-management health and safety committee should have the following responsibilities:

- Identifying current and potential health and safety hazards and problems,
- Identifying appropriate measures to eliminate or control hazards and problems,
- Getting recommendations acted upon, and
- Evaluating the effectiveness of control measures put in place.

Some of the specific activities that joint labor-management health and safety committees can undertake to accomplish these functions include:

- Reviewing all information and data (like OSHA 300 logs, incident reports, complaints, workers compensation data, monitoring results, inspection and walk-through reports, etc.) to identify problems, hazards and trends;
- Investigating incidents, illnesses and near-misses;
- Reviewing information related to contemplated workplace changes for the presence of hazards, and
- Tracking the effectiveness of hazard control efforts.
Union members serving on joint labor-management health and safety committee members will also need time, access to the workplace, access to resources, and access to training (including union-only health and safety training) to effectively carry out their functions.

HEATH AND SAFETY AS A UNION ISSUE

Health and safety issues should not be seen as the sole concern of the union members who serve on either the union’s safety and health committee and/or the joint labor-management health and safety committee. These issues are also the concern of the local union’s leadership, stewards and members.

Bargaining Health and Safety Language in the Contract

Many of the decisions made by the union’s negotiating committee will impact safety and health issues, and union health and safety committees will be regularly identifying issues that can best be dealt with by securing contract language in the collective bargaining agreement. It is important that there is effective communication between union representatives serving on the health and safety committees and the union’s bargaining committee regarding health and safety issues, to assure a coordinated effort.

Effective Communication with the Union’s Leaders and Members

Regular, two-way communication between members who serve on health and safety committees and the union’s leadership and membership is essential. One of the major tasks of any union safety and health committee is to keep leaders and members fully informed and educated. Regular newsletters, meetings, published minutes and personal contact are necessary to assure that this is done. In addition, there should always be ways for the membership to communicate their concerns and ideas to the union’s health and safety representatives.

Building Union Strength

Health and safety is a good vehicle for involving members in the union. Involving members in health and safety increases the union’s power in winning workplace improvements. It also helps build the general strength of the union. The stronger the union, the better it can take on and win safer workplace conditions. The more that unions take up health and safety issues
in member-involving ways, using union-building approaches, the stronger
the union will be.
This questionnaire can be taken back to your local union and completed with the union members of your joint committee. Completing this questionnaire will help you begin a discussion of how to improve the effectiveness of your committee. At the end of the questionnaire, there is a review sheet to help you evaluate your answers.

1. **Number of labor and management representatives on the committee:**
   
   a. How many union representatives serve on this committee?
   
   b. How many management representatives serve on this committee?

2. **Selection of union representatives:** Who selects the union representatives on this committee?

3. **Training of committee members:**
   
   a. What health and safety training do committee representatives now receive?
   
   b. Who provides this training?
   
   c. Does the union have a role in determining training topics and/or training providers?
   
   d. Is the training provided adequate and/or effective? Why or why not?
e. If not, what additional training do you think the committee representatives should have (on what topics, etc.)?

f. Who should provide this training?

4. **Joint labor-management health and safety committee meetings:**

a. How often does the joint labor-management health and safety committee meet?

b. How long are the meetings?

c. How are meeting agendas established?

d. Are there reports, documents, and/or information that are regularly reviewed prior to or at joint safety committee meetings?

   _____Yes  _____No  _____Don’t Know

e. If you answered yes to question 4.d., what information/reports are regularly received and reviewed? (check all that apply)

   _____last month’s OSHA 300 Log of workplace injuries/illnesses
   _____accident reports
   _____incident reports
   _____hazards identified
   _____worker complaints
   _____walk-around inspection results
   _____results from tests conducted on the work environment
   _____reports on corrective actions taken on previously identified hazards
   _____other:

f. How do issues/problems get on the committee’s agenda?
g. When hazards are identified, are alternative methods for hazard control, as well as short- and long-term solutions, discussed? (For example, if there are back injuries, are various methods for addressing these problems discussed, such as: mechanical lifting devices, re-design of workstations or equipment, increasing staffing levels, etc.? Or if there is exposure to toxic chemicals, are hazard control methods discussed ranging from eliminating the chemical, to substituting a non-toxic or less-toxic alternative, to installing local exhaust ventilation, to using various types of personal protective equipment in the short term?)

h. Are timetables set for implementing hazard controls?

i. Are people identified to be responsible for implementing hazard controls?

5. **Other activities (in addition to meetings) engaged in by joint committee:** What are other activities engaged in by the joint committee besides meetings? (check all that apply)

   _____ regular inspections of the workplace
   _____ accident/incident investigations
   _____ assessing potential health or safety impacts from workplace changes (such as introduction of new technologies, materials/chemicals, work processes)
   _____ other:

6. **Preparing for joint labor-management health and safety committee meetings:**

   a. Do union representatives prepare in advance for joint labor-management health and safety committee meetings?

      _____ Yes       _____ No       _____ Don’t Know
b. If you answered “Yes” to 6.a., how and when does this preparation occur?

7. **Effectiveness of joint committee and worksite safety and health program:** How effective do you consider your joint committee and worksite health and safety program in terms of (circle a number, with 1 = not effective and 5 = very effective):

(i) **Identifying hazards (both obvious and hidden)?**

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(ii) **Controlling hazards once they are identified?**

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(iii) **Preventing health and safety problems from occurring?**

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(iv) **Preventing health and safety problems associated with workplace changes?**

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(v) Addressing sources/root causes of the key things in your workplace that you believe are responsible for injuring workers/making them ill?

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8. **Communication:**

a. How often do union representatives on the joint labor-management health and safety committee communicate with local union officers?

b. Where and how does this communication take place?

c. How often do union representatives on the joint committee communicate with members?

d. Where and how does this communication take place? (Include all major forms of communication between union health and safety committee representatives and union members such as reports at membership meetings, members’ reports of health and safety concerns to union health and safety reps)

e. Do these mechanisms allow workers to communicate with the health and safety representatives, for the health and safety representatives to communicate with the membership, or both?

9. **Action planning for improving the effectiveness of your joint labor-management health and safety committee:**
a. Review your responses to questions #1 - #8, and identify three things that would make your joint labor-management health and safety committee more effective:

(1) 

(2) 

(3) 

b. What would it take to undertake any or all of these?

c. What is your plan for undertaking these items/correcting deficiencies that you have identified regarding your joint labor-management health and safety committee?

REVIEW SHEET FOR EVALUATING ANSWERS TO RESOURCE HANDOUT (Evaluating The Effectiveness Of Your Joint Labor-Management Health and Safety Committee)

1. Number of labor and management representatives on the committee:

There should be at least as many union representatives as management representatives on a joint labor-management health and safety committee. This is important for assuring that the voice of the workers is heard.

2. Selection of union representatives:
Union representatives who serve on joint labor-management health and safety committees are there to represent the union and worker concerns. By law, unions must select their own representatives to serve on joint labor-management health and safety committees, just as unions have the legal right to select their representatives on the committee that meets with management to negotiate the collective bargaining agreement.

3. **Training of committee members:**

The goal of training and education in safety and health is to prepare participants to be effective in identifying and eliminating or reducing workplace hazards that are causing or likely to cause injury or illness. Training should be thorough and comprehensive and include topics such as: methods for hazard identification; the “hierarchy of controls” and alternative methods for hazard control; legal rights regarding health and safety in the workplace; specific hazards found in that workplace including “traditional” hazards (for example, toxic chemicals and unsafe equipment); hazards associated with how work is organized or being restructured (for example, extended work hours, shift work, staffing levels, work load, work pace); strategies for getting hazards corrected; and resources for further information on health or safety topics.

It is very important for union representatives to be involved in decisions about what training is needed, the content of training programs, how long they should be, who designs and delivers the training, who attends the training, etc. Another source of information on health and safety issues for union members on a joint labor-management health and safety committee is union-only training provided by the local, regional or National/International Union, the national AFL-CIO, COSH groups and/or university-based labor education programs.

4. **Joint labor-management health and safety committee meetings:**

   a. **How often does the joint labor-management health and safety committee meet?**

   Meetings should be at least monthly, and as often as needed.

   b. **How long are the meetings?**
Meetings should be at least two hours, and as long as needed.

c. **How are meeting agendas established?**

Agendas for joint labor-management health and safety committee meetings should be developed with equal input from union representatives. This is an effective way to assure that issues of concern to the union will appear on the agenda to be discussed.

d. **Are there reports, documents, and/or information that are regularly reviewed prior to or at joint safety committee meetings?**

Among the documents and information that should be reviewed monthly (preferably prior to, but at least during joint committee meetings) are:

- last month’s OSHA 300 Log of workplace injuries/illnesses,
- accident reports,
- incident reports,
- hazards identified,
- worker complaints,
- walk-around inspection results,
- results from tests conducted on the work environment,
- summary results from medical tests such as hearing tests,
- reports on corrective actions taken on previously identified hazards,
- workers compensation claims (medical only and lost-time), and
- unsafe staffing forms (in health care facilities).

f. **How do issues/problems get on the committee’s agenda?**

The union should identify items it wants to have included on the joint committee agenda (which should be developed with equal participation from labor and management).

g. **When hazards are identified, are alternative methods for hazard control, as well as short- and long-term solutions, discussed?**
The “hierarchy of controls” should be used as the basis for determining hazard control measures. This hierarchy supports the elimination of hazards as the preferred way of addressing hazards. If hazards cannot be eliminated (for example, if a less or non-toxic chemical can not be substituted for a toxic substance), then engineering controls (like enclosure of operations or local exhaust ventilation) should be used. Warnings (like back-up signals on trucks) and administrative controls (limiting the time that workers are exposed to a certain hazard) should be considered if engineering controls cannot be installed. Personal protective equipment is the most ineffective control. In many cases, personal protective equipment should only be used as a temporary measure, while hazard elimination or engineering controls are being implemented.

h. Are timetables set for implementing hazard controls?
   i. Are people identified to be responsible for implementing hazard controls?

There should be timetables for implementing hazard controls, officials identified to be responsible for hazard correction, and follow-up actions identified if corrections are not made. Otherwise, even though committees can become great places to discuss problems, elimination or reduction of workplace hazards may not take place. Each meeting should end with an action list of priority items to be addressed, the action to be taken, the date by which the action will be taken, who is responsible for ensuring that the action is taken, and an understanding of follow-up actions if timely corrections are not implemented.

5. Other activities (in addition to meetings) engaged in by joint committee: What are other activities engaged in by the joint committee besides meetings?

All of the following activities can enhance a committee’s effectiveness in identifying and addressing health and safety problems in a workplace:

- regular inspections of the workplace,
- accident/incident investigations, and
• assessing potential health or safety impacts from workplace changes (introduction of new technologies, materials/chemicals, work processes, etc.).

6. Preparing for joint labor-management health and safety committee meetings:

   a. Do union representatives prepare in advance for joint labor-management health and safety committee meetings?

Union representatives should prepare for joint labor-management health and safety committee meetings in order to effectively represent the membership on health and safety matters. This preparation should include activities such as:

• gathering information about health or safety hazards, workplace injuries and illnesses and other safety or health concerns;
• researching issues that need further exploration such as appropriate control measures,
• identifying union priorities;
• identifying actions that need to be taken to in cases where identified hazards are not addressed, or are not addressed adequately, or are not addressed in a timely fashion;
• regular and on-going communication with members; and
• determining a strategy to accomplish established goals.

Many unions have established union-only health and safety committees to engage in these types of preparatory activities and to coordinate the union’s involvement in health and safety. These local union health and safety committees can include the union’s representatives to the joint labor-management health and safety committee as well as other union representatives (for example, local union officers, stewards, negotiating committee members, members who are interested in health and safety). Without such a union-only mechanism, it is difficult for unions to adequately prepare for joint meetings, and the effectiveness of the joint committee in addressing problems can be reduced as a result.
7. Effectiveness of joint committee and worksite safety and health program: How effective do you consider your joint committee and worksite health and safety program?

In the areas where the union identifies the joint committee as not being as effective as the union would like, barriers should be identified, solutions developed and strategies for improving the effectiveness of the committee identified. Contact your International Union, a university-based labor studies program, a COSH group or other resource for assistance.

8. Communication:

Union representatives on joint labor-management health and safety committees should communicate regularly with union leadership and membership. The most effective communication unions can have with members is two-way communication where union health and safety representatives are in regular contact with members and the members are in regular contact with their representatives. This requires that there be “easy to use” ways for members to communicate with their representatives. Consider such communication mechanisms as:

- surveys,
- body mapping,
- one-on-one communication,
- newsletter articles,
- union meetings,
- health and safety information included on union’s website,
- special health and safety meetings,
- health and safety training programs for members,
- union bulletin boards,
- flyers and leaflets, and
- sub-committees on particular issues/topics.

One goal of all health and safety activities is to get members involved. The more union members become involved in health and safety issues, the more effective union health and safety representatives on the joint committee will be. This is because these representatives will be able to learn more about the nature and extent of hazards on the job, as well as ideas for addressing those hazards.
9. **Action planning for improving the effectiveness of your joint labor management health and safety committee:**

Developing a strategic plan for improving the effectiveness of your joint committee will help the committee in its on-going efforts to address health and safety at the workplace. It will help the committee identify hazards and other problems, determine how to eliminate or reduce the hazards, and determine how to accomplish this.
The Role of the Union in Joint Labor-Management Health and Safety Programs, Efforts and Committees

The On-going Battle to Protect the Health and Safety of USW Members

Hazardous workplace conditions regularly threaten the health and safety of United Steelworkers’ members in workplaces across North America. While USW local unions have successfully achieved the elimination and/or reduction of certain hazards in their workplaces, many hazards remain, including those that the union has identified, but management has not addressed. Many hazards in today’s workplaces have been created or made worse by workplace changes such as work restructuring, new technologies and new management policies. Downsizing/understaffing, excessive working hours and shifts, speed-up/push for production, work overload, job combinations, and monitoring can all impact health and safety conditions on the job. The presence of older, unaddressed hazards as well as newly recognized or introduced hazards continue to threaten the health and safety of our members. In some cases the health and safety of communities and the environment are threatened as well.

Unions have important mechanisms such as joint labor-management health and safety committees that provide forums for ongoing communication on health, safety and environmental issues between the union and management. In a document produced in 1989 in the United States by the U.S. Department of Labor, Bureau of Labor-Management Relations and Cooperative Programs entitled “The Role of Labor-Management Committees in Safeguarding Worker Safety and Health”, it states, “It is easy to have a labor-management committee for occupational safety and health. It is extremely difficult to have one that can make major inroads into solving tough, long-standing dangers to worker safety and health.” This is true today across North America, and it is true for all labor-management efforts to improve health and safety in the workplace, not just joint committees.

A Union Approach and A Management Approach to Health and Safety: What's the Difference?

While on one level labor’s and management’s health and safety goals may seem similar (e.g. management wants fewer reported injuries; the union seeks a safe workplace); the reality is that union and management approaches to achieving those goals can be very different (e.g. management’s implementation of policies and practices that discourage workers from reporting injuries vs. the union’s emphasis on eliminating hazards that cause injuries and illnesses). In fact, there can also be a great difference between the way the union and management view what the problems are when it comes to health and safety. Unions view
hazardous conditions as the key problems that need to be addressed; too often management views the problem as “careless or inattentive workers” who are not working safely enough and allow accidents to happen. Unions seek comprehensive worksite health and safety programs that focus on identifying and eliminating hazards (including hazards associated with how work is organized and being restructured); too often management seeks programs aimed at adjusting workers’ behavior – getting workers to work “more safely” around hazards that really should be eliminated or reduced, and discouraging them from reporting symptoms, injuries, illnesses and problems.

Union goals for our health, safety and environment efforts include protecting our members by eliminating/reducing hazards and creating safe and healthful workplaces. Too often, management is more concerned with their bottom line, and their health and safety efforts focus on reducing workers compensation claims by discouraging members from filing them or contesting them once filed; promoting a “good and safe” public image by discouraging workers from reporting symptoms, injuries and illnesses; keeping production up while skimping on health and safety protections/precautions (and then blaming workers when they get injured); and keeping control at all costs.

A Union and “Continuous Bargaining” Approach to Health and Safety

Without a union being well-organized and well-versed in a union approach to health and safety, it is easy for management to take control (overtly or covertly) of a safety program.

Think about how a union prepares for and goes into another type of “joint labor-management” activity – collective bargaining. A union works to achieve its goals during negotiations for a new collective bargaining agreement by engaging in a number of union activities including:

- Research and information gathering
- Communicating with/involving members
- Developing Proposals/Demands
- Identifying and Exercising Leverage

It is clear that when labor and management sit down at the bargaining table, they have different goals. The activities that a union engages in prior to (and during) bargaining helps the union to build the power it needs to be successful in negotiations.

Unions also need power when it comes to health and safety, especially in getting tough, ongoing health and safety problems addressed. The same kinds of activities that unions engage in to prepare for bargaining their contracts are needed to prepare for dealing with management regarding health and safety issues. Research and information gathering; communicating with/involving members; developing proposals and demands; and identifying and exercising leverage are all part of a “continuous bargaining” approach to health and safety.

In order for there to be a real and meaningful role for the union in dealings with management in a joint labor-management health and safety committee or program, there are a number of
specific and essential activities the union must engage and be well-versed in, as part of this union and “continuous bargaining” approach to health and safety:

1) Having a union-only health and safety committee that meets regularly, separately from management, to:
   • discuss health and safety concerns and problems,
   • identify and prioritize issues to be brought to management and/or to joint labor-management health and safety committee meetings,
   • identify solutions (short- and long-term) to address these hazards and hazardous conditions
   • discuss follow-up actions to take if management does not address these concerns

2) Having union-only health and safety training, including training focused on a union approach to health and safety, for union members who serve on this committee (which in most cases would include all those who serve on the union side of the joint labor-management health and safety committee), and others (e.g. the union’s Executive Board, stewards, grievers, etc.)

3) Regularly communicating with members about their health and safety issues and concerns (including regular use of union surveys, one-on-one information gathering, special meetings, etc.);

4) Organizing and activating members to be part of the union's efforts to get health and safety problems corrected;

5) Preparing proposals and positions as a union committee, and approaching management as a united, organized and collective voice;

6) Developing a “continuous bargaining” strategy for getting health and safety problems addressed, especially in situations where management has --or is likely to -- deny, ignore or minimize these concerns (a “continuous bargaining” strategy would involve strategies and tactics – including member-involving strategies and escalating tactics – that would put pressure on management to address health and safety problems they may otherwise chose to ignore or “solve” in ways that are problematic for the union and its members);

7) Caucusing regularly during joint labor-management health and safety committee meetings, to maintain unity, develop a common strategy and formulate responses to management proposals;

8) Having regular and frequent discussions and communication between union members on the health and safety committee and the Union's leadership, to discuss all of the above issues and activities.

Union-only preparation for joint labor-management health and safety committee meetings is just as important as preparing for negotiating sessions during contract bargaining. The union should be as well-organized, strategic and just as inclusive of members' concerns as preparation for contract bargaining.

A key difference between contract bargaining and many joint labor-management processes is the role that union-only meeting time plays in setting the union's agenda, developing priorities and goals and planning strategies for obtaining those goals. While contract bargaining
involves regular union-only meeting time before and during negotiations; many unions involved in joint labor-management health and safety committees often meet only with management and rarely or never as a union-only committee. Using a union and continuous bargaining approach to health and safety, it is essential for the union side of joint labor-management committees to meet independently, regularly, to prepare for joint meetings, evaluate progress, and engage in strategic planning.

In the course of continuous bargaining on health, safety and environmental issues, it is crucial to build involvement and unity within the union.

Union health and safety committee members and representatives can support a continuous bargaining approach to health, safety and environmental issues by engaging in activities such as:

- surveying members regarding their health and safety concerns;
- developing fact sheets and newsletter articles on particular issues to keep members informed;
- making presentations at membership and/or special meetings;
- having one-on-one conversations with members;
- analyzing data such as the employer’s injury and illness logs to identify injury/illness trends, hazards and priorities;
- obtaining and reviewing materials on particular hazards from sources such as the USW Health, Safety and Environment Department (www.usw.org; www.usw.ca); the AFL-CIO; the Canadian Labour Congress; the Canadian Centre for Occupational Health and Safety; the Ontario Workers Health and Safety Centre; websites such as www.workhealth.org; www.hazards.org/bs; the Occupational Safety and Health Administration (OSHA); the Mine Safety and Health Administration (MSHA); the National Institute for Occupational Safety and Health (NIOSH); and other sources;
- identifying and documenting health, safety and environmental impacts resulting from workplace changes (e.g. increased symptoms, injuries and/or illnesses from downsizing, speed-up, 12+hour shifts, mandatory overtime, job combinations, new technologies, work restructuring, etc.) Unions may be able to formally bargain over these and other changes that can impact health and safety.
- identifying strengths and weaknesses of current health and safety training programs; developing union priorities for the type and content of training, and determining training providers; and
- developing and undertaking strategies that involve local union members, build the union and get health, safety and environmental conditions improved.

To be successful in getting health and safety problems addressed, including tough, long-standing dangers that threaten the health and safety of members, it is essential that the union have a functioning union-only mechanism in place, with the elements and characteristics described above. Successful joint labor-management efforts and programs require a strong union-only program to be in place and functioning. These elements and characteristics of a union-only program and continuous bargaining approach are pre-requisites for an effective joint labor-management health and safety program.
Draft Code of Conduct for Union Members Involved in Joint Labor-Management Health and Safety Committees

Many local unions have had years of experience with joint labor-management health and safety committees. Gains in workplace health and safety have resulted from having such a committee where the union can raise and discuss its concerns. In some cases, however, management has used these committees to stall, redirect attention away from union concerns, and limit progress in addressing union issues. Every local union member participating on a joint labor-management health and safety committee should be aware of the pitfalls of these committees, and what he or she can do to best represent and pursue the interest of the union and its members.

This is a draft code of conduct for union members who are involved in joint labor-management health and safety committees and activities. Note that this code is not much different from what we would expect of a union member in other settings – especially when union members are engaged in any type of discussion with management.

Many consultants in the labor-management field have tried to convince unions that we are in a new era – a new period of history – and that the code of conduct for us as union members therefore has to be different. They focus on “trust,” “listening,” “respect in meetings,” and “looking out for the needs of everyone.” But despite all the rhetoric, there are certain basic union values, and a code of conduct that goes with them, that cannot be abandoned.

The following are ideas for that code of conduct as it relates to union members serving on joint labor-management health and safety committees.

1) **Always remember that a union approach to health and safety that is different from a management approach to health and safety**

Union approaches to health and safety recognize that workplace injuries and illnesses are caused by exposure to hazards, and that the goal of all health, safety and environmental efforts must be to identify and eliminate or reduce hazards. Management approaches often blame those who are exposed to hazards – the workers – for job injuries.

A union approach views health and safety hazards as anything in the workplace that can damage a worker’s physical or emotional health – including toxic chemicals, unsafe equipment, poor ergonomic job design as well as understaffing, long work hours, speed-up, heavy work load, rapid work pace and other work organization issues. Management generally seeks to limit the definition of health and safety and often resists, for example, dealing with the health and safety impacts of how work is being organized or restructured.

Union approaches support the “hierarchy of controls” in hazard control and prevention, which promotes hazard elimination or engineering controls over the use of personal
protective equipment. Management approaches often promote the use of personal protective equipment as the preferred way of addressing workplace hazards.

These differences are reflected in everything from how health and safety problems are defined, to the solutions that get promoted. Union representatives on joint committees must pursue union-advocated solutions to the problems that the union has identified and defined.

2) **When in joint meetings, stick to the union agenda. If you are not sure what the union agenda is or how to respond to something that management is saying, call a caucus or wait until the next break.**

It is important for the union representatives on joint committees to act together when dealing with management. This means that significant disagreements should be saved for caucus rather than being aired in front of management. All union representatives should aggressively pursue the union agenda. If the discussion moves to something that the union is not prepared for, a caucus should be called or the issue should be tabled.

*Remember that the only way to adequately prepare our agendas and strategies for the joint meeting is to hold union-only health and safety committee meetings at least as frequently as joint meetings. This means that all local unions should have functioning local union health and safety committees.*

3) **When in caucus, talk about all your hesitations, concerns, etc.**

While it is important to work together when in meetings with management, it is equally important that any disagreements be aired in caucus. People should feel free to raise issues and concerns in caucus; in fact, they should see this as their responsibility. This is the only way to build unity of action.

4) **Evaluate all proposals and ideas for their impact on the members and the union, and do not endorse “solutions” that can hurt members and the union**

It is critical that ideas, proposals and activities be evaluated for their impact on the members and the union in both the short and long term. This takes more time than simply looking at “how it affects us today.” There are ways to fix one problem that can create other problems for the members or for the union.

5) **Report to the union on all joint labor-management safety and health committee meetings and activities, and don’t keep secrets with management**

The union cannot act in a unified manner if it doesn’t know what is going on. It is therefore important for union participants on joint committees to regularly communicate with the union leadership about what is going on in their workplace-wide or department-wide joint labor-management health and safety committee meetings. Don’t keep secrets with management. Frequent, full and open two-way communication and discussion with union leadership and membership is the only way to keep things on a union track, and
build the support needed to take on and win health and safety improvements that management may be resisting.

6) **No involvement, direct or indirect, in disciplining other members**

There are many ways, besides the formal discipline procedure, for members to be involved in disciplining other members. Management may ask for union buy-in into policies that involve disciplining, drug testing or counseling workers when they report an injury or accident. These policies do nothing to make workplaces safer – they drive down injury reporting and punish workers rather than identify and correct hazardous workplace conditions.

Behavior-based safety programs can result in members being identified for engaging in “unsafe acts,” sometimes resulting in discipline. In addition to promoting the disciplining of our members, these types of programs can also create divisions within the union. Union representatives should oppose “blame-the-worker” safety programs and advocate for a comprehensive worksite safety and health program that emphasizes finding and fixing hazards.

7) **UNITY**

This cannot be said too many times or in too many ways. Building unity with union members (within and outside of the health and safety committees) must always be on the minds of any union representatives serving on joint labor-management health and safety committees.

8) **Take good notes**

As part of keeping an overall record, and to serve the strategic process, it is important that there is accurate reporting of committee meetings and activities. Never rely on management to keep the only minutes of a meeting.

9) **Never go into any discussion alone**

You can’t be a union if you are by yourself. We should always try to make sure that when we are in discussions with management, there is at least one other union member present. This helps build the presence of the union, it allows us to demonstrate unity and it gives more than one union “head” to generate ideas and evaluate actions.

10) **Ask for help when you need it**

No one union health and safety committee member knows everything about the health and safety concerns in their workplace. However, when we communicate with each other, involve the members, local union leadership, and international union staff, solutions can be developed that will address health and safety hazards while involving membership and building the union.
This list is a draft that can be added to or changed. But when your local has done that, let us know about your suggestions as well as print up the finished product, post it around the union hall and make sure that all our members who are involved in joint labor-management health and safety committees have a copy and know what is expected of them.
E. I. du Pont de Nemours & Company and Chemical Workers Association, Inc., International Brotherhood of Dupont Workers and Chambers Works Central Safety and Occupational Health Committee; Anti-Knocks Area Safety Committee; Jackson Lab Programs and Publicity Committee; Freon Central Safety Committee; Chambers Works Fitness Committee a/k/a Chambers Works Recreation/Activities Committee; Control Unit Safety Committee; and Physical Distribution Safety Committee a/k/a Environmental Resources Safety Committee, Parties-in-Interest. Cases 4-CA-18737-1, 4-CA-18737-2, 4-CA-18737-3, 4-CA-18737-4, 4-CA-18737-5, 4-CA-18737-6, 4-CA-18737-7, 4-CA-18792, 4-CA-18835, 4-CA-18840-2, and 4-CA-19078.

May 28, 1993

DECISION AND ORDER

BY MEMBERS DEVANEY, OVIATT, AND RAUDAUGH

The central issues in this case are whether six safety committees and one fitness committee are employer-dominated labor organizations within the meaning of Section 2(5) and Section 8(a)(2) of the Act and whether the Respondent bypassed the Union in dealing with the committees and in dealing with unit employees during safety conferences, in violation of Section 8(a)(5). The judge found that the seven committees at issue are labor organizations and that the Employer dominated the formation of one of the committees and the administration of all the committees, in violation of Section 8(a)(2). He found that the Respondent bypassed the Union by dealing with these committees, in violation of Section 8(a)(5). The judge, however, dismissed the allegations that the Respondent violated Section 8(a)(5) by holding safety conferences.

We agree with all the judge’s rulings. We add rationale to his decision because we wish to provide guidance for those seeking to implement lawful cooperative programs between employees and management. Our recent decision in Electromation addressed certain issues raised by employee participation committees in a nonunion setting. The instant case provides the opportunity to address issues raised by employee participation committees which exist in circumstances where employees have selected an exclusive collective-bargaining representative. The Respondent here ran afoul of the Act. We clarify the basis for these violations and suggest what the Respondent could have done to avoid unlawful conduct. The Respondent also engaged in some lawful cooperative efforts. We emphasize those efforts because they show that there is some room for lawful cooperation under the Act.

3 Although the judge found that the Respondent unlawfully bypassed the Union by dealing with the safety committees and the fitness committee concerning numerous proposals for safety awards and recreational facilities, the judge inadvertently failed to address the allegations that the Respondent violated Sec. 8(a)(5) by implementing these proposals without affording the Union the opportunity to bargain. We correct this oversight and find that the Respondent unlawfully implemented proposals concerning safety incentives and prizes and fitness facilities. (See G.C. Exh. 36 which contains the parties’ stipulation to the items provided by the Respondent.) We shall order the Respondent to cease and desist from unilaterally providing such items. We shall also order the Respondent, on request by the Union, to rescind these unilateral changes. However, our Order should not be construed as requiring the Respondent to cancel any benefit without a request from the Union. See, e.g., Columbia Portland Cement Co., 303 NLRB 880, 885 (1991).

4 The Respondent argues, and the General Counsel agrees, that the judge provided an overbroad remedy for the Respondent’s unlawful prohibition of the use of the electronic mail system for the distribution of union literature and notices. We find merit in the Respondent’s exception and shall limit the remedy to discriminatory prohibition of the use of the electronic mail system for distributing union literature and notices. See Storer Communications, 294 NLRB 1056, 1099 (1989).


6 As is clear from the decision and his concurring opinion in Electromation, Inc., supra, Member Oviatt agrees in many respects with the comments of his concurring colleague, particularly those regarding the efficacy and usefulness of employee-management cooperative programs and the rationale used to determine whether Sec. 8(a)(2) has been violated. Electromation, Inc., also highlights areas in which Member Oviatt’s approach differs from that of his concurring colleague, in particular the issue whether employee-members of a committee must act in a representational capacity before the committee can be found to be a Sec. 2(5) labor organization.

Member Raudabaugh shares his concurring colleague’s interest in encouraging and allowing employees, employers, and unions lawfully to pursue employee participation and cooperation between management and employees in the workplace. He stresses here, however, as he did in his concurring opinion in Electromation, that the Board
1. Labor organization status under Section 2(5) of the Act

The threshold question for a determination of whether an employer has violated Section 8(a)(2) is whether the entity involved is a labor organization. Under the statutory definition set forth in Section 2(5), the entity is a labor organization if (1) employees participate, (2) the organization exists, at least in part, for the purpose of “dealing with” employers, and (3) these dealings concern “conditions of work,” grievances, labor disputes, wages, rates of pay, or hours of employment. There is no question that each committee at issue herein is an organization in which employees participate. In addition, the committees discuss subjects such as safety, incentive awards for safety, or benefits such as employee picnic areas and jogging tracks. These subjects fall within the categories of subjects listed in Section 2(5). The committees, therefore, meet the first and third requirements for labor organization status. We turn now to the second requirement.

The Limits of “dealing with”

The principal issue is whether the committees exist for the purpose, at least in part, of “dealing with” the employer on statutory subjects. The Supreme Court held in NLRB v. Cabot Carbon Co. that the term “dealing with” in Section 2(5) is broader than the term “collective bargaining.” The term “bargaining” connotes a process by which two parties must seek to compromise their differences and arrive at an agreement. By contrast, the concept of “dealing” does not require that the two sides seek to compromise their differences. It involves only a bilateral mechanism between two parties. That “bilateral mechanism” ordinarily entails a pattern or practice in which a group of employees, over time, makes proposals to management, management responds to these proposals by acceptance or rejection by word or deed, and compromise is not required. If the evidence establishes such a pattern or practice, or that the group exists for a purpose of following such a pattern or practice, the element of dealing is present. However, if there are only isolated instances in which the group makes ad hoc proposals to management followed by a management response of acceptance or rejection by word or deed, the element of dealing is missing.

Just as there is a distinction between “bargaining” and “dealing,” there is a distinction between “dealing” and no “dealing” (and a fortiori no “bargaining”). For example, a “brainstorming” group is not ordinarily engaged in dealing. The purpose of such a group is simply to develop a whole host of ideas. Management may glean some ideas from this process, and indeed may adopt some of them. If the group makes no proposals, the “brainstorming” session is not dealing and is therefore not a labor organization.

Similarly, if the committee exists for the purpose of sharing information with the employer, the committee would not ordinarily be a labor organization. That is, if the committee makes no proposals to the employer, and the employer simply gathers the information and does what it wishes with such information, the element of dealing is missing, and the committee would not be a labor organization.

Likewise, under a “suggestion box” procedure where employees make specific proposals to management, there is no dealing because the proposals are made individually and not as a group.

The committees at issue here do not fall within any of these safe havens. They involve group action and not individual communication. They made proposals and management responded by word or deed. The

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9 See, e.g., Postal Service, 302 NLRB 767, 776 (1991), holding that the term “wages” does not necessarily refer to a sum of money given for actual hours worked but also refers to other forms of compensation and benefits.

10 See Electromation, 309 NLRB at 995 fn. 21.

11 There is also an issue as to whether the “suggestion box” is an organization, committee, or plan, within the meaning of Sec. 2(5).
committees made proposals to management representatives in different ways.

Some of the committees submitted proposals concerning safety and fitness or recreational matters, to representatives of management outside the committees. Management representatives responded to these proposals. For example, the Antiknocks Committee proposed to various supervisors and managers that safety problems be corrected, and the managers responded to these proposals. The Fitness Committee proposed to higher management that tennis courts and a pavilion be constructed, and management rejected this proposal on the ground that it was too costly at the time. This activity between committees and management is virtually identical to that found to be "dealing" in *Cabot Carbon*.

All the committees discussed proposals with management representatives inside the committees. Each committee has management representatives who are full participating members. These representatives interact with employee committee-members under the rules of consensus decision-making as defined in the Respondent's Personal Effectiveness Process handbook. The handbook states: "consensus is reached when all members of the group, including its leader, are willing to accept a decision." Under this style of operation, the management members of the committees discuss proposals with unit employee members and have the power to reject any proposal. Clearly, if management members outside the committee had that power, there would be "dealing" between the employee committee and management. In our view, the fact that the management persons are on the committee is only a difference of form; it is not a difference of substance. As a practical matter, if management representatives can reject employee proposals, it makes no real difference whether they do so from inside or outside the committee. In circumstances where management members of the committee discuss proposals with employee members and have the power to reject any proposal, we find that there is "dealing" within the meaning of Section 2(5).

The mere presence, however, of management members on a committee would not necessarily result in a finding that the committee deals with the employer within the meaning of Section 2(5). For example, there would be no "dealing with" management if the committee were governed by majority decision-making, management representatives were in the minority, and the committee had the power to decide matters for itself, rather than simply make proposals to management. Similarly, there would be no "dealing" if management representatives participated on the committee as observers or facilitators without the right to vote on committee proposals.

As noted above, if a committee exists for the sole purpose of imparting information, there would be no dealing. In addition, if a committee exists for the sole purpose of planning educational programs, there would be no dealing. The Central Safety Program Committee and the Jackson Lab Program Committee, however, did not limit their activities to imparting information or planning educational programs. Both committees also decided on incentive awards to be given to unit employees, either in recognition of, or to encourage, safe work practices. Such awards are benefits and compensation which are mandatory subjects of bargaining and fall within the subjects set forth in Section 2(5).

2. Domination of the administration and/or formation of the committees

The structural operations of the committees warrant the finding that the Respondent dominated the administration of the committees. As discussed above, the

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12 See e.g., *St. Vincent's Hospital*, 244 NLRB 84, 85-86 (1979) (free coffee and meals); *Southern Florida Hotel Assn.*, 245 NLRB 561, 569 (1979) (providing beer, soft drinks, and snacks); and *Poletti's Restaurant*, 261 NLRB 313, 317 fn. 16 (1982) (free desserts).

13 We reject the Respondent's argument that the committees were performing narrowly defined tasks that historically had been performed by either management committees or by management directly and, thus, that they were "dealing for," not "dealing with" the Respondent. This contention is contrary to the evidence, which shows a significant change in the composition, operation, and responsibilities of the committees from the Employer's previous unilateral safety and audit programs. Thus, we have found, contrary to the Respondent's contention, that the Safety and Fitness Committees were not charged with performing delegated management functions. In any event, setting wages, hours, and terms and conditions of employment, etc., can be both management functions and mandatory subjects of bargaining. In either case, bilateral discussions of these statutory subjects constitute "dealing with" within the meaning of Sec. 2(5).

14 To the extent that the Respondent reads Secs. 8(c) and 9(a) of the Act to confer on employers an unlimited right to communicate
Respondent ultimately retains veto power over any action the committee may wish to take. This power exists by virtue of the management members’ participation in consensus decision-making. The committee can do nothing in the face of management members’ opposition. In addition, the record shows that in each committee, a management member serves as either the leader or the “resource” (monitor or advisor) and therefore has a key role in establishing the agenda for each meeting and in conducting the meeting.\(^{15}\)

The Respondent also controls such matters as how many employees may serve on each committee. In addition, the Respondent determines which employee volunteers will be selected in the event that the number of volunteers exceeds the number of seats designated for employees on the committees. Unit employees had no independent voice in determining any aspect of the composition, structure, or operation of the committees. In fact, as the record demonstrates, the Respondent can change or abolish any of the committees at will. In our view, all of these factors, taken together, establish that the Respondent dominated the administration of the committees.

Further, the Respondent dominated the formation of the Freon Committee. Management representatives made the decision to reorganize the old Freon safety committee, made plans for structuring the new safety committee, and called the organizational meeting to establish the new committee. Management representatives determined who would serve on the committee by inviting certain unit employees to attend the organizational meeting. Finally, management representatives chaired the meeting and, along with participating employees, created the new safety committee and determined its structure and purpose. Thus, the Respondent had substantial control over all aspects of the formation of the Freon Safety Committee.

3. The 8(a)(5) issues

In 1989, the Respondent began to hold quarterly all-day safety conferences. The stated objective of the conferences was to “increase personal commitment, responsibility, and acceptance of safety as our #1 concern.” In 1990, the unit manager of Environmental Resources held a separate conference called “Safety Pause” for similar reasons. Each conference was structured according to PEP methods. After supervisors and managers made opening remarks, the conferees broke into small groups to discuss specific topics such as communication of safety information. They were told that bargainable matters could not be dealt with, that the conference was not “a union issue.” In the small groups, employees shared their experiences on the topic, stated what they thought the ideal situation would be, and discussed what barriers there were to reaching the ideal, how to overcome the barriers, and how to implement improvements. The conferees were told that if comments or questions came up concerning bargainable issues or items that required more information, these matters should be placed in a “bucket list” to indicate that they could not be considered at the conference. The resource or facilitator for each group was responsible for ensuring that bargainable issues were not discussed. In each small group, conferees expressed their ideas and their comments were recorded. The comments and suggestions from the conference were forwarded to the Central Safety and Occupational Health Committee for consideration.

The General Counsel maintains that the Respondent’s conduct of these conferences amounts to bypassing the Union and dealing directly with the employees on mandatory subjects of bargaining in violation of Section 8(a)(5).\(^{16}\) The judge rejected the General Counsel’s argument, finding that the conferences constituted permissible communication between an employer and its employees. We agree with the judge’s conclusion.

In our view, the conferences amounted to brainstorming sessions where employees were encouraged to talk about their experiences with certain safety issues and to develop ideas and suggestions. The Respondent did not charge the conference with the task of deciding on proposals for improved safety conditions. As discussed above, this style of brainstorming does not constitute “dealing with.” Because there is no “dealing,” there can be no “direct dealing” with the employees in violation of Section 8(a)(5).

We also note that the Respondent mentioned the Union at each conference and told the employees that the conference was not a union matter. It provided a mechanism for seeking to keep bargainable issues out of the discussion. The Respondent made clear to the employees that it recognized the Union’s role and that bargainable issues should be handled only by the Union. Although the Respondent thus sought to keep bargainable issues out of the discussion, we are not wholly persuaded that it succeeded in doing so. The subject matter of such discussions was safety in the workplace, and that subject is a mandatory subject of bargaining. However, for the reasons discussed above, we conclude that the Respondent was not directly deal-

\(^{16}\)The General Counsel does not contend that the Respondent violated Sec. 8(a)(1) by soliciting grievances. Accordingly, we express no view on that issue.
ing with its employees. In addition, the good-faith effort to separate out bargainable issues and the assurances that the Union had the exclusive role as to such issues are further indications that there was no undermining of the Union’s status as the exclusive representative.

Although the above discussion concerning safety conferences involves only Section 8(a)(5), the safety conferences are a good example of how an employer can involve employees in important matters such as plant safety, without running afoul of Section 8(a)(2) or Section 8(a)(5) of the Act. Nothing in the Act prevents an employer from encouraging its employees to express their ideas and to become more aware of safety problems in their work. In the case of the conferences, the Respondent informed the employees of the Union’s role and sought to prevent the conference from considering matters within the scope of the Union’s duties as the exclusive collective-bargaining representative of its employees. The Respondent sought suggestions and ideas from the employees, but did not structure the conference as a bilateral mechanism to make specific proposals and respond to them.\(^{17}\)

By contrast, in the case of the safety and fitness committees, the Respondent did not take care to separate its activities from those properly within the Union’s authority. On the contrary, some committees dealt with issues which were identical to those dealt with by the Union, and they brought about resolutions that the Union had attempted and failed to achieve. The Antiknocks Area Safety Committee got a new welding shop for a welder who complained of poor ventilation in the welding shop. The Union’s efforts to resolve the problem had failed and the welder took his complaint to the committee instead. The Fitness Committee developed a recreational area with picnic tables, a volleyball area, a horseshoe pit, a jogging track, and sanitary facilities. The Union had sought similar fitness facilities in negotiations with the Respondent and had failed. Finally, all the safety committees established incentive awards. In the past, the Union had negotiated with the Respondent when employees had wanted better incentive awards for safety. As noted, the Respondent dealt with the committees on these subjects. In sum, the Respondent bypassed the incumbent labor organization in violation of Section 8(a)(5) and dominated other labor organizations in violation of Section 8(a)(2).

**AMENDED CONCLUSIONS OF LAW**

1. Insert the following as Conclusion of Law 3 and renumber the subsequent paragraphs accordingly.

   “3. By unilaterally implementing the proposals of the committees concerning safety awards and fitness facilities without affording the Union an opportunity to bargain, the Company has violated Section 8(a)(5) and (1).”

2. Substitute the following for renumbered Conclusion of Law 4.

   “4. By discriminatorily prohibiting bargaining unit employees from using the electronic mail system for distributing union literature and notices, the Company has violated Section 8(a)(1).”

**ORDER**

The National Labor Relations Board orders that the Respondent, E. I. du Pont de Nemours & Company, Deepwater, New Jersey, its officers, agents, successors, and assigns, shall

1. Cease and desist from

   (a) Dominating the formation and administration of the Freon Central Safety Committee a/k/a Fluorochemicals Central Safety Committee and Fluorochemicals Safety and Health Excellence Committee or any other labor organization.

   (b) Dominating the operation and administration of the following safety and fitness committees or any other labor organization:

   - Antiknocks Area Safety Committee
   - Chambers Works Fitness Committee a/k/a Chambers Works Recreation/Activities Committee
   - Control Unit Safety Committee
   - Jackson Lab Programs and Publicity Committee
   - Physical Distribution Safety Committee a/k/a Environmental Resources Safety Committee
   - Programs and Publicity Committee of the Chambers Works Central Safety and Occupational Health Committee
   - Freon Central Safety Committee

   (c) Dealing with any of these committees or with any reorganization or successor.

   (d) Bypassing the Chemical Workers Association as the exclusive collective-bargaining representative of employees in the appropriate bargaining units.

   (e) Unilaterally implementing the proposals of the committees concerning safety awards and fitness facilities without affording the Union an opportunity to bargain.

\(^{17}\) We note the judge’s finding that in announcing the safety conferences, the Respondent informed employees that 30 volunteers would attend the first conference but that all employees would be attending a safety conference in the near future. Thus, there is no evidence that the safety conferences were representational in nature. In that regard, here the Employer’s conferences, although more limited in scope and time, were comparable to the “committees of the whole” established by the employer in *General Foods Corp.*, 231 NLRB 1232 (1971).
(f) Discriminatorily prohibiting unit employees from using the electronic mail system for distributing union literature or notices.

(g) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.
   (a) Completely disestablish the seven committees.
   (b) On request, bargain with the Union concerning plant safety and fitness facilities.
   (c) On request, rescind the safety awards and fitness facilities implemented unilaterally without affording the Union an opportunity to bargain.
   (d) Post at its facilities at Deepwater, New Jersey, copies of the attached notice marked "Appendix." 18 Copies of the notice, on forms provided by the Regional Director for Region 4, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.
   (e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

IT IS FURTHER ORDERED that all allegations contained in the complaint found not to constitute unfair labor practices are dismissed.

MEMBER DEVANEY, concurring.

1. Introduction

I join my colleagues in adopting the judge's rulings. 1 This case provides an opportunity to shed further light on the range of employer-employee committee involvement permissible under the Act. I write separately, as I did in Electromation, Inc., 2 in part to supplement and support my colleagues' comments, but also to emphasize that the conduct the majority finds unlawful is also unlawful under my narrower and more historically focused perspective. Like the judge and the majority, I reject the Respondent's characterization of the six area safety committees and the Fitness Committee at DuPont's Deepwater plant as management tools the operation of which was outside the Union's scope and to which the employee members brought only their individual interests and concerns rather than those of their fellow employees. I find ample basis in the record for Judge Ladwig's conclusion that the Parties-in-Interest were statutory labor organizations and that the Respondent's conduct with respect to them violated Section 8(a)(2) and Section 8(a)(5). I further find that the Respondent attempted to use the committees to freeze the Union out of areas in which it had a vital and legally recognized interest: employee health and safety 3 (including onsite facilities for fitness), bonuses, and employee grievances over safety. As a practical matter, the Respondent's conduct as to the safety and fitness committees comes close to a textbook example of an employer's manipulation of employee committees to weaken and undermine the employees' freely chosen exclusive bargaining agent. By contrast, I find, as do my colleagues, that the "safety conference" or "safety pause" meetings did not violate the Act; employees were encouraged there to raise their own issues and propose their own ideas while "bargainable" issues were tabled. The Respondent's different conduct in the two employee participation settings provides a

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18 If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

1 I also agree with my colleagues' correction of the judge's inadvertent failures to include a remedy for the domination of the formation of the Freon Committee and to address the allegations that the Respondent violated Sec. 8(a)(5) by implementing proposals generated by the committees without bargaining with the Union. Further, I agree with the majority's correction of the judge's overbroad remedy with respect to the use of the electronic mail system for union notices.

I do not agree, however, with the discussion by Members Oviatt and Member Raudabaugh of "the limits of 'dealing with'" in sec. 1 of the majority opinion. See fn. 10, below.

2 309 NLRB 990 (1992) (Devaney, concurring).
useful contrast that helps to outline the boundaries of Section 8(a)(2) more clearly.

In *Electromation* I expressed the view that Section 8(a)(2), read together with the definition of “labor organization” in Section 2(5), does not proscribe broad areas of employer-employee communication; that Congress targeted certain well-defined evils in enacting Section 8(a)(2); and that the Board should focus enforcement of the provision on the specific evils Congress had targeted. In this case, as in *Electromation*, amici curiae have argued that a conclusion that DuPont’s handling of its safety and fitness committees violated Section 8(a)(2) depends on an “indiscriminate” application of the prohibition against employer-dominated unions that would “thwart the myriad efforts being undertaken by labor unions, employee groups, and employers to develop human resource policies to meet the challenges of the 21st Century.”

In my view, such characterizations are not a fair description of the Board’s holding. As in *Electromation*, the record here demonstrates that where the Board has found an 8(a)(2) violation, it has been faced with employer abuse of an employee committee to the detriment of the Section 7 right to choose the bargaining representative; where, however, the record indicates that DuPont established an employee organization that acknowledges that the choice of the bargaining agent resides solely with the employees, the Board has dismissed the complaint allegations.

I bring the same approach outlined in my concurring opinion in *Electromation* to the facts here. I read Section 8(a)(2)’s legislative and precedential history as leaving employers significant freedom, through interaction with groups of more than one and fewer than all employees, to involve rank-and-file workers in matters formerly seen as management concerns, to call on employees’ full ability and know-how, and to increase their enthusiasm for and commitment to quality and productivity through implementing recent developments in worker effectiveness training and empowerment, whether these developments occur through hierarchical employer-structured entities or through “democratization” of the workplace, whereby employees become, in a sense, their own supervisors and managers. In *Electromation*, I noted that the early history of the Act, although vigorously condemning sham unions that prevented employees from exercising their right to choose their own bargaining representative, was silent as to organizations through which employees provide input on “problems of mutual interest” such as “safety; increased efficiency and production; conservation of supplies, materials and equipment; encouragement of ingenuity and initiative.” On the other hand, I acknowledged then, and I do so here, that employer-controlled “sham unions,” which Congress intended to outlaw in passing Section 8(a)(2), are by no means extinct, although they may now appear in guises quite different than those of 1935. Thus, although Section 8(a)(2) is, in my view, narrower in application than some commentators have argued, it does prohibit a particular type of employer conduct.

In analyzing the issues presented by the facts of this case, which contains both lawful and unlawful conduct, my starting point and assumptions are somewhat different from my colleagues. My reading of the briefs here and in *Electromation* indicates that, for many amici, concern over Section 8(a)(2)’s possible interference with the implementation of employee involvement programs centers on the legal status of employee committees, such as the safety committees and the fitness committee here, that are the creation and tool of management. Accordingly, my focus will be on employee groups that are established and dominated by the employer and on the fundamental choices Section 8(a)(2) requires employers to make with respect to such groups. I find no statutory bar to such committees or to employer domination of them, as long as the committees are not labor organizations or, relevantly, “employee representation committee[s] or plan[s] in which employees participate and which exist[] for the purpose . . . of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.” As in *Electromation*, then, I answer questions concerning the effect of Section 8(a)(2) on employee involvement programs as follows: Section 8(a)(2) should not create obstacles for employers wishing to implement such plans—as long as such programs do not impair employees’ free choice of a bargaining representative. Section 8(a)(2) does not ban agenda-setting, establishing or dissolving committees, or mixing managers and statutory employees on a committee. It does, however, outlaw manipulating such committees so that they appear to be agents and representatives of the employees when in fact they are not. Thus, an employer using employee committees lawfully will have chosen to keep the committees in proper perspective as management tools. It will not accord silent, partial, and revocable recognition to a committee by bargaining (or

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I recognize the importance of the concerns expressed by management spokespersons and the negative effects of a perception that, with respect to employee participation programs, employers’ hands are tied under Sec. 8(a)(2) and the Board’s interpretation of it. The reality, however, should allay such concerns: 8(a)(2) complaints constitute a very small percentage of the General Counsel’s caseload. Between fiscal year 1990 and fiscal year 1992, the last year for which complete figures are available, complaints alleging violations of Sec. 8(a)(2) constituted approximately 0.21 percent of the total number of complaints issued by the Office of the General Counsel. In fact, out of over 9300 complaints issued in that 3-year period, only 20 involved allegations of Sec. 8(a)(2).

("dealing") with it and it will not usurp the employees' exclusive right to choose a representative by such bargaining or dealing. In this case, I find that the Respondent did manipulate the safety and fitness committees to inhibit employees' free choice. The Respondent undermined the freely chosen bargaining agent by establishing, tacitly recognizing, and bargaining over mandatory subjects with employer-controlled employee representation committees. Thus, I find that the Respondent's domination of the operation and administration of the safety and fitness committees and the bypassing of the Union violated Section 8(a)(2) and (5).

The lesson to be gleaned from the violations found and the allegations dismissed here is simply that, under current law and precedent, employers cannot establish and use employee committees with the flexibility, discretion, and authority inherent in the creation and use of a management tool and lead employees to believe, either directly or indirectly, that the "management tool" is the employees' tool.

2. Factual background

The DuPont Deepwater plant employs over 3500 employees and produces over 750 chemical products. The Union, the membership of which is limited to Deepwater employees, has represented clericals and production and maintenance employees at the facility for 50 years.

Until 1987, the Deepwater plant's safety program was administered through area safety committees composed solely of managerial personnel. The committees planned monthly safety meetings in the various areas of the plant, and exercised the authority to award compensation such as cash, tools, shirts, and the like to employees as an incentive to safe work habits. Employees occasionally expressed dissatisfaction with the small value of the incentives; the Union successfully negotiated increases in the value of the items several times.

In 1984, the Respondent instituted a personal effectiveness program for employees (PEP), which encouraged decision-making through consensus. The Respondent used PEP as its organizing principle when, in 1987, it revamped its safety committees to include unit employees as members. PEP provides a parliamentary structure for meetings and goal-setting in which every group has a "facilitator" (chairperson) and a "resource" (adviser) who, between them, exert extensive control over the group's agenda and the conduct of the meetings and one of whom is invariably a member of management. PEP requires that all group members, including the managerial members, agree on any decision made by the group, whether the decision be to clarify policy, to propose a new way of handling a problem, or to decide on a problem-solving strategy. Thus, as the judge found, no employee proposals could leave the committee without the assent of the management members.

The management/employee area safety committees operate independently of each other, but share some features: managers serve on each committee; management decides which employees who volunteer for the committees would serve on them; the continuation of the safety committees is dependent on management, which can abolish them at any time; employee members serve on the committees for indefinite periods, without rotations; and management provides all funds for the activities of the committees. The Respondent also provides meeting places and equipment, pays the employee members for their time, and has authorized the committees to use electronic mail to communicate with employees.7

The committees' activities differ, despite their common characteristics. For example, the Central Safety Programs Committees has developed monthly safety information programs and established safety awards. The Antiknocks Safety Committee has urged unit employees to inform committee members of their safety problems and touted the committee as "the fastest way to get things fixed"; the committee took employee complaints and concerns to management for correction. The Antiknocks Committee is one of the most successful and efficient of the employee committees. It has arranged for improvements in the procedure for handling welders' protective clothing and secured a new, better-ventilated welding shop for a welder after the Respondent denied the Union's repeated attempts to get the welder's complaints about the ventilation in the shop corrected. The committee also, often on information from unit employees, got potholes repaired, personnel assigned to clean air hoses, and new procedures in the handling of safety garments put into place, to name only a few of the goals it achieved. When it learned of or observed safety hazards, the Antiknocks Committee tried to correct some situations itself; when it could not, a member presented the problem to the supervisor or manager in the area on the committee's behalf. If the problem was not resolved there, the committee would pursue it to higher levels of plant management.

All of the safety committees decided on safety awards to employees in recognition of or to encourage safe work habits. These awards ranged in value from the nugatory (e.g., sunglass holders) to the substantial (e.g., breakfasts, dinner dances, evenings on the town, corduroy jackets, cash awards of $50 and $25, and

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6 This factual background is intended only to provide some of the key facts on which my analysis is based. I fully agree with the judge's findings of fact, and I have not attempted to present an exhaustive picture here.

7 Deepwater employees were forbidden to use electronic mail for union business or messages.
$100 savings bonds). Employees on the committees pressed for larger awards for their fellow employees; the committees also sought higher awards from management. During the operation of the committees, the Respondent never bargained with the Union over the amounts of the safety awards.

In 1989, in the course of contract negotiations, the Union proposed that a joint labor-management health and safety committee be established to discuss and negotiate such issues and to investigate and attempt to prevent accidents. The Union proposed 21 items concerned with employee safety. The Respondent “commended the Union for its interest in the subject,” but told the Union that discussions on health and safety should take place outside contract bargaining. When the Union insisted that bargaining on health and safety issues was part of contract negotiations, the Respondent rejected the Union’s proposals, characterizing them as “not . . . additive to our business.” The Respondent offered no counterproposal on the subject of a safety committee.

Management initiated the formation of the Fitness Committee in late 1989 or early 1990, with employee members chosen to represent various areas of the plant. The Respondent admits that the manager in charge told an employee member that the committee sought a “representative” from each area, and the judge credited an employee member’s testimony that he asked why certain employees were on the committee and was told that their presence, regardless of their personal interest in fitness, gave the committee a more representative cross-section of plant employees. The Union was not notified of the committee’s formation. Before the committee was formed, the Union had unsuccessfully proposed the establishment of an employee fitness facility comparable to the one at another DuPont plant. As the judge found, the Respondent rejected the proposal on the grounds that it was not interested. In a memo dated September 26, 1989, a management assistant recommended that the employee activities budget be increased $10,000 for employee events. The memo stated that the Respondent’s practice of not funding employee teams “just drives employees to the Union for assistance—I would like to change that.”

In January 1989 the Respondent approved the Fitness Committee’s proposal for outdoor facilities at a former parking lot and budgeted money for a jogging track. The minutes of the committee’s May 11, 1989 meeting indicates that the Respondent rejected an employee member’s proposal for tennis courts as too expensive. An employee member pressed for tennis courts through the electronic mail system in a June 1989 message sent to plant managers and other management personnel and committee members. In the summer of 1989, the Respondent added picnic tables and bathrooms. When employee committee members proposed a horseshoe pit and a volleyball court, the Respondent implemented both proposals. In January 1990 employee member Ebert proposed the addition of an outdoor pavilion and two tennis courts to the committee. The committee agreed and a manager on the committee suggested that Ebert make a presentation to plant management for funding. Ebert made the proposal, which was denied on the grounds that the budget contained no funds for the projects.

3. Did the Respondent dominate the administration of Deepwater’s six safety committees and the fitness committee?

I agree with my colleagues and the judge that the Respondent dominated the operation of the seven committees. The Respondent started the committees; the suggestions, proposals, and actions of the committees depended on the approval of the management members; the implementation of such proposals and plans depended entirely on the Respondent’s will; the Respondent maintained complete control over the continued existence of the committees, and, in some cases, set the agendas for the committees. DuPont’s portrait at the hearing and in its brief of committees formed solely as management tools to solve narrow management problems, some of which, in fact, had grown out of previously all-management structures virtually concedes this “domination.” Further, although I am open to persuasion by the right set of facts, I find it difficult to conceive of a situation where the very existence of an employee committee depends on the will of the employer that would not merit a finding that the employer “dominated” the committee.

I hasten to add, however, that an employer’s domination of the administration of an employee committee is not, taken alone, an unfair labor practice. In my view, the concerns voiced by amici about the effect of Section 8(a)(2) on legitimate employee participation plans relate almost entirely to committees whose usefulness depends on a type of employer domination, in the sense that an employer brings employees together

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8 Even under the Respondent’s cited standard, a finding of domination is virtually inescapable here. The Respondent cites Hertzka & Knowles v. NLRB, 503 F.2d 625, 630 (9th Cir. 1974): “the question is whether the organization exists as the result of a choice freely made by the employees, in their own interests and without regard to the desires of their employer . . . or whether the employees . . . supported the organization . . . because they knew their employer desired it . . . .” In this case there is no question that the organizations did not exist as the result of the employees’ choice. The organization which the employees had empowered to speak for them on the issues of safety and health was the Union. For better or worse, the fact that management can pick the employees who participate, countermand any decision of a committee, and dissolve the employee committee at will implies, as a necessary corollary, that employees are not exercising free choice over the operation of the committee.
to work on and, if possible, to solve, management-designated problems, but retains the flexibility to dissolve the committee when its effectiveness has ended, to start it or another up when needed again, to set its agenda, and to include managers and supervisors on it if these factors would increase the committee’s effectiveness.

Further, the success of many types of employee involvement programs depends on persuading employees—or freeing them—to turn their full attention and intelligence to the solution of management problems; to forget, in a sense, for the duration of the committee’s work that they have their own separate interests in the workplace and to do the employer’s work. Employers “dominate” employees every time a supervisor or manager issues work instructions to statutory employees; employers “dominate” groups of employees every time a group is instructed to perform a task.

Without more, I see no unlawful behavior or threat to employees’ Section 7 rights when employers form employee committees with management members, provide such committees with funds, time, space, and compensation, assign the committees agendas, and dissolve them at will. Such committees need not interfere with the employees’ exclusive right to choose a representative—if they do not pretend to represent the interests of employees as distinct from those of the employer. Under the statute, an employer violates Section 8(a)(2) by “dominating” only one of the many types of employee groupings or committees that employers have found valuable: a labor organization dealing with the employer with respect to conditions of employment. In my view, the crucial issue in every case where an employee committee is alleged to violate Section 8(a)(2) is whether the employer has usurped the exclusive right of the employees to choose their own representative to deal with the employer with respect to conditions of work. As I noted in Electromation,9 I would interpret evidence that an employer represented a dominated committee to employees as its exclusive agent and made it clear that employees who served on it did so to further the employer’s managerial goals as indications that the committee in question was not a labor organization dealing with the employer over conditions of employment.

I find the contrast between the operation of the six safety committees and the “safety conferences” and “safety pauses” instructive. The latter two types of meetings were, like the seven committees discussed above, structured according to the PEP principles and employees were divided into small groups to work on specific topics relating to safety. The employees were informed that bargainable issues could not be discussed, and when bargainable issues arose, they were placed on a “bucket list” and were not discussed during the meetings. I see little distinction, with respect to the issue of employer domination, between the safety committees discussed above and the safety conferences here. In all cases, the Respondent created the employee groups and included supervisors in them. The safety conferences and pauses are, however, quite different from the safety committees in a crucial respect: the Respondent did not establish the safety conferences and pauses as representatives of the employees and did not bargain or “deal with” them over mandatory subjects of bargaining; in fact, the Respondent took pains to inform the employees who participated that the conferences were not a substitute for union representation and that bargainable issues could not be discussed. Thus, the status of the safety conference and pauses remained clear: they were management tools for solving managerial problems, and there was no effort to make them appear to be acting on behalf of the employees. Here the Respondent made the right choices. It used “employee committees”—the safety conferences and pauses—that were management tools as management tools, without tacitly accordign them the status of bargaining agents in their areas of concern. Thus, there was no usurpation of the employees’ exclusive right to designate their own representative.

4. Did the Respondent “deal with” the dominated employee committees over mandatory subjects of bargaining?

In my view, it is unnecessary to reach the question whether DuPont “deal with” the dominated committees, inasmuch as the record clearly demonstrates that the Respondent bargained with those entities.10 As the

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9 See 309 NLRB at 994 fn. 20 (Devaney, concurring).

10 I am uncomfortable with the majority’s discussion of the meaning of “dealing with,” especially here, where the higher level of involvement, bargaining, is so clearly present. In my view, bargaining is a bilateral process, but “dealing with” is not necessarily bilateral, as employers can use an ostensibly bilateral process as a strictly unilateral one by appearing to consider employee proposals without actually considering them. I agree that a “suggestion box,” in which employees acting as individuals, with or without managers, come up with a range of suggestions and recommendations for management to consider would not be bargaining or “dealing with.” Similarly, a brainstorming group of employees who work together, with or without managers, to come up with suggestions and recommendations for management, is not “dealing with.” In both situations, bargaining or “dealing with” is not present in part because the employees have no expectation other than that management will consider their suggestions and they understand that they are acting on management’s behalf in participating. But I disagree with the majority when it characterizes a proposal and its immediate acceptance as not constituting bargaining. In my view, that two-step process can indeed constitute bargaining, and under some circumstances some might say it is bargaining at its most successful and efficient.

Rather than attempting to outline the differences between “dealing with” and “bargaining” in the abstract, I find it instructive to return to the legislative history. After hearing the testimony of witnesses in the 1934 and 1935 Wagner Act hearings before the Senate Labor and Education Committee that the “bargaining” going on between
judge found, for example, employees on each of the safety committees sought and obtained safety awards of greater value for employees who satisfied certain goals. Further, as in Electromation, supra, the safety committees resolved employee grievances respecting safety, even taking some grievances to the plant manager level and above. As described above, the success of the Antiknocks Committee in alleviating the welder’s difficulties with the ventilation in his shop by persuading the Respondent to move the shop; the Antiknocks Committee’s self-advertisement as the quickest way to get safety and health complaints resolved; the Respondent’s provision of a fitness facility through working with the Fitness Committee; and the presentation to higher management of proposals regarding a tennis court and outdoor pavilion by a unit employee committee member constitute bargaining over mandatory subjects of bargaining. Other committees, such as the Central Safety Committee and Jackson Lab Committees, did not handle grievances or solve employee-generated problems. These committees were generally responsible for establishing and disseminating safety programs. If these committees had confined their activities to such programs, I do not believe that they would have violated Section 8(a)(2). However, these committees also established safety incentives and awards in connection with these programs and distributed them to employees. In some cases, bargaining went on within the committees as employee members sought larger awards for their fellow employees. This common thread of bargaining over employee compensation runs through each of the committees. As the Union had previously bargained over such matters, the Respondent’s recognition of the committees as the employees’ bargaining agent with respect to safety bonuses is especially egregious, in that it weakened the selected representative both in fact and in the eyes of the employees and substituted the employer-controlled committee for that elected by the employees.

5. Are the Dupont “safety” and “fitness” committees “employee representation committees or plans” as Congress understood those terms in 1935?

When an employer-sponsored group is at issue, the “employee representation committee or plan” is the applicable category in Section 2(5)’s definition of a labor organization. In my view, as I discussed more extensively in Electromation, supra, the statutory formula “employee representation committee or plan” was, for Congress in 1935, a term of art describing a “sham” union through which employers usurped employees’ exclusive power to choose a bargaining representative by establishing a “representative” for the employees and dealing with that “representative.” In this case, I find that the six safety committees and the fitness committee are such “employee representation committee[s] or plan[s].” In my view, three key findings by the judge, all of which I find well supported by the record, mandate such a finding. First, the committees were clearly—and improperly—vested by management with the authority to act as agents for the employees.11 Second, DuPont caused each committee to become a structure for negotiating employee compensation in the form of safety bonuses, and in the case of some of the committees, other benefits that were clearly mandatory subjects of bargaining, with the purpose and effect of excluding and weakening the Union, which had previously negotiated these matters. Third, DuPont further usurped the employees’ exclusive right to a loyal bargaining agent by salting the committees with members from managerial or supervisory ranks with the power to veto any employee suggestion or proposal. Thus, Dupont was on both sides of the bargaining table: instead of receiving proposals from a bargaining agent strictly loyal to the employees, Dupont received proposals “pre-negotiated” by the managerial committee members.12 Finally, although I do not consider this factor essential to a finding of an 8(a)(2) violation, I find the clear showing of union animus and the deliberate bypassing and undercutting of the Union here to clinch the matter: the six safety committees and the fitness committees were “employee representation committees or plans” like those condemned in 1935, albeit more limited in subject matter.

Thus, I agree with my colleagues that the Respondent violated Section 8(a)(2) and (5) in its handling of the seven committees, and that it did not violate the Act in its handling of the safety conferences or safety pauses. In my view, the difference between the two

11 I would require that an employee committee act in a representative capacity in order to be found a statutory labor organization.

12 Thus, although I formulate the issue in different terms, I agree with the majority that, with respect to a finding that an employer bargained with or “dealt with” a committee, it does not matter in the final analysis whether the bargaining or “deal” occurred between employees and managers on the committee or between employees and managers outside the committee. Both situations usurp employees’ right to choose a bargaining representative that is exclusive and loyal. In circumstances where employees bargain or “deal” with manager/committee members with the right to alter or veto their proposals, the employer has put itself on both sides of the bargaining table and the committee is not the loyal representative of employees. Where employee committees bargain or “deal with” managers on the staff level, the employer has tacitly recognized a bargaining agent not chosen by the employees. As in Electromation (supra; Devaney, concurring), both forms of usurpation occurred here.
sets of circumstances is that with respect to the safety and fitness committees, the Respondent tried to have it both ways: it tried simultaneously to maintain control, discretion, and flexibility in its use of the committees and also to create the illusion of an employee representative that undercut and weakened the chosen representative. Although I believe that Section 8(a)(2) provides employers with somewhat greater scope for utilizing employee committees than do my colleagues in the majority, the Respondent’s conduct here is plainly unlawful under my practical and historically derived standard.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT dominate the formation or administration of the Freon Central Safety Committee a/k/a Fluorochemicals Central Safety Committee and Fluorochemicals Safety and Health Excellence Committee or any other labor organizations.

WE WILL NOT dominate the operation and administration of the following committees or any other labor organizations:

- Antiknocks Area Safety Committee
- Chambers Works Fitness Committee a/k/a Chambers Works Recreation/Activities Committee
- Control Unit Safety Committee
- Jackson Lab Programs and Publicity Committee
- Physical Distribution Safety Committee a/k/a Environmental Resources Safety Committee
- Programs and Publicity Committee of the Chambers Works Central Safety and Occupational Health Committee
- Freon Central Safety Committee

WE WILL NOT deal with these committees or their successors.

WE WILL NOT bypass the Chemical Workers Association as your bargaining agent.

WE WILL NOT unilaterally implement these committees’ proposals concerning safety awards and fitness facilities without affording the Union an opportunity to bargain.

WE WILL NOT discriminatorily forbid you to use the electronic mail system to distribute union literature or notices.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL completely disestablish the seven committees.

WE WILL bargain on request with the Union concerning plant safety and fitness facilities.

WE WILL, on request, rescind the safety awards and fitness facilities implemented unilaterally without affording the Union an opportunity to bargain.

E. I. DU PONT DE NEMOURS & COMPANY

Scott C. Thompson and Richard Wainstein, Esqs., for the General Counsel.
Hastings S. Trigg Jr., Esq., of Wilmington, Delaware, for the Respondent.
Theodore M. Lieverman, Esq., of Haddonfield, New Jersey, for the Union.

DECISION

STATEMENT OF THE CASE

MARION C. LADWIG, Administrative Law Judge. These consolidated cases were tried in Philadelphia, Pennsylvania, on June 10–14 and 17–20, 1991. The charges were filed March 19, April 2 and 18, and July 20, 1990, and consolidated complaints were issued March 20 and April 22 and 25, 1991 and amended at the trial (Tr. 5–8, 1933).

The Company created (or reorganized) at its Deepwater, New Jersey plant, six safety committees and one fitness committee in the pattern of its quality of work life committees, which are not involved in this proceeding. The basic question is the legality of these seven employer-employee committees.

The General Counsel and the Union contend that the committees are company-dominated labor organizations and that the Company is unlawfully bypassing the Union in dealing with them. The Company denies that the committees deal with it as representatives of the employees, contending that they function “only as a management vehicle to enhance the safety of employees through labor-management communication or to carry out similar management functions.”

The primary issues are (a) whether the Company’s affirmative defenses have merit, (b) whether the safety and fitness committees are labor organizations, and (c) whether the Company, the Respondent:

(1) Dominated the formation of one of the safety committees.
(2) Dominates the administration of all seven committees.
(3) Bypasses the Union by dealing with the committees concerning working conditions.
(4) Discriminatory denies employees’ use of the plant’s electronic mail for union literature and notices.
(5) Bypassed the Union and dealt directly with employees during safety conferences and a “Safety Pause.”
(6) Adjusted employee grievances without affording the Union an opportunity to be present, violating Section 8(a)(1), (2), and (5) of the National Labor Relations Act.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs
filed by the General Counsel, the Company, and the Union, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Company, a corporation, manufactures chemicals at its large Chambers Works chemical plant in Deepwater, New Jersey, where it annually receives goods valued over $50,000 from outside the State. It admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5).

II. ALLEGED UNFAIR LABOR PRACTICES

A. Safety and Fitness Committees

1. Background

a. Prior case

The legality of the Company’s Jackson Lab Design Team was litigated in a prior case before Administrative Law Judge Arline Pacht. The Design Team was one of the quality of work life committees that the Company created in its OE/PEP employee-involvement program. As discussed later, the Company relies in its brief (at 121–128) on allegations in this prior case to support its Jefferson Chemical affirmative defense. It also relies (at 139) on the judge’s conclusion—that employee members of the Design Team “were encouraged and did act in a representative capacity”—in its argument that the safety and fitness committees do not function as representational bodies.

On January 30, 1990, the Board, in the absence of exceptions, adopted Judge Pacht’s findings and conclusions. E. I. du Pont & Co., Case 4–CA–16801, JD–208–89 (G.C. Exh. 2A). The Board ordered the Company to cease and desist from dominating the “formation, operation and administration” of the Jackson Lab Design Team or “any other labor organization” and from “Bypassing the Union.” The Board also ordered the Company to “completely disestablish the Design Team.”

The adopted findings and conclusions in the judge’s December 22, 1989 decision include the following.

Over the Union’s repeated objections, the Company in the spring of 1987 created the Design Team “to function as a problem-solving body . . . to identify and propose solutions to problems in the workplace” and “to initiate changes which would improve [Jackson Lab’s] working environment and increase individual job satisfaction.”

At the time, from the fall of 1985 to July 1987, all 2200 or 2300 bargaining unit employees at the plant were being given a 11-day PEP training course. PEP (Personal Effectiveness Process) is the employee version of MTP (Management Training Process). The Company had begun implementing MTP and OE (Organizational Effectiveness) in August 1984. The objective, in part, was to promote “a lot of [employee] involvement and wide participation throughout the organization.”

The Company “determined the Design Team’s membership by hand-picking” volunteers to serve. The Design Team was “wholly dependent” on the Company for financial support.

Guidelines in the training material contained recommendations for avoiding “‘special problems’ that could be posed when implementing OE/PEP “at unionized sites.” One recommendation was to “Ensure management control,” with “‘authority and responsibility for decision making’ remaining ‘with management, for they are accountable for the results.’” Another was that “‘Any union officer who may be asked to participate will . . . do so as an individual.’”

Two of the other recommendations were to “Assure that all participants will be offering their thoughts as individuals and will be speaking only for themselves” and to “Maximize the number of participating employees . . . to avoid the appearance of permanent ‘representative’ groups.” Yet minutes of Design Team meetings indicated that the voluntary, nonelective employee members “were expected to represent their co-employees in the areas in which they worked.”

The judge concluded that the record in that case provided “ample evidence that the members of the Design Team were encouraged to and did act in a representative capacity” and were urged “to find problems and devise solutions” to be presented to the Jackson Lab director. Also, “apart from [dealing with management by] transmitting formal proposals” to the chief executive officer, “the rank and file members of the Design Team ‘dealt with’ management in the course of their meetings,” because half the Design Team were members of management.

Judge Pacht also concluded: “By exhorting the Team to propose solutions to workplace problems, and by adopting the Team’s proposals before putting them on the bargaining table, [the Company] created and fostered an organization whose purpose and functions competed with those of the Union . . . . Moreover, by giving the Team favored treatment, management signalled to the employees that this rival entity could bring about change more effectively than the designated bargaining agent.”

On December 29, 1989, the plant manager (Works Manager Richard Stewart), acknowledging receipt of the decision, stated in an electronic mail message to all employees (C.P. Exh. 4):

The case only involved the Jackson Lab Design Team, a small group formed to give employees an opportunity to improve their work environment, thereby improving productivity and competitiveness of the Laboratory.

. . . .

We do not believe the decision is well-founded nor is it representative of the way we need to operate a Research Laboratory today. At no time did Chambers Works Management or the Design Team ignore or hinder the bargaining process . . . .

Management feels employees should have input concerning their jobs and the daily operation of the plant. There will be no change in our efforts to encourage and support your active participation in the running of our business here at Chambers Works.
b. Safety program at Chambers Works

For years before the advent of the OE/PEP program, the Company operated its safety program with management committees.

The Chambers Works Central Safety and Occupational Health Committee (Central Safety Committee), the policy-making body on safety matters (R. Exhs. 2, 41; Tr. 45), had a number of subcommittees, including the Programs and Publicity Committee (Central Safety Programs Committee). That subcommittee planned the monthly area safety meetings (Tr. 90, 1822–1823). The Jackson Lab Central Safety Committee (Tr. 604; G.C. Exh. 3B at 4) also had a programs and publicity subcommittee (Jackson Lab Programs Committee). Management personnel served on the various committees and conducted the safety meetings.

Through the years the Company gave employees door prizes, other prizes in safety-meeting drawings and safety contests, and awards for safety milestones. The evidence shows that these gifts included coffee and doughnuts, change purses, coffee mugs, key chains, small tool kits, and T-shirts (Tr. 187–188, 367, 394, 495, 685–686, 1620–1621, 1637; R. Exhs. 19, 48, 49). They also included a $25 savings bond in 1978 (R. Exh. 16) and a $20 gift certificate in 1980 (R. Exh. 17). The evidence does not disclose what other safety awards were (Tr. 188, 367, 394, 1599–1600, 1638–1640).

Area Representative Arthur Maurizio credibly testified (Tr. 367) that jackets had not been given (contrary to Union President William Golt’s recollection, Tr. 495), but are now being given (after the PEP-style safety committees were formed). Former President Leslie Morris credibly testified (Tr. 1637) that “Pizza parties really came into view as a result of the PEP program.” Before then, coffee and doughnuts were given for “small celebrations in the areas when they reached various milestones.” Employee David Muntz vaguely recalled (Tr. 723) that “something like” pizza was given.

At times, when employees complained to the Union that “the safety prizes were becoming insignificant in value, or they were being reduced in value,” the Union would bargain with the Company in regular labor-management executive meetings for “a greater prize for [the employees’] accomplishments.” (Tr. 1626–1627, 1639–1640.) On occasion, awards given by management at the business unit level were discussed by the business unit manager and the Union’s area representative (Tr. 1640–1641).

In 1984, when the employee-involvement program began, the Company gave $400 gift certificates to three winners in a contest on Family Awareness of Unsafe Acts (R. Exh. 47). Between then and the trial, the Company gave some expensive and different kinds of safety awards.

c. Safety and fitness committees formed

Beginning about 1987 the Company created (or reorganized) the following six safety committees and one fitness committee in the pattern of its PEP-style quality of work life committees (Tr. 203–204, 211–214, 217–219, 505–507, 807; R. Exh. 9). All seven of the committees are alleged to be unlawfully dominated labor organizations.

The Antiknocks Area Safety Committee (also called Petchem Area Safety Committee) was created in the summer of June 1987 (R. Exh. 7; Tr. 159–160).

The Central Safety Programs Committee was reorganized in 1988 and again in 1989, becoming a PEP-style committee with 20 to 25 members (G.C. Exh. 5 at 85; Tr. 62, 1458–1459). It had operated unconstitutionally as a management committee until 1984, when it accepted three employees (William McKie, Oscar Mulford, and James Scott) as members (R. Exh. 19; G.C. Exh. 4; Tr. 536–537).

The Chambers Works Fitness Committee (also called Chambers Works Recreation/Activities Committee) was created in December 1988 (G.C. Exh. 3B at 6) or January 1989 (R. Exh. 28; Tr. 1104–1106).

The Control Unit Safety Committee was created in late 1987 (G.C. Exh. 3B at 8) or early 1988 (Tr. 1588).

The Freon Central Safety Committee was created December 5, 1989, to replace committees that had previously existed in the Freon business unit (G.C. Exhs. 3B at 7, 11 at 13–14). It was later renamed Fluorochemicals Central Safety Committee and again renamed Fluorochemicals Safety and Health Excellence Committee (G.C. Exh. 11 at 101, 108). This committee (formed during the 10(b) limitation period discussed below) is alleged to have been unlawfully dominated in its formation as well as in its administration.

The Jackson Lab Programs and Publicity Committee began operating as a PEP-style committee sometime in the same period as the other safety committees. About 1985, when employees first became members, the committee met monthly with a member of management who “oversaw the meetings.” (G.C. Exh. 24; Tr. 605–608, 661–665.)

The Physical Distribution Safety Committee (also called Environmental Resources Safety Committee) was created in March 1989 (G.C. Exh. 3B at 9).

The Monastral Area Safety Committee, created in early 1988 and abandoned in February 1990 when the employee members resigned upon the Union’s request (Tr. 1003–1004, 1939), is not alleged to have been an unlawfully dominated labor organization.

d. Joint labor-management safety committee refused

The Union repeatedly informed the Company, as discussed below, that health and safety at the Chambers Works were its No. 1 priority.

On October 31, 1989, the Union made a health and safety proposal (R. Exh. 22 at 1, item 2) that “The parties will create a joint labor-management health and safety committee,” which would meet regularly and discuss all health and safety issues. The Union also proposed (at 5, item 20) that the committee members would be paid for “all time spent in attending meetings, making inspections . . . and otherwise engaging in legitimate duties for health and safety purposes.”

Explaining the proposal for a joint committee at the negotiations (R. Exh. 50 at 2–3), the Union told the Company:

Health and safety is a mandatory [subject of bargaining]. Most industrial sites that have a union have a joint health and safety committee. . . . This should be the forum where all health and safety [problems] can be aired and potential resolutions and solutions can come out. A joint committee is critical; if in fact Management and the Union are going to work together. A unilateral employer committee is not sufficient. . . . The Union represents the needs of the employees . . . .
Before responding to the Union's proposal for a joint labor-management health and safety committee, the Company (as discussed above) announced to all employees by electronic mail that they did not believe the judge’s decision in the prior case was “well-founded” and that “There will be no change in our efforts to encourage and support your active participation in the running of our business here at Chambers Works.”

In turn, the Union on January 19, 1990, notified its members (G.C. Exh. 38) that “Until the Union and Management can settle this issue, no one should volunteer and no one should continue to serve on any committee or team.”

On March 7, 1990, the Company rejected in writing the Union’s proposals that a joint labor-management health and safety committee be created and that committee members be paid for this committee work (as employee members of the Company’s safety and fitness committees were being paid). The Company’s letter, rejecting these and other union proposals, stated (C.P. Exh. 13):

The Union’s proposals on . . . health and safety . . . are rejected by Management. These proposals in their present format are not viewed as additive to our business.

The Company offered only to supplement the safety committees with discussions on safety—either between Area Safety Manager Homer Turney and the union president (Tr. 520) or between union and management representatives “to continually improve the safety and health environment for all employees” (C.P. Exh. 12 at 2)—but not to replace the safety committees as the Union was seeking.

e. OSHA guidelines for employee involvement

The Company argues in its brief (at 142–143) that the use of its safety committees is entirely consistent with the approach urged by the federal agency charged with overseeing employers, maintenance of safe and healthful work places. In its Safety and Health Program Management Guidelines [R. Exh. 4], the Occupational Safety and Health Administration (OSHA) urges employers to “provide for and encourage employee involvement in the structure and operation” of the employer’s safety and health program. . . . OSHA recognizes these functions can be carried out in a number of organizational contexts including committees or teams. [Emphasis added.]

I note, however, that in making this argument, the Company ignores the relevant sentence in the OSHA guidelines, immediately following the words “in a number of organizational contexts.” As quoted at length nearly 120 pages earlier in the Company's brief (at 26), the OSHA guidelines state in part:

Such functions can be carried out in a number of organizational contexts. Joint labor-management committees are most common. Other means include labor safety committees, safety circle teams, rotational assignment of employees to such functions, and acceptance of employee volunteers for the functions. [Emphasis added.]

Yet, as discussed above, the Company rejected the Union’s proposal for a joint labor-management committee, stating that the proposal, as made, was “not additive to our business.”

f. Complaints of competing parallel structure

After lengthy negotiations with the Union, the Company implemented the OE/PEP employee-involvement program over union objections that “management was in the process of setting up a parallel union on the site, bargaining directly with people in meetings and reaching conclusions on . . . working conditions” (Tr. 1623, 1908).

On December 22, 1988, after the Company began establishing the new safety committees, the Union complained in a letter to the Company (G.C. Exh. 37) about this “obvious” bypassing of the Union. The Union first referred in the letter to its earlier requests that the Company stop implementing the “PEP Team concepts until disposition was made by the General Counsel . . . of the charge of unfair labor practices.” Then, noting that the General Counsel had sustained the Union’s appeal in the Design Team case, the Union requested that “all committees be ordered disbanded”—including the “safety and health committees” [emphasis added]—as a parallel structure (to the Union).

It is undisputed that the Union repeatedly complained orally to the Company about the new committees: that the Company was “taking working people and making them union representatives” and that “the PEP process is nothing but a union-busting tactic” (Tr. 1610–1611).

In a January 12, 1989 letter (G.C. Exh. 15A) the Union, referring to alleged management domination of the “parallel labor organization,” requested the Company to stop implementing “OE, PEP, Design Teams, and any other like programs” until their legality was determined by the NLRB. The Union attached a resolution, signed by 18 members of the union executive board, stating that the “Quality of Work Life Program . . . has as its effect the displacement and undercutting of the [Union] as the duly recognized collective bargaining representative.” It urged the Company to abolish all the programs and urged all bargaining unit employees not to participate in them.

Human Resources Unit Manager Bruce Fitzgerald admitted that he knew by May 1989 that the Union’s position was that the safety and health committees “ought to be disbanded” (Tr. 1888–1889).

It is undisputed that the Union informed the Company early in 1989 that health and safety were the Union’s No. 1 priority (Tr. 460–462). The Company was also aware (Tr. 111) of the Union’s March 1, 1990 letter to all its members in the Specialty Intermediates Area regarding “Resigning Voluntary Committees” (R. Exh. 3). In the letter the Union again stated that health and safety were its No. 1 priority at the facility. It added: “The Federal Government has found that this type of activity by committees set up on a volunteer basis and dominated by Management and given rewards is illegal, they replace your Union with committees which are given that authority by Management.”

On July 2, 1990 (after the Company rejected the Union’s proposal for a joint labor-management health and safety committee), the Union again complained about the safety committee. The complaint, in a letter to the Company (G.C. Exh. 17), stated that the Company was “going behind the
Union’s back to create Company-dominated ‘PEP’ teams to address health and safety issues.’’

### g. Company motivation

As an explanation for staffing the safety and fitness committees with employee volunteers—not following the “most common” practice of having “Joint labor-management committees”—the Company contends in its brief (at 139 fn. 23) that the answer is “Quite simple.” It contends that such volunteers “would be highly motivated and individually committed to bring their individual interests and talents to bear on committee matters.’’

I note, however, that the Company’s own records reflect another explanation—an antiunion motivation.

An interoffice management memorandum dated September 26, 1989 (G.C. Exh. 41 at 71), regarded “Support for Employee Recreational Events—1990” in the Fitness Committee budget. Management Assistant Gerald Ferguson, with a copy to the unit manager, stated in the memorandum:

> I think we should budget some funds in 1990 for the support of employee activities, e.g. softball. . . .

> If we don’t have some type of limited funding system, the alternative is to perpetuate the current practice where some organizations aggressively sponsor their employee teams ([J]ackson[LAB]) and others take a hard line. It seems that this practice just drives employees to the Union for assistance—I would like to change that.

> How’s $10,000 sound? [Emphasis added.]

Thus, the Company was considering a Fitness Committee recreation budget of $10,000 for an antiunion purpose of competing with the Union.

2. **Affirmative defenses**

a. ‘‘Jefferson Chemical’’ defense

The Company contends in its brief (at 121):

Under principles set forth in Jefferson Chemical Co., 200 NLRB 992 (1972), the General Counsel was dutybound to investigate and to litigate all matters encompassed by the broad charge alleging violations of Section 8(a)(2) and 8(a)(5) in [the earlier Design Team case] which was tried in May 1989. His failure to do so requires that any matters which were known, or should have been known, by the General Counsel in May 1989 be dismissed.

The Company points out (at 122–123) that the amended charge in the earlier case alleged that the Company “formed, dominated and assisted employee organizations,” that “by forming, assisting and dominating this organization” it violated Section 8(a)(2), and that “in dealing with other entities” it violated Section 8(a)(5). (Emphasis added.) The Company also points out that the complaint “focused upon one alleged labor organization, namely the Design Team.”

Regarding the six safety committees, however, the consolidated complaint alleges only later conduct occurring since the beginning of the 10(b) limitation periods in September and October 1989.

These limitation periods began September 22, 1989 (6 months before the May 22 date of service of the charges filed May 19, 1990), for Antiknocks Area Safety Committee, Central Safety Programs Committee, Freon Central Safety Committee, and Jackson Lab Programs Committee; October 4, 1989, for the Control Unit Safety Committee; and October 20, 1989, for the Physical Distribution Safety Committee.

Thus, the limitation periods for the six safety committees began months after the trial in the Design Team case on May 2–4, 1989. The allegations that the Company unlawfully dominated the formation of the Freon Central Safety Committee on December 5, 1989, and dominated the administration of all six safety committees since the beginning of the limitation periods could not have been litigated in the earlier proceeding.

Although five of the six safety committees were in existence before the May 1989 trial of the Design Team case, the alleged domination of their administration would be a continuing violation. Appliance Corp., 168 NLRB 742 fn. 2 (1967), enfd. in relevant part 442 F.2d 82 (7th Cir. 1971). The Board held in that case that its “finding of an 8(a)(2) violation is limited to the Respondent’s unlawful domination of, support of, and interference with the administration of the Committee, and does not extend also to Respondent’s conduct in regard to its formation” outside the limitation period. Similarly in Castaways Management, 285 NLRB 954, 956 (1987), enfd. 870 F.2d 1539 (11th Cir. 1989), the Board affirmed violations of Section 8(a)(2) on the basis of “continuing misconduct” within the limitation period.

As specifically held in Alamo Cement Co., 277 NLRB 1031, 1037 (1985), enfd. mem. 810 F.2d 196 (5th Cir. 1987), Jefferson Chemical does not preclude litigating unfair labor practices of a continuing nature that occur in part after the conclusion of the previous case. To hold otherwise “would be granting [the respondent] a license to interfere” with protected employee rights. Of course, Jefferson Chemical could not preclude litigating the allegation that the Company dominated the formation of the Freon Central Safety Committee in December 1989, 7 months after the close of the May 1989 Design Team trial. Great Western Produce, 299 NLRB 1004 fn. 1 (1990) (unlawful unilateral conduct “long after” the earlier trial).

The General Counsel and the Union contend that the Jefferson Chemical principle against piecemeal litigation is not applicable in the circumstances of this case. But even assuming that Jefferson Chemical would be applicable, I find that the principle does not apply to (1) allegations of 8(a)(2) and (5) conduct toward the six safety committees within the limitation periods, months after the Design Team trial in May 1989.

Regarding the Fitness Committee, the General Counsel has alleged that the Company continued to dominate its administration after the close of the May 1989 trial. I find that the Jefferson Chemical principle does not preclude litigation of this conduct. The 10(b) defense relating to the conduct is discussed below.

I deem it unnecessary to rule on the allegation that the Company unlawfully nominated the formation of the Fitness Committee in 1988 (before the trial in May 1989). I do rule on the merits of alleged domination of the formation of the Freon Central Safety Committee in December 1989 (long after the close of that trial). A ruling involving the formation of the Fitness Committee would not affect a remedial order.
b. The 10(b) defense

The Company contends in its brief (at 128–129) that the 8(a)(2) allegations relating to the six safety committees and the Fitness Committee should be dismissed because the underlying charges filed in March and April 1990 were untimely under Section 10(b) of the Act.

Regarding the safety committees, as discussed above, the General Counsel has alleged only conduct occurring since the beginning of the 10(b) 6-month limitation periods in September and October 1989. I therefore reject the contention that the underlying charges were untimely.

Regarding the allegations that the Company unlawfully dominated the administration of the Fitness Committee after the close of the May 2–4, 1989 Design Team trial, I agree with the General Counsel that the underlying charge was timely filed.

As held in A & L Underground, 302 NLRB 467, 468 (1989):

[T]he Board’s long-settled rule [is] that the 10(b) period commences only when a party has clear and unequivocal notice of a violation of the Act. . . . Further, as is the case with the 10(b) defense generally, the burden of showing that the charging party was on clear and unequivocal notice of the violation rests on the respondent.

If the Union had been on notice of the alleged violation, the limitation period for the Fitness Committee would have begun September 22, 1989 (6 months before the March 19 charge was served March 22, 1990). The Company’s interoffice management memoranda dated September 18 and 27, 1989 (5 days after September 22), indicate, however, no company awareness at that time of the Union’s being “informed in any manner concerning the Fitness Committee’s functions and or activities” (G.C. Exhs. 30, 31; Tr. 1079–1082).

The Union’s first knowledge of even the existence of the Fitness Committee came shortly after the committee sent out its September 5, 1989 electronic mail message (G.C. Exh. 34B; Tr. 1133), asking for volunteers to “Bring Your Own Rakes and Shovels” for “our latest undertaking,” making flower beds at the C Corral, a former parking lot (Tr. 482, 1084). The Union had been informed in April 1989 that the company intended to build a track facility and to provide some additional items for recreation in C Corral (G.C. Exh. 40 at 18). Another committee member (Grady Fryberger) was appointed steward on January 30, 1989. His name was inadvertently retained on the stewards directory list (G.C. Exh. 34A), stating that it “has no knowledge of what this committee is” and “requesting immediate information” about it. There is no evidence that the Company provided the information until the following March (G.C. Exhs. 3A and 3B at 6).

I find that the Company has failed to meet its burden to show that the Union was on clear and unequivocal notice of the alleged violation before the Company’s response in March 1990, the same month the Union filed the charge. I therefore reject the Company’s contention that the underlying charge was untimely.

c. Waiver defense

Without citing any applicable authority that waiver is a defense to an 8(a)(2) violation, the Company contends in its brief (at 130–133) that the Union has waived the alleged 8(a)(2) violations. I reject this contention as unfounded.

The Company contends (at 130–131) that the Union waived any objections to the safety committees by failing to specifically request their abolition in the company-union negotiations on October 31, 1989 (when the Union proposed a joint labor-management health and safety committee). It further contends (at 132) that the Union’s “Broadly worded letters objecting to PEP-style committees as ‘illegal’ during the pendency” of the earlier Design Team case and after Judge Pacht’s “resolution of that charge,” should not be regarded as “specific objections to the safety-related committees.” In making these contentions the Company overlooks the Union’s written December 22, 1988 request, discussed above, that the Company disband the “safety and health committees.”

The Company also contends (at 131–132) that it “is clear the [Union] has acceded to, and been involved in, the very system it now objects to in the Antiknocks (Petchem) Area and other units/areas with safety-related committees.” It contends that Leslie Morris (the Union’s president in 1987, Tr. 1615) “expressly agreed” to the formation of the Antiknocks Area Safety Committee, which would include bargaining unit personnel. In explanation, the Company asserts that Morris had no objection if the committee “merely [sought] input from the bargaining unit people related to how to better perform in the safety area.”

Again, as in its above argument about OSHA guidelines (ignoring the relevant sentence, “Joint labor-management committees are most common”), the Company omits and ignores a relevant portion of Morris’ testimony. Over 70 pages earlier in its brief (at 58) the Company did include the relevant portion, as follows (Tr. 1617):

We told them that as long as they did not infringe on any of the bargaining rights of the collective bargaining agreement, that if they were merely seeking input from the bargaining unit people relative to how to better perform in the safety arena, we had no objections. [Emphasis added.]

The Company also contends (at 131) that union stewards ‘actively participated as members’ of the Antiknocks Area Safety Committee ‘from 1987 forward.’ It is true that four union stewards (Donald Hymer, Philip Muldoon, David Muntz, and Wayne Serfass) volunteered to be members in 1987 when the Company established the committee (Tr. 165, 171–172, 696). The Company admits, however, that stewards served on the committee only as individual employees and not as representative of the bargaining unit.

Three of these stewards had left the committee by early 1990 (Tr. 170–171, 328–330). On March 26, 1990, the fourth one (Muntz) was terminated as a union steward “Because I wouldn’t get off the safety committee” (Tr. 700, 730; R. Exh. 40 at 18). Another committee member (Grady Fryberger) was appointed steward on January 30, 1989. He was not, however, recognized as a steward after May 15, 1989. His name was inadvertently retained on the stewards,
list until he was removed formally on September 19, 1990 (Tr. 155, 328, 387–388; R. Exh. 40 at 1, 21).

The authorized 110 stewards for the production and maintenance unit and 20 for the clerical unit (both bargaining units represented by the Union) have only limited contractual authority and are not authorized to represent the Union on any of the safety committees. The stewards are contractually authorized to present employee complaints and demands to foremen. They are appointed by the elected area representatives to assist the representatives, whose functions are to ‘‘police the contract’’ and act on the Union’s behalf in grievance meetings and negotiations with the Company. (Tr. 280–281, 477–478, 501, 518–519; R. Exhs. 13 at 14–16, 14 at 15–17; C.P. Exh. 8 at 10.)

The Company further contends (at 132) that two area representatives (James Shields and Fred Clements) ‘‘knew of both the composition and the activities of the Control Unit Safety Committee since early 1988,’’ yet the Union ‘‘permitted it to function without objection.’’ In making this additional waiver contention the Company again overlooks the Union’s December 22, 1988 request that the Company disband all the safety committees.

3. Company-dominated labor organizations

a. Overview

All six safety committees and the fitness committee share the following attributes.

1. The Company—not the employees—initiated the committees. Employees in both the production and maintenance and the clerical bargaining units were already represented by the Union, which was seeking a joint labor-management safety committee.

2. The Company decides which employees to invite, from what working groups or areas and, if the number of volunteers exceeds the desired number, it selects the volunteers to serve on the committees (Tr. 126–128, 796, 1675–1676).

3. Members of management serve on all seven committees (G.C. Exh. 36).

4. These PEP-style committees operate at the will of the Company, who may modify or abolish them at any time.

5. The Company permits the electronic mail to be used to distribute committee literature and notices, but prohibits employees from using it to distribute any union literature or notices.

6. Employees serve on the committees for indefinite periods of time, without any regular rotation (Tr. 607; G.C. Exh. 7 at 135).

7. Employee members receive their regular pay for the time spent in attending meetings and performing committee duties (G.C. Exh. 36; Tr. 693).

8. The Company provides meeting places, equipment, and supplies and pays all expenses of the committees (G.C. Exh. 36).

Section 8(a)(2) of the Act provides:

It shall be an unfair labor practice for an employer—

(2) to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: Provided, That subject to rules and regulations made and published by the Board pursuant to section 6, an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay . . . . [Emphasis added.]

A ‘‘labor organization’’ is defined in Section 2(5) as follows:

(5) The term ‘‘labor organization’’ means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work. [Emphasis added.]

In denying that the safety and fitness committees are statutory ‘‘labor organizations,’’ the Company contends in its brief (at 134) that ‘‘They function only as a management vehicle to enhance the safety of employees through labor-management communications or to carry out similar management functions.’’ Thus, in effect, the Company is admitting that the committees, purportedly functioning only as ‘‘a management vehicle,’’ are under its control.

In view of this position and the persuasive evidence of actual company domination of the formation of one committee and the administration of all seven committees, I find that if the employer-employee committees are labor organizations, they are company-dominated labor organizations. NLRB v. Scott & Fetzer Co., 691 F.2d 288, 291 (6th Cir. 1982). In that case the court stated:

We think there is little question that if [the employer-employee committee] is a ‘‘labor organization’’ under section 2(5) of the Act, the Committee was dominated by the Company. It was expressly mandated by the Company, and the Company controlled the composition and its meetings. Therefore, we think it follows that if the Committee was in fact a labor organization, the Company was guilty of a violation of section 8(a)(2).

I first consider the evidence of domination and then the evidence concerning the status of the committees as labor organizations.

b. Domination

(1) Formation of Freon Central Safety Committee

The evidence shows that the Company created the Freon Central Safety Committee, exercising control over its structure and purpose.

On November 29, 1989, David Moffett, a Freon area manager, sent a memorandum to 9 bargaining unit employees and to 12 members of management, ‘‘exempt’’ personnel, whether titled consultant, coordinator, director, management assistant, manager, or supervisor (G.C. Exhs. 1q, 3B at 7, 36 at 8; Tr. 83, 1696). In the absence of any objection, I receive in evidence (as R. Exh. 51) the Company’s September 26, 1991 posttrial cover letter and the attached partial list of its supervisors and agents.

In the memorandum (G.C. Exh. 11 at 3) Moffett invited the individuals to a December 5, 1989 meeting ‘‘designed to
define the Freon Area’s safety process for 1990’ and stated: “You were selected to participate based on your demonstrated interest in the continuous improvement of the Freon Area safety performance... Please contact [one of two individuals] if you cannot attend this meeting.” Moffett admitted (Tr. 1662–1663) selecting the 21 employees and members of management.

Before the December 5 meeting, as discussed below, Moffett and others met and made plans for structuring a safety committee for the Freon business unit (Tr. 1700–1701; G.C. Exh. 11 at 23).

On December 5, 1989, when all 9 employee “volunteers” and 9 of the 12 management members attended an all-day meeting at a nearby hotel, the Company “established” a new committee (G.C. Exhs. 3B at 7, 11 at 4). On December 11 Area Manager Mark Kaufman, who chaired the meeting, named the committee the “Freon Central Safety Committee” and sent minutes of the meeting to the 21 employees and members of management he had invited to participate (G.C. Exhs. 11 at 13, 36 at 8; Tr. 786, 1696).

Then on December 21, 1989, Kaufman distributed a letter to all Freon personnel, informing them of the decision “to eliminate the old safety steering committee and its sub-committees” and to replace the committees with the new committee. He listed the committee’s “key functions,” one of which was to “Become a forum for discussion and resolution of safety concerns.” (G.C. Exh. 11 at 33; Tr. 1695.)

Thus the Company, through its management, controlled all aspects of the formation of the new committee. It called the organizational meeting, selected employees and members of management to attend, made plans ahead of time for structuring the committee, chaired the meeting, and, with the employees participating, determined the structure and purpose and created the new committee.

I find that the Company dominated the formation of the Freon Central Safety Committee.

(2) Administration of committees

The evidence is clear from the structure and operation of the seven PEP-style safety and fitness committees, that the Company exercises control over the operations of the committees. Under the PEP-style structure, management members of the committees control the subject matter of the meetings and must approve all committee decisions.

As defined in the PEP Glossary, each committee has a leader (chairman), a resource (monitor), and a scribe (note taker). Before each meeting, the leader, resource, and scribe confer and determine the agenda. At the meeting, they “work together as a team.” All decisions must be made by “consensus,” defined as being “reached when all members of the group, including its leader, are willing to accept a decision.” After the meeting, the leader, resource, and scribe confer again and evaluate “how the meeting went and how to make it better next time.” (C.P. Exh. 1 at 5, 39–41, 68, 70; Tr. 217–219, 623, 807, 1282.)

A management member serves either as the leader or as the resource, a “facilitator, advisor” who “keeps the meeting on track” (Tr. 59–60, 318, 608, 698–699, 784, 799; G.C. Exhs. 5 at 85, 158, & 202, 11 at 11, and 24 at 21; C.P. Exh. 1 at 39; R. Exhs. 31 at 2 & 5, 51). In either position the management member exercises control over planning the agenda and over conducting the meeting, either by chairing the meeting or keeping it “on track.” By requiring a consensus for all decisions, the Company ensures management control over committee activities. No decision can be reached by the committee unless all management members present at the meeting “accept” the decision.

The employees have no independent voice in determining the existence, structure, or purpose of the committees. The Company can change or abolish any of the committees at will, as it did in reorganizing the Central Safety Programs Committee in 1988 and 1989 and in eliminating the old safety committees in the Freon business unit and creating a new committee on December 5, 1989, as discussed above. The committees are wholly dependent on the Company for meeting places, equipment, supplies, and expenses. The employee members receive their regular pay for time spent in committee activities. (G.C. Exh. 36.)

The Company argues in its brief (at 157–158) that its conduct did not “adversely affect employee freedom of choice and expression,” citing Hertzka & Knowles v. NLRB, 503 F.2d 625, 626, 629–631 (9th Cir. 1974). That case is distinguishable. There, each of the five in-house committees was composed of five employees and one management representative. In sharp contrast to here, an employee suggested the committee system, which was approved “overwhelmingly” by the employees themselves. Moreover, the employee committee members could “easily outvote” the management representative.

Citing its holding in an earlier case, the court ruled (503 F.2d at 630) that the “question is whether the organization exists as the result of a choice freely made by the employees, in their own interests, and without regard to the desires of their employer.” The court further ruled that an 8(a)(2) finding “must rest on a showing that the employees’ free choice, either in type of organization or in the assertion of demands, is stifled by the degree of employer involvement” (emphasis added).

Here, it was the Company that initiated the committees. The employees were already represented by the Union, and the Company rejected the Union’s offer to “work together” with the Company on safety matters through the proposed joint labor-management safety committee. The employees had no “free choice” in the “type of organization.”

The Company argues (at 160–161): “There is nothing on this record to suggest that, once on the committee, these employees [serving on a voluntary basis] were in any way thwarted in the free expression of their views at committee meetings.” It is clear, however, that the employee members had no “free choice” in the “assertion of demands” beyond the committees to the Company. The PEP requirement that all decisions be made by consensus gave the management members an absolute veto.

I find that the Company dominates the administration of the seven committees.

c. Labor organizations

(1) Employee representation committees

In denying that the safety and fitness committees are labor organizations, the Company contends in its brief (at 134) that they “do not function as representational bodies.” It argues that they are not understood by either the employees or the Company “as acting on behalf of non-participating bargain-
ing unit employees’ and that they function ‘‘only as a man-
agement vehicle.’’

The evidence, however, reveals (a) that both employees
and members of management regard employee committee
members as representatives of their working groups or areas
and (b) that the employee members participate in committee
activities on behalf of other bargaining unit employees.

(a) Freon central safety committee

Employee representation of each working group was part
of the planning for this committee. Before the December 5,
1989 organizational meeting, Area Manager Moffett and oth-
ers met and planned ‘‘Area-wide representation [emphasis
added] per the following [12] groups’’ in the Freon business
unit. The groups included (1) 12-hour shift operators, (2)
blending and shipping operators, (3) mechanic/insulators, (4)
instrument mechanics, (5) electricians, (6) technicians, listed
as ‘‘Technical Representative [emphasis added],’’ (7) labora-
tory personnel, and (8) clerical/planner schedulers. The other
groups consisted of members of management in the Freon
business unit: (9) shift team managers, (10) team managers,
(11) area managers, and (12) safety and environmental con-
sultants. (Tr. 1700, 1709; G.C. Exh. 11 at 23.)

Thus in late 1989, when all six of the other PEP-style
safety and fitness committees were already in operation, Area
Manager Moffett was planning an employee representation
structure for the safety committee in the Freon business unit.
As discussed below, those in attendance wanted the com-
mittee to be cross-sectional, with a representative from each
group. ‘‘So everybody would be represented.’’

By the time, however, that Area Manager Kaufman named
the new committee on December 11, 1989, and announced
it to the Freon employees on December 21 and when Area
Manager Moffett testified at the trial, the Company was
avoiding using the word ‘‘representation.’’

In Kaufman’s December 21 announcement (G.C. Exh. 11
at 33–34), as well as his December 11 draft of the letter
(G.C. Exh. 11 at 14–15), he omitted the phrase, ‘‘Area-wide
representation per the following groups.’’ He stated in the
announcement: ‘‘The area has been divided into 12 groups
with the hope of having at least one volunteer from each
with a maximum of 20 people on the Central Safety Com-
nitee. . . . The groups are as follows’’ (listing the same 12
groups). He continued to list a ‘‘Technical Representative’’
for the technicians.

When Area Manager Moffett was questioned at the trial
about the words ‘‘area-wide representation for the follow-
ing groups’’ and asked if ‘‘what the committee was seeking was
representatives from those groups,’’ he evasively responded
(Tr. 1700–1701):

A. What they were seeking was a background of
. . . varying experiences. People who were working in
different areas . . . a cross section . . .

. . .

A. I’m saying that that’s the sense of what this divi-
sion is.

. . .

I worked with four or five people in structuring the
questions that we were going to ask and how we were
going to do it.

And, what we were looking at all along in our peo-
ple that we invited, were people that came from varying
background, varying of skills. [Emphasis added.]

Moffett did not explain—if this were a complete, candi-
dresponse—why he used the words ‘‘Area-wide representation
per the following groups’’ when planning ‘‘how we were
going to [structure the committee],’’ and the Company offers
no explanation for the listing of a ‘‘Technical Representa-
tive’’ for the technicians. Moffett did not concede that the
employee volunteers would in fact be ‘‘representing’’ the
first eight listed groups of Freon employees. Finding Moffett
to have been less than candid, I discredit his response to that
extent.

As the undisputed testimony of employee member Ronald
Nipe disclosed, Unit Manager Marvin Reinhart (manager
over the Freon areas) also referred to employee representa-
tion. Nipe credibly testified (Tr. 782) that Reinhart (who at-
tended the meeting but who did not testify) personally
told him before the December 5, 1989 meeting that Reinhart
wanted him as a ‘‘representative’’ on the committee. Nipe
tested that the committee wanted to be cross-sectional (Tr.
786). When asked what that meant, he credibly answered
(Tr. 806–807):

Well, that means you have . . . a representative
from the mechanical group, electrical group, the instru-
ment group, the operating group.

Q. And . . . did anyone say why they wanted a
cross-sectional representation?

A. So everybody would be represented.

Nipe acknowledged on cross-examination that it was true
that he was encouraged to bring his own ideas to the meet-
ings and was not encouraged to canvass and poll people and
bring their ideas. He testified, however: ‘‘I felt obligated that
if there was a problem in the area that I would convey it.’’
(Tr. 819.) He further testified that area employees submit to
the committee written F.U.S.S. (Follow Up Safety Sugges-
tions) safety complaints, which the committee discusses and
works on to correct (Tr. 792–793, 850, 853; G.C. Exh. 11
at 26).

The evidence is clear that the employee members partici-
pate in the committee activities on behalf of other bargaining
unit employees. As discussed below, employee members reg-
ularly discuss with management members and seek to resolve
employees’ safety complaints, agreed that bargaining unit
employees should be assigned to audit teams to improve
safety audits, sought exceptions in the safety manual for cer-
tain Freon employees, and seek appropriate awards for the
employees’ safety accomplishments.

(b) Antiknocks area safety committee

Employee member David Muntz, whom the Union termi-
nated as a steward because he refused to leave the com-
mmittee, credibly testified about contacting nonmember em-
ployees. ‘‘We talked to fellow employees and if they had a
safety item that they thought needed correcting, they would
bring it to the committee . . . it was the fastest way to get
things fixed.’’ (Tr. 701, 707.)

An example was the complaint of a welder who was
‘‘concerned about his health’’ because of poor ventilation in
the welding shop. After the Union's efforts failed in getting the problem solved, the welder took the problem to employee committee members. The committee succeeding in getting him a new welding shop. (Tr. 297–303, 702–705, 717, 728–729; G.C. Exh. 7 at 47.)

The employee members' representative role is further indicated by one of the committee's listed "Accomplishments" (G.C. Exh. 7 at 1, 47): in 1988, "Area People Recognize Committee," and in 1989, "Recognition of Committee." The evidence, discussed below, further shows that employee members represent nonmember employees in discussing and seeking solutions to their safety complaints and in seeking larger and more appropriate safety awards.

(c) Central safety programs committee

This committee is responsible for the monthly safety programs in the plant (Tr. 62). Evidently for better representation, employee membership on the committee is "prorated" according to number of employees in the various business units of the plant (Tr. 126–127).

When Unit Manager Joseph Jenny, the committee's resource, was asked "Who decides the topics that will be addressed in those safety meetings," he answered (Tr. 125): "That committee generally solicits a list of topics."

Employee members act for other bargaining unit employees in seeking more appropriate safety prizes throughout the plant, as discussed below.

(d) Control unit safety committee

Clerical employee Ralph Coggovia credibly testified that he joined the committee when management member Nickolas Psaltis personally called him and asked if he wanted to volunteer to be on the committee for the clerical people (Tr. 1261). After he joined, employees approached him about safety problems (Tr. 1216, 1244–1245, 1254–1259).

As a committee member he recognizes his representative responsibility, but only for safety problems in his office. During remodeling in the Specialty Intermediates building, a clerical employee who worked in another part of the building complained to him about a fire extinguisher being on the floor instead of hanging on the wall. He asked, "Why are you asking me?" and suggested that the employee go to the proper person, the landlord of the building. The response was: "You're a member of the control department safety committee, you handle it." He did so, on behalf of the committee. (Tr. 1217, 1245.) Coggovia explained: "I wouldn't want 500 different people coming directly to me" with safety complaints. He added, however, that he "would be involved" if the employee "had a problem in his office." (Tr. 1244, 1258.)

Employees also contact other employee committee members with complaints, and the committee discusses the safety items in its meetings. The committee used the electronic mail to invite employees having "any safety situation to feel free to contact any member of the committee" (Tr. 1312, 1335).

Employee members also act on behalf of other Control Unit employees in seeking more appropriate safety awards, as discussed below.

(e) Fitness committee

It is undisputed that management member Everett Sparks, who initiated the Fitness Committee, informed employee member Arthur Ebert that they were seeking a "representative" from each area—even though (Tr. 1112–1113, 1127) many of the employee members on the committee had a special interest in fitness. Sparks (who did not testify) told Ebert that the original membership was developed "through a cross-sectional view . . . You try and incorporate . . . a representative from each area, say a mechanic or whatever, to be on the membership." (Tr. 1414, 1423–1424.)

Ebert further credibly testified that he "specifically asked [Sparks] why certain people were on this committee and [Sparks] said that it would be more representative if it was a cross-sectional view of the site. And it was regardless of what their feelings were personally . . . as far as fitness is concerned." (Tr. 1425.)

The evidence, discussed below, shows that employee members have made continuing efforts on behalf of the employees plantwide to obtain additional fitness facilities. At least one employee outside the committee took a suggestion from each work group on the committee through a committee member (Tr. 1390, 1438).

(f) Jackson lab programs committee

Employee Joseph Karaskevicus credibly testified that he went on the committee when Lab Supervisor Perry Poless (who did not testify) asked if he would like to join the committee, because Poless "needed a representative from his group." There were about 17 working groups in the Jackson Lab and "There's supposed to have been a representative from each work group on the committee." (Tr. 605–607.) Karaskevicus explained that "The philosophy is to have each work group send a representative to the committee" (Tr. 652).

Employee committee member Kim Nelson acted on behalf of nonmember employees when she solicited ideas by electronic mail from all 1100 Jackson Lab employees on what they would like for a 25-year safety celebration (Tr. 627–628, 682, 692–693; G.C. Exh. 3B at 4). The committee further demonstrated that it was acting on the employees' behalf in December 1989 when it sent the committee's 1990 safety programs questionnaire to the 1100 Jackson Lab employees (G.C. Exh. 24 at 30–33; Tr. 655–657).

Employee members have dealt with management members in deciding to continue and later to discontinue one of the safety programs, in discussing and deciding on appropriate safety awards, and in determining whether to adopt a program to give company stock as a safety award, as discussed below.

(g) Physical distribution safety committee

Employee William Scurry credibly testified that when employees in the truck control center were asked if anybody wanted to join the committee, "I was the only one on day work at the time, so I joined it as our representative" (Tr. 1273). He told employees in his area that "if they had a safety problem" and "if they brought it to me, I would take it to the committee and the committee would look at it." His supervisor was aware that he had permission "to take things to the safety committee." (Tr. 1301–1302.) Other employee
members also “brought problems from the employees to the committee” (Tr. 1305).

The evidence thus shows that although employee members of the seven committees are not elected by the employees, they serve in an agency relationship, representing the bargaining unit employees. In view of this finding I deem it unnecessary to rule on the Union’s contention in its brief (at 95±100) that because of the statutory language (“any organization of any kind . . . in which employees participate”), “even if the committees here were not considered representative, they would still be labor organizations within the meaning and intent of the Act.”

I reject the Company’s contention that the committees function “only as a management vehicle.” I find that each of the seven safety and fitness committees is a “employee representation committee” and that although the employee committee members are not elected, an agency relationship exists between them and the bargaining unit employees they represent.

(2) Dealing with employer

(a) In general

The statutory definition of a labor organization (quoted in full above) requires that the organization exists at least in part for the purpose of “dealing with” employers concerning “conditions of work.”

There is no dispute that the purpose of each of the safety and fitness committees concerns working conditions and that both safety and fitness facilities, as well as benefits, are mandatory subjects of bargaining. “Employee health and safety indisputably are mandatory subjects of bargaining.” Oil Workers Local 6–418 (Minnesota Mining) v. NLRB, 711 F.2d 348, 360 (D.C. Cir. 1983).

Contrary to the Company’s contention in its brief (at 134–155) that none of the seven committees “deal with” it within the meaning of Section 2(5) of the Act, I agree with the General Counsel (in his brief at 91–92) and the Union (in its brief at 91–93) that bargaining unit employees on the committees deal with the Company at different levels.

First, at the committee level, the employee members act on behalf of other bargaining unit employees in dealing with the management members, who represent the Company. Second, when approval of higher management is required for proposals on which both employee and management members agree at the committee level, or when action is required by other management, the committee through one or more of its members deals with the Company at the other level.

The dealing consists of various forms. One is when bargaining unit employees take their safety complaints or requests for fitness facilities to the committee or its employee members—rather than through stewards to the Union—as a faster or more effective way of getting results. The employee and management members discuss the matters in the meetings and try to resolve them. One of the stated “key functions” of the Freon Central Safety Committee, for example, is to “Become a forum for discussion and resolution [emphasis added] of safety concerns” (G.C. Exh. 11 at 33).

Another form of this dealing is the employee members acting on behalf of bargaining unit employees in seeking larger or more appropriate safety awards. Previously, as found, when employees complained to the Union that management’s safety prizes were becoming insignificant in value or were being reduced in value (before the Company created the PEP-style safety committees), the Union would bargain with the Company in executive meetings for “a greater prize for [the employees’] accomplishments.”

Another form is the employee members’ acting on behalf of bargaining unit employees—instead of the Union’s acting on their behalf—in seeking to improve the effectiveness of safety audits by assigning employees to serve with members of management in conducting nonpunitive safety audits. Still another form is discussing and proposing changes in the Safety How manual, which directly affects the employees’ working conditions.

The complaint alleges that the Company unlawfully bypassed the Union in dealings with the committees: since the beginning of the limitation periods for the safety committees and since the May 2–4, 1989 Design Team trial for the Fitness Committee.

(b) By the seven committees

(i) Antiknocks area safety committee

This committee clearly substitutes for the Union in handling safety complaints for employees in the business unit since the September 22, 1989 beginning of the limitation period.

Employees take their safety concerns to employee committee members by “word of mouth” or to the committee by dialing its “lead line” (dialing L E A D). They talk to an employee member during the day or leave a message on the answering machine at night. Employee member James Graves and other committee members take turns listening to the answering machine and “would get the problem and write it down on a book and then it would be addressed at one of our meetings.” (Tr. 701–702, 742–743, 753–754.)

Committee meetings for the February 13, 1990 meeting show an example. The minutes state that an employee member reported that “A need has been expressed for a central facility to put on and clean up, and remove acid suits. Object is to localize contamination.” (G.C. Exh. 7 at 74; Tr. 153±154).

As another example, one of the committee’s “1990 Accomplishment” reads (G.C. Exh. 7 at 125): “Welder’s clothing being punched at change house.” The evidence shows that someone had noticed that the flameproof suits were not being punched (to be replaced after being punched and washed 25 times) and “brought it to the attention of the safety committee.” The committee contacted the change house attendant and arranged for the clothes to be properly punched and replaced. (Tr. 748–749; G.C. Exh. 7 at 74.)

Other listed 1990 accomplishments included such safety matters as pot holes fixed, new covers put on ditches, person assigned to clean air hoses, sidewalk along seawall repaired, and exhaust pipe at shop repaired (G.C. Exh. 7 at 125).

Committee members meet, discuss the problems, and try to resolve them. Often a designated committee member “would find out who was in charge of that area and would present the problem” on the committee’s behalf. If the problem cannot be resolved or takes too long, the committee goes to the business unit manager. Then if the problem is not resolved, the committee may threaten to go to the plant man-
ager. Something like 90 percent of the problems ‘‘got fixed.’’ (Tr. 701, 743–744, 1033–1034.)

The Union learned in March 1990 that its steward Muntz was involved in this activity and immediately notified the Company in writing to ‘‘Please remove’’ him from the stewards list (R. Exh. 40 at 18). Area Representative John Bowe credibly testified that when Muntz described his involvement with this committee at a safety conference, ‘‘I went back to the hall and I asked to have him stricken from the list’’ (Tr. 1033, 1063). Bowe explained (Tr. 1071) that Muntz had described basically how they had a grievance procedure built right in . . . to where they would go up the steps [as in a grievance procedure]. They would handle things in the area, then they would go to the business unit manager, and then they would threaten to go to the plant manager.

Sometimes the management members do not agree when the employees members deal with them in committee meetings. An example is the ‘‘Update—Hot suit cleaning room’’ in the January 16, 1990 minutes (G.C. Exh. 7 at 66). The employees wanted new silver fireproof suits for use around molten lead (used in producing the gasoline ‘‘antiknocks’’ additive), ‘‘but management didn’t want to give them to us until we had a cleaning facility for them’’ (Tr. 714–715). Six weeks later management member John Redkoles told the employee members that the new hot suits would be ordered that week (G.C. Exh. 7 at 77).

I infer that Redkoles, a safety consultant in the Antiknocks business unit, serves as the committee’s resource. The documentary evidence shows that he formed the committee in 1987, initially handled the ‘‘lead line’’ calls, prepared (with Area Manager Michael Gilmore) ‘‘a proposal for addressing all opportunities’’ presented by the September 1989 Safety Emphasis survey, and distributed charts (each bearing his name) from the committee’s 1990 planning meeting on November 10, 1989 (G.C. Exh. 7 at 6, 19, 44–54).

Employee members also deal with management members in seeking larger or more appropriate safety awards. If higher approval is required, the committee deals with the Company at the higher level.

The committee has agreed to give some expensive safety awards. Awards given since the beginning of the limitation period included an ‘‘Antiknocks Perfect Attendance’’ dinner dance for 35 people in March 1990 costing $2223.25 and a dinner dance for 50 people in April 1991 costing $3404.66 (G.C. Exhs. 7 at 161–162 & 187–194, 36 at 4). The committee awarded 24 jackets costing $1476 (G.C. Exh. 7 at 195, 197–199). A note on a November 20, 1990 invoice for 20 of the jackets reads (G.C. Exh. 7 at 197): ‘‘14 to Bargaining Unit.’’

Committee minutes show that the 1990 dinner dance was discussed in meetings on January 27, February 13, and March 13, 1990 (G.C. Exh. 7 at 72, 74, 81). They also show that the 1991 dinner dance was discussed January 15 (with notations, ‘‘No time lose (DW days)—No illness’’ and ‘‘No Recordable injuries’’), January 22, February 12 (with a notation, ‘‘Recordable injuries not eligible’’), February 19, March 1, 5, and 12, and April 2, 1991 (G.C. Exh. 7 at 139, 140, 143–146, 148, 153).

There was a dispute in the committee over eligibility for the ‘‘perfect attendance’’ award. The criteria were no lost workdays from disability, no recordable injuries on or off the job, and no recordable occupational illnesses, which includes no KOA (presumably Knock Out of Area), that is, being ‘‘removed from the area for a high lead’’ content in the blood or urine. (Tr. 151, 157). Those were the criteria for the dinner-dance award both in the spring of 1989 (outside the limitation period) and in March 1990 (Tr. 158).

In 1991, employee members sought an expansion of the awards to other employees by eliminating the no-KOA requirement for eligibility, but the management members did not agree and the requirement remained (Tr. 151, 738–740).

The committee agreed to the award of jackets in 1990, but approval of the business unit manager was required (Tr. 714). There have been various other awards approved by the committee since the beginning of the limitation period.

(ii) Central safety programs committee

Since the September 22, 1989 beginning of the limitation period, employee committee members have dealt with the management members in obtaining appropriate safety prizes for employees throughout the plant. In October 1989 the committee approved a safety prize of turkeys to be given to 200 winners of the November ‘‘Winter Safety’’ contest (G.C. Exh. 5 at 66). The committee also approved the award of corduroy jackets, 34 of which were ordered December 20, 1989 at a cost of $1690 (G.C. Exh. 5 at 295).

In January 1990 the committee approved prizes to be given at the March safety meetings. The employees would be shown a safety video, and all who got correct answers on a quiz would be given a Croakie eyeglass holder as a prize. In addition, there would be drawings for prizes of $12 driving gloves. The Company purchased 2500 Croakies at a cost of over $6000. (Tr. 66–70, 92–94; G.C. Exh. 5 at 135, 291–293.) The Company admits in its brief (at 37) that the ‘‘prizes may have been unique.’’

Among the other prizes the committee approved was a smoke alarm given out in a drawing at the end of each safety meeting in October 1990. Ordered in September, 100 of them cost $1063. (G.C. Exh. 5 at 184, 282.)

(iii) Control unit safety committee

The evidence shows that since the October 4, 1989 beginning of the limitation period, Control Unit employees have taken safety complaints to employee committee members or to the committee on which the employee members serve.

An example was when an employee took a traffic problem to an employee member who brought it to the attention of the committee, which discussed the problem and acted to resolve it (Tr. 1315–1317). Another example of a complaint that the committee sought to resolve after it was taken by an employee to an employee member was a complaint about unpainted lines on safe walkways (Tr. 1209–1210, 1254–1256).

Employee member Coggiova brought to the committee the problem of empty water bottles floating around in the wind, creating a traffic hazard. He had observed a hazardous situation of an empty water bottle flying across the road near the building where he worked. ‘‘We know how people feel about these things . . . because I know I wouldn’t want somebody
fitting . . . my car or vice versa, hitting somebody else.’

The committee took the problem to the safety department on the site and the matter was corrected at most locations. (Tr. 1210–1211.)

On the committee’s behalf, Coggovia took to other management two safety problems that an employee had brought to him. One involved the fire extinguisher on the floor, discussed above, and the other involved washbowls in the men’s room “about ready to fall down.” Both problems were taken care of. (Tr. 1217, 1254.)

Employee members, since the beginning of the limitation period, have also dealt with management members in obtaining what they consider more appropriate safety awards.

The committee agreed to give many cash awards. The documentary evidence shows four $50 and four $25 awards (totaling $300) given in March 1990, the same number of cash awards (totaling $300) in July 1990, five $50 and five $25 awards (totaling $375) in September 1990, and eight $25 awards (totaling $650) in January 1991 (G.C. Exh. 43 at 28–31). Some of the safety programs were ongoing, and the committee “discussed what would be appropriate gifts or awards to be given out.” For one of the contests, the committee decided that the “runners-up had a choice of a smoke detector or fire extinguisher.” (Tr. 1329–1330, G.C. Exh. 43 at 4).

In January 1991 the Company gave a $100 savings bond to the winner of a safety-theme contest. The committee had submitted an electronic mail message to all Control Unit personnel, asking for suggestions for the theme and stating “there would be an award to the winner.” There were “different suggestions, what the possibilities” were for an appropriate award. The employee and management members of the committee finally decided on the savings bond as something “personal.” (Tr. 1332–1333.)

In 1989 (outside the limitation period) the Company had provided a full breakfast to Control Unit employees, and the plant manager had promised another breakfast in 1990 for an injury-free 1989. The committee started planning the second breakfast around the end of September 1989, and the breakfast was held in January 1990 for around 275 or 300 people. (Tr. 1214–1215, 1322–1325.)

In early 1990 the committee decided to have another breakfast if there were no injuries that year. After some injuries occurred, committee members sought some get-together for the 1991 safety kickoff. The committee agreed on having a continental breakfast, which was approved by Unit Manager James Melville. About 200 people attended. (Tr. 1214, 1324–1328.)

(iv) Fitness committee

Before this committee was formed in late 1988 or early 1990, the Union had been seeking in negotiations with the Company a fitness center like the Company’s health complex at its Mannington Mills plant, where the facilities include a weight room, jogging track, and tennis facility. The Company responded that it was not interested at the time. (Tr. 1607–1610.)

In January 1989 the Company approved the idea of outdoor facilities at the C Corral (a former parking lot) and specifically budgeted a walking/jogging track there (Tr. 1103–1106; R. Exh. 27 at 3). Since the trial of the Design Team case on May 2–4, 1989, employee members of the Fitness Committee have continued to deal with the management members, and the committee with higher management, seeking additional facilities.

The minutes of the committee’s May 11, 1989 meeting show that the employee members’ proposal for the construction of tennis courts was not accepted by the management members. The minutes state that “Tennis courts may have to be tabled until next season due to their expense.” (G.C. Exh. 41 at 34–36.)

Employee member Edward Forrest continued to press for the tennis courts in an electronic mail message on June 2, 1989. The message was sent to the plant manager, Management Assistant Ferguson, Unit Manager Reinhart, Financial Consultant Richard Jagers, and 67 others, including committee members. (G.C. Exh. 41 at 38–40.)

Later that summer, after picnic tables and sanitary facilities were added, employee member Arthur Ebert suggested a volleyball area, and a plant employee outside the committee suggested that a horseshoe pit also be provided. The committee agreed, Ferguson approved, and the Company provided the funds. (Tr. 1081, 1122–1124, 1390–1392.)

In January 1990, after the track and other facilities were installed, employee Ebert proposed to the committee a 60-by-60 foot open-air pavilion, set on concrete. “I knew at that time that we [were] not going to be getting a separate [indoor] facility per se in the area.” The committee approved the proposed pavilion and two tennis courts, and Ferguson suggested that Ebert make a presentation to the plant staff for funding. (Tr. 1381–1386, 1423.) Ebert made the presentation, informing the staff that the committee was proposing the projects. The response was that “there was no money in the budget for these projects at the time.” (Tr. 1387–1388.)

(v) Freon central safety committee

As found, one of the committee’s “key functions” when it was created in December 1989 was to “Become a forum for discussion and resolution of safety concerns.” Also as found, employees in the Freon business unit submit F.U.S.S. safety complaints to the committee for it to discuss and work on to correct. As employee member Nipe credibly testified (Tr. 792): “Basically F.U.S.S. is . . . a procedure that the Freon [unit] has of correcting complaints.”

Minutes of the committee’s June 15, 1990 meeting (G.C. Exh. 11 at 80–81) show examples of safety problems with which employee and management members dealt. The committee discussed “Comments . . . received from operators on the quality of rubber gloves” and the need “for more air lines and safety showers around the HF storage tanks.” Followups on F.U.S.S. complaints included the “Lack of air masks at HF pumps.”

Concerning safety audits, employee and management members of the committee agreed to the assignment of employees outside the committee to serve with members of management on nonpunitive audit teams to enhance the effectiveness of the safety audits.

When safety plans were being made in November 1989, the old committee for inspections and audits was “not functioning” and audits were “not being done in any established way” (G.C. Exh. 11 at 6, 8). The new committee decided at the December 5, 1989 organizational meeting (at 33) that one of its “key functions” would be to “Perform auditing
on safety performance throughout the area.’’ Minutes of the committee’s January 18, 1990 meeting state (G.C. Exh. 11 at 45): ‘‘At present there is no area wide audit program.’’

On January 28 Supervisor Samuel Scull (who ‘‘sat on the Central Safety Committee.’’ Tr. 789–790) made an assessment. In a memorandum sent only to members of management he observed (G.C. Exh. 11 at 50): ‘‘The one important thing I think were missing here is a ‘Safety Audit’ using a cross section of people on a routine basis’’ (Tr. 1710–1711). Area Manager Moffett acknowledged (Tr. 1693) that there was no active audit program at the time and that ‘‘Our previous years’ programs had fallen to disuse.’’ Employee member Nipe confirmed (Tr. 800) that there were no employees on the safety audits at that point.

At the next meeting of the committee on February 15, 1990, the employee members dealt with management members on the subject of assigning Freon employees to serve with members of management in making nonpunitive safety audits. The committee agreed. (Tr. 799–801, 839, 1680; G.C. Exh. 36 at 9.) I find it clear that this change in work assignments of certain Freon employees involved working conditions.

Employee members have also dealt with management members in seeking exceptions to rules in the Safety How manual for certain Freon employees, as shown in minutes of the June 15 and August 10, 1990 committee meetings. On August 10 a management member ‘‘stated the proposed exception to allow employees to NOT wear ‘Nomex’ in the Service Bldg. will not be submitted’’ (by the committee to the Company). (G.C. Exh. 11 at 81, 90.) This vetoed that proposal.

Concerning employee members dealing with management members on appropriate safety awards, the committee discussed future awards at its January 18, 1990 meeting and designated some of its members to make the final determination. On January 22 the committee informed Freon employees that ‘‘the area will provide pizzas for lunch to everyone in the area for every quarter of the year that we have a total of one or less injuries’’ and ‘‘If we meet our annual goal, there will be an area-wide dinner.’’ (Tr. 322–324, 816–817, 1698; G.C. Exh. 11 at 44, 49.) Employees were given pizza when they reached the quarterly goal, but the annual goal was not reached (Tr. 839, 1705).

(vi) Jackson lab programs committee

Employee members dealt with management members, and the committee with Jackson Lab Director Peter Jesson, when the committee planned and handled a major celebration for Jackson Lab’s 25-year safety record. That milestone (of no lost workday injuries) was expected to be reached in early December 1989. (G.C. Exh. 24 at 17, 36 at 5; Tr. 626–627, 684.)


After September 22 (the beginning of the limitation period), as shown in minutes of its meetings, the committee continued to make the arrangements, publicizing the event among employees both at the plant and at their homes, signing up employees ‘‘with a guest,’’ providing bus transportation, and reserving an additional Friday night on February 9 ‘‘to accommodate demand’’ (G.C. Exh. 24 at 13, 15, 17, 19). Around November the committee sent a flyer to all Jackson Lab employees, soliciting attendance dates (Tr. 629).

A total of 1176 individuals attended, costing the Company $25,813.20 for the dinner and entertainment at $21.95 each (G.C. Exh. 24 at 107). Around November 1989 the committee sought and received Director Jessup’s final authorization for the large expenditure (Tr. 628–629).

Employee committee members also deal with management members in adopting appropriate safety awards in various ongoing programs. Minutes of the February 5, 1990 meeting show that ‘‘It was decided to continue [the Safety Champion program in 1990.]’’ Under this program, $100 dinner tickets were given, costing the Company (including tax) up to $139 and $154. (G.C. Exh. 24 at 77, 151–165; Tr. 678). Minutes of the December 10, 1990 meeting show that ‘‘Due to the comments [in the committee’s 1990 safety programs questionnaire] and the general unpopularity of this [Safety Champion program], it was decided to discontinue it for 1991’’ (G.C. Exh. 24 at 27, 36).

In 1990, for prizes in a safety puzzle contest, the committee approved an employee member’s suggestion of 10 pairs of baseball tickets costing a total of $180 (Tr. 617–618; G.C. Exh. 36 at 5), but vetoed his suggestion for $18 Halon fire extinguisher awards as too expensive (Tr. 619).

In an effort to please the employees, after abandoning coffee and doughnuts, the committee decided from time to time to provide pizza, pizza and soda, an ice cream buffet, or an ice cream and fruit buffet for safety award parties. Invoices in evidence show that these parties cost $2290.24 on October 23, 1989; $2751.66 on February 6, 1990; $2966.12 on May 3, 1990; $2765.95 on October 22–24, 1990; and $3238.52 on February 4, 1991 (G.C. Exh. 24 at 51–53, 57, 76, 131–133, 137, 139, 145–147; Tr. 647–648). The committee was also ‘‘looking for feasible substitutes for the usual pizza or ice cream’’ (G.C. Exh. 42 at 2).

At its March 1991 meeting the committee discussed the Company’s Belle plant safety awards program, which provided a choice of 4 hour-off or two shares of DuPont stock, but did not approve the program. The Company had referred the program to the committee for ‘‘an assessment of the merits of stock as opposed to other forms of recognition.’’ (G.C. Exh. 24 at 80–83, 130.)

(vii) Physical distribution safety committee

The evidence shows that since the October 20, 1989 beginning of the limitation period, employee members have dealt with management members when the committee discusses employees’ safety problems that the employee members bring to the committee (Tr. 1283, 1301, 1305).

The evidence also shows that when anything is given out, such as the stipulated ‘‘$50, a fire extinguisher or a safety knife and first aid package’’ about April 1990 (G.C. Exh. 36 at 11; Tr. 1279), the employee and management members agree on the prize or award, because ‘‘anything we did was with a consensus’’ (Tr. 1283). In 1990 the committee specifically agreed to the replacement of one safety program with another (Tr. 1299).

In summary, I find there is persuasive evidence that the employee members of the safety and fitness committees ‘‘deal with’’ the management members, and the employee...
representation committees with the Company, concerning safety, benefits, and fitness facilities, which concern working conditions and are mandatory subjects of bargaining.

d. Concluding 8(a)(2) finding

The General Counsel in his brief (at 74–94, 102–108) and the Union in its brief (at 85–108) contend that the six safety committees and one fitness committee are company-dominated labor organizations.

To the contrary, the Company contends in its brief (at 156–163) that “At best, there was an unrealized potential,” but “no domination or unlawful support.” Citing a number of Board and court cases, it further contends (at 134–155) that the committees are not labor organizations because they (1) “do not function as representational bodies,” (2) are not understood “as acting on behalf of non-participating bargaining unit employees,” (3) “function only as a management vehicle,” and (4) do not “deal with” it within the meaning of Section 8(5). It argues that no agency relationship exists between employee committee members and other bargaining unit employees who do not elect or select them.

I agree with the General Counsel and the Union. Regarding alleged domination, as found, the Company dominated the formation of the Freon Central Safety Committee and dominates the administration of all seven committees.

Regarding the Company’s contention that the committees are not labor organizations, there is obviously little resemblance between these committees and the organizations involved in the cases on which the Company relies. I find that the cases are clearly distinguishable.

The group of employees in *Fiber Materials*, 228 NLRB 933, 934–935, 941 (1977), met with the employer only twice “merely to raise questions” about the employer’s fringe benefit policies. The four teams in *General Foods Corp.*, 231 NLRB 1232, 1234–1235 (1977), “in their aggregate constitute[d] the entirety of the nonsupervisory work force” at the employer’s testing and research center. Team members spoke on their own behalf and there was no “agency relationship to a larger body.”

The employees council in *John Ascuaga’s Nugget*, 230 NLRB 275, 276 (1977), did not “deal with” the employer, but merely performed “a purely adjudicatory” function of rendering “a final decision” on employee grievances. Similarly the grievance committee in *Mercy-Memorial Hospital*, 231 NLRB 1108, 1121 (1977), did not “deal with” the employer. The committee “was created simply to give employees a voice in resolving the grievances of their fellow employees at the third level of [the] grievance procedure, not by presenting to or discussing or negotiating with management but by itself deciding the validity of the employees’ complaints and the appropriateness of the disciplinary action, if any, imposed.” The single management member, “who has only one vote like any employee member on the committee, is bound by the decision reached by a majority of the committee.”

Also the communications committee in *Sears, Roebuck & Co.*, 274 NLRB 230, 243–244 (1985), did not “deal with” the employer on behalf of the employees. It was a committee on which a “rotating system was used so that each employee in each department would have an opportunity to sit in on two” meetings with the manager “to give input in order to help solve management problems.”

Likewise in *NLRB v. Scott & Fetter Co.*, above, 691 F.2d at 289–290, 294–295, the court held that the committee, which no one viewed “as anything more than a communicative device,” did not “deal with” the employer. The committee was established to “provide to as many employees as possible the opportunity” to contribute “ideas for improving operations.” The court found that “The continuous rotation of Committee members to ensure that many employees participate makes the Committee resemble more closely the employee groups speaking directly to management on an individual, rather than a representative, basis as in *General Foods*,” above.

Having found (1) an agency relationship existing between the employee committee members and the bargaining unit employees they represent and (2) persuasive evidence that the employee members and the employee representation committees “deal with” the Company concerning safety, benefits, and fitness facilities, which concern working conditions as well as being mandatory subjects of bargaining, I find that the committees are labor organizations within the statutory definition.

I therefore find, as alleged, that the Company unlawfully dominated the formation of the Freon Central Safety Committee and dominates the administration of all six safety committees and the fitness committee, violating Section 8(a)(2) and (1) of the Act.

4. Bypassing the Union

The General Counsel contends that the Company, in bypassing the Union and dealing instead with the safety and fitness committees concerning matters subject to collective bargaining, “necessarily violated Section 8(a)(1) and (5).” I agree.

The Union is the exclusive bargaining representative of the employees. As held by the Supreme Court in *Medo Photo Supply Corp. v. NLRB*, 321 U.S. 678, 683–684 (1944):

The National Labor Relations Act makes it the duty of the employer to bargain collectively with the chosen representatives of his employees. The obligation being exclusive . . . it exacts “the negative duty to treat with no other.”

Citing *Medo Photo*, the Board held in *Modern Merchandising*, 284 NLRB 1377, 1379 (1987):

It is well established that the Act requires an employer to meet and bargain exclusively with the Union. Further, an employer who chooses to deal directly . . . with a representative other than the designated bargaining representative regarding . . . conditions of employment risks violating Section 8(a)(5) of the Act.

It is clear [that the Respondent’s] bypassing the Union . . . has had the effect of eroding the Union’s position as exclusive representative. Accordingly, we find the Respondent has failed in its duty to bargain with the Union and has violated Section 8(a)(5) and (1) of the Act.

Having found that the seven safety and fitness committees are company-dominated labor organizations, I find by dealing directly with them concerning working conditions and man-
the Act.

sively with the Union, violating Section 8(a)(5) and (1) of the Act.

datory subjects of bargaining, the Company has unlawfully bypassed the Union and failed in its duty to bargain exclusively with the Union, violating Section 8(a)(5) and (1) of the Act.

B. Denied Employee Use of Electronic Mail

The complaint alleges that the Company maintains “a rule prohibiting employees . . . from using [its] electronic mail system for distributing [union] literature and notices while permitting the employees to use [its] electronic mail system for distributing literature and notices on all other topics,” violating the employees’ Section 7 rights (G.C. Exh. IRR pars. 7, 22).

The evidence indicates that in this large chemical plant and research laboratories, where a staff of 3700 people are employed producing about 750 different products (Tr. 41), the electronic mail has become an important, if not essential, means of communication. The seven safety and fitness committees, including some of the employee members (G.C. Exh. 41), are permitted to use it. As found, the plant manager used it to notify all employees that they did not believe the judge’s decision in the prior Design Team case was “well-founded.”

The large volume of electronic mail messages in evidence reveals that the Company permits employees to use the electronic mail to distribute a wide variety of material on many subjects. These messages (G.C. Exh. 23), sent from employees’ computer terminals to sometimes hundred of other terminals where the messages can be read on the screen or printed out (Tr. 76–77), include poems, notices, or discourses on such topics as boredom, drugs, educational co-ops, Erich Fromm, Federal Express, higher education, IRS, liberal arts, life, mortality, philosophy, TV programs, religion, riddles and attempted answers, skin cancer, victory, and words of wisdom.

Yet the Company prohibits any employee, whether or not a representative of the Union, from using the electronic mail to distribute any union literature or notice (Tr. 488). I find that this prohibition clearly is discriminatory.

Moreover, whether or not intended, this prohibition tends to diminish the representative role of the Union and to erode union support.

In its dealings with the committees, the Company demonstrates to the employees a greater willingness to grant benefits and solve their safety problems if they go through the committees rather than through the Union. As found, the Company even permitted the Control Unit Safety Committee to use the electronic mail to invite employees having “any safety situation to feel free to contact any member of the committee,” instead of going through the Union. Also as found, an interoffice management memorandum reveals that the Company was considering a Fitness Committee recreation budget of $10,000 for an antiunion purpose of competing with the Union.

The Company argues in its brief (at 178) that there are “less costly alternative methods” for the Union to communicate with the employees and that there are “legitimate, non-discriminatory bases for [the Company] to deny electronic mail access to the [Union] for Union business.”

I do not deem it necessary, however, to rule on whether the Union would otherwise be entitled to use this common means of plant communications for contacting the bargaining unit employees it represents. I do find that having permitted the routine use of the electronic mail by the committees and by the employees to distribute a wide variety of material that has little if any relevance to the Company’s business, the Company discriminatorily denies employees use of the electronic mail to distribute union literature and notices.

I rely on the Board’s holding in Northeastern University, 235 NLRB 858, 865 (1978), enf’d. in relevant part 601 F.2d 1208, 1216–1217 (1st Cir. 1979). The Board held that the employer “violated Section 8(a)(1) of the Act by denying its employees the use of [a room, which was normally available to employees, for a meeting of the 9 to 5 Organization] for purposes of engaging in activities protected by Section of the Act.” It cited its holding in Columbia University, 225 NLRB 185 (1976), involving that university’s refusal to permit a union organizing committee composed of its employees to use the facilities of a center that the university made available to both on- and off-campus student groups: “Such discriminatory treatment interferes with employees in the exercise of the rights guaranteed in Section 7 in violation of Section 8(a)(1) of the Act.”

I therefore find that in the circumstances of this case, the rule prohibiting employees from using the electronic mail system for distributing union literature and notices violates Section 8(a)(1) of the Act.

C. Safety Conferences and “Safety Pause”

In March 1983 the Company held an all-day safety conference “to formulate new ideas that would result in a higher level of motivation and commitment for improved safety performance” (R. Exh. 23 at 2). In 1989 the Company resumed such conferences, holding them offsite quarterly in December 1989 and March, June, September, and December 1990 (Tr. 829).

The December 8, 1989 safety conference was announced in a October 25 notice to all employees. The notice (G.C. Exh. 26) stated that the conference was called “to generate new ideas that will improve safety performance,” that this first conference would accommodate about 30 volunteers, and that all employees “will be attending a Safety Conference in the future.” The Company had previously invited the union president to participate (Tr. 1773). About 40 employees and members of management from all the business units in the plant attended the conference (Tr. 759–760).

The stated objective of the conference, which was “run along lines of PEP” (Tr. 804, 1840), was to “increase personal commitment, responsibility, and acceptance of safety as our #1 concern” (R. Exh. 38). The slogan was: “You make the difference” (Tr. 828, 1775). The employees were asked to give “their personal experiences” and were told “not to act as representatives” to solve problems for their areas. They were permitted to make whatever safety suggestions they had. It was the responsibility of the resource in each session to ensure that the employee and management participants did not discuss or deal with bargainable issues. (Tr. 833, 1055, 1780–1783, 1791, 1824.)

In February 1990 the new unit manager of Environmental Resources decided to hold a separate conference, called a “Safety Pause,” for gathering “a lot of information” to reach the safety goals in that business unit (Tr. 1550; G.C. Exh. 35). Attended by 50 of the 130 employees and members of management, the Safety Pause was held offsite in the
same manner as the plantwide safety conferences (Tr. 1508, 1551–1552; C.P. Exh. 9).

The General Counsel and the Union (in their briefs at 127–129, 113–114) contend that the Company was unlawfully dealing directly with the employees. To the contrary, I agree with the Company (in its brief at 164) that both the safety conferences and the Safety Pause ‘‘fall within the ambit of permissible communication between an employer and its employees.’’ In view of the precautions taken to prevent the participants from discussing or dealing with bargainable issues, I find applicable the Board’s ruling concerning an employee questionnaire in Logemann Bros. Co., 298 NLRB 1018, 1019–1020 (1990):

We find that the distribution of the questionnaire was merely permissible communication between the Respondent and its employees, was consistent with the Respondent’s past practice of communicating with employees, and was motivated by legitimate business concerns.

I therefore find that the holding of the safety conferences and the Safety Pause did not violate the Act.

D. Purported Grievance Adjustment

The complaint alleges that the Company violated Section 8(a)(5) and (1) by meeting with employees in the Jackson Lab Information Services Group ‘‘for the purpose of adjusting employee grievances’’ without giving the Union the opportunity to be present.

This allegation involves informal complaints by employees to the group supervisor about the uncompleted fire protection system being installed, a discussion of the problem at a regular staff meeting, and a meeting with the fire marshal, who showed a video and answered questions (Tr. 1725–1733, 1737–1739; R. Exh. 39).

No grievance was filed and therefore no grievance was adjusted. I find that the allegation lacks merit.

CONCLUSIONS OF LAW

1. By dominating the formation and administration of the Freon Central Safety Committee a/k/a Fluorochemicals Central Safety Committee and Fluorochemicals Safety and Health Excellence Committee and dominating the administration of the Antiknocks Area Safety Committee, Chambers Works Fitness Committee a/k/a Chambers Works Recreation/Activities Committee, Control Unit Safety Committee, Jackson Lab Programs and Publicity Committee, Physical Distribution Safety Committee a/k/a Environmental Resources Safety Committee, and Programs and Publicity Committee of the Chambers Works Central Safety and Occupational Health Committee all of which are labor organizations within the meaning of Section 2(2)(5), the Company has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(2) and (1) and Section 2(6) and (7) of the Act.

2. By dealing directly with the committees, bypassing the Union as the exclusive bargaining representative of the production and maintenance employees and the office and clerical employees in separate appropriate bargaining units, the Company has violated Section 8(a)(5) and (1).

3. By prohibiting bargaining unit employees from using the electronic mail system for distributing union literature and notices, the Company has violated Section 8(a)(1).

4. The Company has not violate the Act by holding the safety conferences and Safety Pause.

5. The Company has not unlawfully adjusted grievances without affording the Union an opportunity to be present.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Still opposing any joint labor-management safety committees, although ‘‘most common’’ in unionized settings, the Respondent urges in its brief (at 180) ‘‘that the Board should seriously consider the implications of interpreting and applying the Act to disturb the safety management systems at issue.’’ The Respondent has not shown why the offered cooperation of the Union, which repeatedly has informed it that health and safety are the Union’s No. 1 priority, would not contribute to ‘‘the goal of maintaining and heightening individual employee safety awareness’’ without eroding the Union’s status as the exclusive bargaining representative.

The Respondent having bypassed the Union and dealt directly with the six safety committees and one fitness committee, which are found to be unlawfully dominated labor organizations, I find that it must cease dealing with and completely disestablish the seven committees.

[Recommended Order omitted from publication.]
PURPOSE

To analyze communication patterns between your union’s health and safety committee members and those with whom they communicate, and to determine if changes should be made in how communication is taking place and who is being communicated with.

TASKS

Complete the communications map and answer the questions.

- As a group, review the diagram (attached) which portrays your union’s health and safety committee members (in the middle of the diagram) and those with whom they communicate.

- If there are individuals, organizations or agencies that your health and safety representatives communicate with that are not now represented on this diagram, add them by labeling the circle marked “other” with their name(s) or by adding additional circles.

- Next, put in arrows to symbolize how communication now takes place between your health and safety representative(s) and the other parties on the communications map.

- Use one arrow to symbolize minimal communication, two or three arrows to symbolize more or a lot of communication, and no arrows to symbolize no communication.
• Place an arrowhead going *toward the health and safety committee members* if the other party mostly initiates communication.


• Place an arrowhead going *toward the other party* if communication is mostly initiated by the union’s health and safety committee members.


• Place arrowheads going both ways if communication happens in both directions.


• After you have placed your arrows on the diagram, answer the seven questions attached.
Questions To Answer Regarding Communications Map

1. Who is/are the union’s health and safety committee members communicating with the most?

2. Who is/are the union’s health and safety committee members communicating with the least?

3. What are the strengths of this communications pattern?

4. What are the weaknesses of this communications pattern?

5. Should there be any changes made to this communications pattern? If so, what changes should be considered?

6. If appropriate, how could communication on health and safety issues with union leadership/officers be improved?

7. If appropriate, how could communication on health and safety issues with the union membership be improved?
Activity Handout
UNION PREPARATION FOR JOINT LABOR MANAGEMENT SAFETY AND HEALTH COMMITTEE MEETINGS

PURPOSE

To practice preparing for joint labor-management health and safety committee meetings.

TASKS

Your small group includes the union health and safety committee representatives to a joint labor-management health and safety committee in your workplace. You are meeting to prepare for the next joint labor-management meeting. Management has given you the agenda for that meeting (see attached.)

As a group, review and discuss the agenda. Begin preparing for this meeting by answering the questions below. Pick a reporter who will report back to the larger group on your responses to these questions.

1. Select one of the following items that appears on the joint labor-management meeting agenda:

   I, i: Redesign of Department 1: blueprint/layout to be submitted to the committee (employer)

   II, iii: Complaints about ventilation in Department 2: employees complaining of headache and other minor symptoms

   III, ii: Creation of Departmental/Area Safety Teams (employer)
a. For the one agenda item that you selected, what additional information would you like to review about the item before the joint labor-management meeting?

b. Where and how could you get this information?

2. Choose one of the following items from the joint labor-management meeting agenda:

II, i: Storage Area: new shipment of supplies dumped in doorway, crates and boxes piled over six feet high

II, ii: Some workers not using gloves, safety glasses, ear plugs

III, iii: Discuss ways to prevent upper and lower back pain and injuries (new program for stretching and lifting techniques training)

a. For the agenda item that you selected, state what you think management will say about this item in the upcoming meeting, and how they will want to address it:
b. Given your prediction of management’s approach to this item, what should the union say about this item in the upcoming joint meeting?

3. Having reviewed this agenda, are there any items not currently on the agenda that you think should be *regularly* included on the agenda of a joint labor-management health and safety committee meeting?

_____ Yes   _____ No   _____ Don’t Know

If “Yes”, what might be some of these missing items?
4. Making a strategic plan for the upcoming joint meeting:

a. Look over entire agenda and pick one item that you think is a priority for the union to deal with. (This could be an agenda item that you have already discussed in one of the questions above, or an item that your group hasn’t yet discussed.) The item your group picked is:

b. Why did you pick this item? Why do you think it is a priority for the union?

c. What do you want to accomplish in this meeting regarding this item?

d. What is your plan for accomplishing this?
JOINT LABOR-MANAGEMENT SAFETY AND HEALTH COMMITTEE
AGENDA

I. On-Going Items

   i. Re-design of Department 1: blueprint/layout to be submitted to the committee (employer)

II. Workplace Inspection Report Findings

   i. Storage Area: new shipment of supplies dumped in doorway, crates and boxes piled over six feet high

   ii. Some workers not using gloves, safety glasses, ear plugs

   iii. Complaints about ventilation in Department 2: employees complaining of headache and other minor symptoms

III. New Items

   i. Union membership survey (union): workload and speed-up noted as top priority of members responding to survey. Complaints include fatigue, stress, and tension.

   ii. Creation of Departmental/Area Safety Teams (employer)

   iii. Discuss ways to prevent upper and lower back pain and injuries (new program for stretching and lifting techniques training) (employer)
SECTION V:

Strategic Planning and Continuous Bargaining for Health and Safety
Activity Handout
Introduction to a Continuous Bargaining Approach to Health and Safety

Purpose: To prepare for continuous bargaining over an issue that is negatively impacting (or could negatively impact) health and safety on the job.

Task: As a group, choose an issue that is (or could) negatively impact health and safety on the job. Next, review the four aspects of a “continuous bargaining” approach and discuss and answer each set of questions below.

The issue/problem/concern chosen by your group is:

I. Research and Information Gathering:
What information would you like to have about this issue, problem or concern; and where and how could you find it?

II. Communicating With/Involving Members:
How could you communicate with and involve your members in the local union’s efforts to get this issue, problem or concern addressed?
III. **Formulating Proposal/Demands:**
What do you want management to do, and therefore, what should the union’s proposal(s)/demand(s) be?

IV. **Identifying/Exercising Leverage:**
What are some things the union could do to put pressure on management, if they aren’t implementing your proposals/demands? (Think in terms of member-involving strategies and escalating tactics.)
Activity Handout
Planning for a Continuous Bargaining Campaign to Improve Health and Safety

Purpose: To work through the process of preparing for continuous bargaining over an issue that is negatively impacting your members, their health and safety and the union (this could be a particular hazard, a new technology, a change in work organization/work restructuring, a new or changed management policy or program, or other issue).

Task: For the purposes of this activity, your small group is the union health and safety committee in a workplace dealing with this situation. Given the workplace issue or change your group is working on, answer the following questions as a group. Select a reporter to present your responses to the large group.

1. The workplace issue/change you are working on is:

2. What are some key impacts of this issue/change on the members and their health and safety?

3. What are some key impacts of this issue/change on the union?

4. Proposals/Demands:
   a. What do you want management to do regarding this issue/change, and therefore, what should the union’s specific demands be?

   b. What would management say if you asked them to comply with these union demands?

STOP HERE
5. Information Gathering:
   a. What are some of the things you need to know about this issue/change?
   b. Where and how could you get this information?

6. Communicating with Members:
   a. What are two or three key points that members should know about this issue/change and the union’s activities around it?
      •
      •
      •
   b. How would you communicate with the members about this issue/change?
   c. If you had 30 seconds to talk with a member about this issue/change, what would you say? As a group, prepare an “elevator” (30-second) talk and be ready to present it to one of your members (as played by one of the instructors).
7. Surveying Members:

   a. What are 2 or 3 questions you could ask members in a survey about this issue/change?

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   -
   -

   b. How could the union conduct this survey of members?

8. Communicating with Local Union Leadership:

   a. What support/action do you need from your union’s Executive Board to go forward with a union campaign around this issue?

   b. What are some key points you would make to convince your Executive Board to take on this campaign?
9. Building Leverage:

a. Come up with a slogan for a campaign around the issue/change you are working on.

b. Identify one potential ally that could help in this campaign. What could this ally do? Describe a plan for involving this ally.

c. If you don’t think that management will simply give you what you are asking for, what are three things the union could do to put pressure on them? (Think in terms of member-involving strategies and escalating tactics.)

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An important first step in creating a safer and healthier workplace is identifying the problems and hazards that put workers at risk for injury, illness and/or stress on the job.

Once problems have been identified, the next step is to put together a plan for getting problems addressed — and then putting that plan into action.

If all health and safety problems in the workplace were immediately and appropriately corrected when workers and unions brought them to the attention of management, there might be little need for a multi-step strategic planning process. However, the reality is, in order to get real attention and satisfactory action regarding unsafe and unhealthy workplace conditions, it is often necessary to map out all of the possible steps needed to get hazards corrected — and then put that plan into action.

WHAT IS STRATEGIC PLANNING?

Strategic planning involves putting together a plan that serves as a map to get from “here” (problem unsolved) to “there” (problem solved).

Strategic planning includes the following steps:

- Determining important issues and problem areas,
- Selecting a specific, priority problem to solve,
- Identifying possible and desired solutions,
- Developing an overall plan for getting the problem solved,
- Carrying out specific actions that address all of the elements in the plan,
- Publicizing the progress and successes of the actions, and
- Evaluating and redeveloping the plan as needed.
WHY DO STRATEGIC PLANNING?

Most union health and safety committees are busy enough dealing with the many issues and problems that endanger workers’ health and safety on a daily basis. Why add a complex planning process on top of everything these committees have to do already?

The answer is simple: because there are significant health and safety problems that simply will not get addressed without a comprehensive plan for bringing about solutions. This strategic planning process allows a union to do more than react. It allows the union to set its own agenda, its own priorities, and work towards the solutions it has identified. A good strategic plan also promotes the involvement of members in working towards the solutions, thereby increasing member involvement in health and safety and in the union.

ELEMENTS OF A STRATEGIC PLANNING PROCESS

Answering the following kinds of questions will help in developing a strategic plan to solve a health or safety problem:

- What is the problem you have chosen to take on or address?

- Why did you select this issue or problem? Why is this important to the members and the union?

- What solutions will you seek (consider both short-term and long-term solutions)?

- What information do you already know that will help you solve this problem?

- What information do you need in order to solve this problem? From where could you get this information?

- How will you communicate with your members about this issue/problem, and what are the key things you want your membership to know or understand?
• What barriers might you face (what could stand in your way) in trying to achieve your short and/or long-term goals?
• What could you do to overcome these barriers?

• Who might allies be in this campaign (besides your members)?

• What would an action plan look like? List specific tasks/things that could be done to build a campaign around your issue/problem, along with the person(s) who will do each task, the dates by which the task needs to be accomplished, and the resources needed to accomplish the task.

• How will this strategy for dealing with the issue/problem help involve your members?

• How will you evaluate this effort?

Often, reaching a long-term solution to a health or safety problem in the workplace means identifying shorter-term goals or objectives along the way. These short-term goals or objectives should be SMART:

• Specific: specify a key result to be accomplished
• Measurable: so you can know whether you’ve succeeded or not
• Assignable: specify who will do it
• Realistic: but still represents a change and a challenge
• Time-related: specify the amount of time needed or deadline

One of the core activities of strategic planning is the development of an action plan. The action plan is actually a specific roadmap for achieving the solution to the problem identified. This roadmap will take the plan from paper into action.

Elements of an action plan can include:

• **What**: List all the different things that need to be done, step by step (like gather information, communicate with/involve members).

• **When**: Develop a timetable with specific dates for achieving each task. Make sure your timetables are reasonable!
• **Who:** Someone needs to be assigned to each particular task who will take responsibility for that task, keep a record of activities and report-back on progress.

• **How:** Identify resources that might be needed, and from whom or where resources could be obtained (resources include money, time, people, and materials).

There may be **obstacles** that you face along the way to reaching your solution. It is useful to predict what obstacles you might encounter, and make sure your action plan addresses each obstacle in order to overcome it.

There will also be **allies** who support your efforts to address the health or safety problem you have chosen. Identify potential allies and make sure your action plan includes reaching out and involving them.

It will be necessary to **meet regularly** to review progress and modify your plan as needed.

At the end of the allotted time for the strategic plan, it is important to **evaluate** the successes, strengths and weaknesses of the plan and its progress. This will enable you to incorporate what was learned into future strategic planning activities for the next problem or set of problems that you want to see addressed.

The ability to put together a plan and put that plan into action is a pre-requisite for success in addressing health and safety in the workplace, especially for tough, long-standing health and safety problems that have been difficult to get corrected.
SECTION VI:

Evaluation
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Date:

Evaluation Form

1. Overall, how would you rate this health and safety training session?
   ___ excellent  ___ good  ___ adequate (O.K.)  ___ fair  ___ poor
   Comments:_________________________________________________________________
   _______________________________________________________________________

2. Were the teaching methods effective?
   ___ yes  ___ no  ___ don't know
   Comments:_________________________________________________________________
   _______________________________________________________________________

3. Were the materials, hand-outs and/or activities useful?
   ___ yes  ___ no  ___ don't know
   Comments:_________________________________________________________________
   _______________________________________________________________________

4. Will the information you received in the training program be useful on the job and/or in your health and safety work?
   ___ yes  ___ no  ___ don't know
   Comments:_________________________________________________________________
   _______________________________________________________________________

5. What would have made this a better/more useful health and safety training program?
   _______________________________________________________________________
   _______________________________________________________________________

6. On what additional health and safety topics would you like further information and/or training?
   [Optional: include your name, local union, district, address and email so we can contact you.
   _______________________________________________________________________
   _______________________________________________________________________
   _______________________________________________________________________

7. Additional Comments:
   _______________________________________________________________________
   _______________________________________________________________________