

Using collective bargaining to promote safety and health

Part 2

Many trade unionists are not aware that they can negotiate with management over safety and health issues and reach collective bargaining agreements that require management to maintain specific safety and health conditions and policies. If used skillfully, bargaining for safety and health can produce important contract language and furnish the union with substantial leverage over day-to-day working conditions. In addition, the union can use safety and health issues to require that management provide the union with information that is not otherwise accessible while a contract is in force. This is Part 2 of a 2-part introduction to putting safety and health issues on the negotiating table. The first part is available from NYCOSH.

Your right to refuse unsafe or unhealthful work

A clause about refusing unsafe work with no loss of pay is important, because the law does very little to protect workers from firing or discipline for refusing to do a dangerous job. For example:

No employee shall be required to perform work that he/she reasonably believes involves a substantial probability that serious physical harm may occur. Employees who exercise this right of refusal shall be assigned to other work. The employee shall accept such assignment either at the rate of the job from which he/she was relieved or the rate of the job to which he/she is assigned, whichever is higher. If an employee exercises the right of refusal, the employer shall not assign another employee to the task without first informing the employee to be assigned and the union that the work has been refused under the terms of the contract. The employer shall not discipline or otherwise discriminate against any employee because the employee has exercised any right established by this contract.

A contract that protects an employee who refuses to perform a task because of a "reasonable belief" that the task may cause serious bodily harm gives more protection than existing laws and regulations.

Preparing for bargaining

Winning safety and health demands is no different than the fight for higher wages. The most important part of any bargaining does not take place at the bargaining table. Successful bargaining depends on involving the whole membership in establishing priorities and showing strong support for them. Without the support of the membership, it's very hard to win anything at the table.



When preparing for bargaining, examine the safety and health provisions, if any, in the current contract. Has it worked well? Do parts of it need to be strengthened? If your contract does not include any safety and health language, what are the most pressing safety and health issues you face?

You can also review safety and health language in a model contract or in other unions' contracts. An excellent resource for safety and health contract language is *Collective Bargaining for Health and Safety: A Handbook for Unions* by the Labor Occupational Health Program, Center for Occupational and Environmental Health, University of California, Berkeley. Single copies are available for \$20 from LOHP, 2223 Fultron St., Berkeley, CA 94720. For more information contact LOHP at that address or telephone 510-642-5507; e-mail lohpl@socrates.berkeley.edu; website: www.lohp.org

Two additional sources of safety and health contract language:

1. "Joint Local Labor-management Safety and Health Committee Provisions in Private Sector Collective Bargaining

(continued on next page)

Using collective bargaining to promote safety and health

(continued from previous page)

Agreements” in the Winter 2000 issue of the U.S. Department of Labor’s quarterly “Compensation and Working Conditions” available on the Internet at http://www.nycosh.org/US_Dept_of_Labor_article_on_joint_safety_and_health_committees.pdf

2. Model Health and Safety Contract Language, a page in the Canadian Auto Workers website, at <http://www.caw.ca/whatwedo/health%26safety/minpos.cfm>

Identify safety and health concerns, with specific examples. Management is required to give the union information it needs to prepare for bargaining, including information on the following subjects:

1. complaints to supervision or management
2. grievances related to safety and health (both successful and unsuccessful)
3. surveys of workers regarding safety and health concerns
4. records of injuries and illnesses (workers who are cov-

ered by OSHA have a right to copies of the employer’s OSHA-200 log of injuries and illnesses or, in states where the OSHA law is enforced by a state agency, the state’s equivalent form. In New York State, it is a DOSH-900 log for public-sector workplaces.)

5. records of workers’ compensation cases
6. records of disciplinary action taken against workers for raising safety and health issues
7. records of any reasonable accommodation resulting from an Americans with Disabilities Act or state disability claim and records of any light-duty assignment and the disability that prompted the assignment

Government agencies also have information relevant to your employer’s safety and health record, most of which must be disclosed on request.

- workers’ compensation board case records
- OSHA and state safety and health agencies (copies of complaints and inspection reports)
- other state and local agencies, such as the health department and the fire department (copies of complaints and inspection reports)

Discuss your safety and health experience. Examine the union’s records, including records of complaints and grievances. Identify specific examples of problems with the existing contract. Determine which of these problems could be corrected by means of improved contract language.

Union access to safety and health information

Asking for information is a useful way to force management to respond to members’ concerns about safety and health issues. By law, unions are entitled to safety and health information such as the following:

- Information necessary for negotiating and servicing labor contracts, through the National Labor Relations Act or state law
- Information specified by the OSHA regulations and other laws and regulations
- Any information that OSHA has about the employer, including inspection narratives, settlement agreements and citations. To obtain all relevant OSHA records, make three separate Freedom of Information Act requests: one to OSHA headquarters in Washington, one to the Regional OSHA office with jurisdiction over your location, and one to your local (Area) OSHA office. If you are in a State Plan state, make the request to the Area office under

(continued on next page)



“Get over here... You said labor and management should stand together.”

Bargaining for safety and health

(continued from previous page)

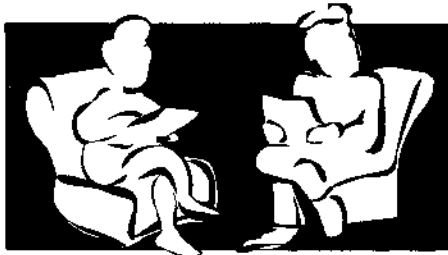
What about safety & health problems that can't be settled cooperatively?

Workers and management don't always agree on how to resolve a safety and health problem. A contractual method of resolving disputes is needed, such as the grievance and arbitration procedure, which has the advantage of familiarity and the potential for speedy resolution, but can have some disadvantages.

- Grievances can take a long time to resolve. Safety and health issues can be matters of life and death. They should take priority over other grievances.
- "Labor relations" staff — who are more familiar with disciplinary matters and contract interpretation than with occupational safety and health — may not be competent for dealing with these issues.
- Arbitrators may also lack any safety and health expertise.

Unions may want to establish an expedited grievance procedure with strict deadlines for safety and health issues. The contract can also provide that safety and health matters will be arbitrated by members of a special panel, consisting of safety and health experts.

If a contract establishes the right to grieve a safety and health issue, it should not restrict the union from using other ways of resolving differences, such as complaining to OSHA, making use of safety stewards or labor-management safety and health committees. No contract can waive a members' legal rights, such as the right to file an OSHA complaint.



Hazardous-duty pay

If a job is inherently hazardous, it is preferable to compensate workers in those jobs by means of their overall pay scale, than it is to pay them more for working under unusually unsafe conditions. Unions can use the process of negotiating over hazardous duty to eliminate or control the hazards, rather than obtaining premium pay for members who are put at undue risk.

Some contracts require premium pay for workers when they perform certain hazardous or unpleasant tasks. A hazardous-duty pay clause can be abused by an employer who chooses to pay a small premium rather than to spend enough to eliminate hazardous conditions and make the job safe.

Hazardous-duty pay should be paid only under specific, agreed-upon conditions. A contract can require the employer to take specific steps to correct any condition that results in hazardous-duty pay and limit it to work that is unavoidable.

Summary: safety and health contract language

1. Safety and health contract language can be used to obtain greater protection than the regulations of OSHA or other government agencies.
2. For some public-sector workers, contract language may be their **only** protection regarding occupational safety and health.
3. Contract language can establish a stronger "right to refuse" unsafe work and stronger protection from discrimination for exercising a safety and health right than OSHA or state law.
4. In some circumstances, it is easier and quicker to directly enforce safety and health contract language than rely on OSHA or another agency.
5. A contract can establish a procedure for reporting — and documenting — safety and health complaints and their disposition.
6. Contract language can cover safety and health hazards that are not regulated by OSHA.
7. A contract can mandate safety stewards or a joint labor-management safety and health committee.
8. Use great care crafting contract language so it will be effective and not subject to misinterpretation.

This publication made possible by a grant from the New York State Department of Labor Occupational Safety and Health Training and Education Program.



(continued from previous page)

your state's freedom of information law. Specify in each request that you are making similar requests to the other two affected offices, so each request is only for records in the office that receives it. A summary of OSHA inspection information is available on the OSHA website, but the records that can be obtained under the Freedom of Information Act include much more information.

- For public-sector unions (and the public at large), copies of any of the employer's records that are covered by a Freedom of Information law
- Copies of safety and health studies, or safety-related engineering studies that are conducted by management and that affect bargaining unit members.

In addition to information that is covered by existing laws, contract language can provide additional, significant rights to obtain other safety and health information, such as the right to immediate notification about accidents or conditions that may affect the safety and health of employees and the right to investigate injuries, near-misses and illness.

A contract can require management to provide the union with information about the safety and health effects of any new process before it is instituted. It can require management to give the union an opportunity to inspect any new machinery before it is installed.

Contractual joint labor-management safety and health committees

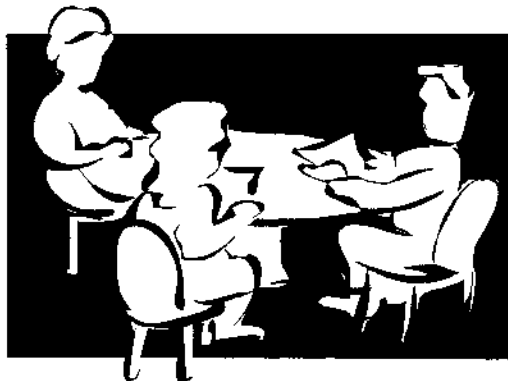
A contract can require the creation of a joint labor-management safety and health committee, which brings together the people affected by safety and health conditions and their union representatives with the people who have the responsibility for insuring safe and healthful working conditions. Labor-management safety and health committees create an opportunity for the union to bargain continuously over safety and health issues and for frontline managers and workers to resolve safety and health issues at the level where they arise.

A union needs its own safety committee to set its safety and health agenda and strategy. A joint committee is not a substitute for a union safety committee, because the union and management will have sharp disagreements over some safety issues. When there is a basis for discussion, it's fine to work with management, but it is vital for union members to have a forum for addressing safety and health issues that management will not consider. If you decide to establish a joint labor management safety and health committee, it is important to get contract language that provides time for the union members of the committee to caucus.

The union and management can benefit from the work of a joint labor-management safety and health committee, because such a committee has the potential to both protect union members by reducing the number of workplace injuries and illnesses and reduce the expenses that the employer incurs when a worker is hurt or sick.

A contract that sets up a joint labor-management safety and health committee should specify:

- the number of committee members, half of them from the union and elected by the union members.
- the duties and responsibilities of the committee and the equality of the union and management in the leadership of the committee, which should have co-chairs from union and management or a chair that rotates between union and management. The committee's minutes should require the approval of both the union and management.
- the pay status of committee members when they are performing committee business. Union members of the committee should be paid for the time they spend on committee business, including both time in committee meetings, time to prepare for meetings, including time to caucus with the union members of the committee, and time to perform other duties of committee members.
- the information that members of the committee will have access to, including injury and illness data
- the amount and subjects of training that committee members will receive, and management's responsibility to pay for it
- unrestricted access to the plant to investigate reports of accidents, injuries, illnesses, near misses and hazardous conditions



Labor-management committee members should be able to devote time to committee work outside of committee meetings. Management representatives on the committee will spend time investigating and analyzing safety and health issues for management before and after committee meetings; union representatives on the committee must have the right to devote paid time to such activities on behalf of the union. This provides the union members of the committee with a full opportunity to discuss safety and health issues and to set their own priorities for resolving them, prior to their discussions with management.

Management is likely to attempt to restrict all safety and health issues to the labor-management committee process. With a contract clause stating that the joint labor-management is not the union's "exclusive forum" for dealing with safety and health issues, the union will keep the option of using the forum of its choice, including the grievance mechanism and OSHA complaints.

(continued on next page)

As the NYCOSH website grows so does the number of people who visit it

This spring NYCOSH added the 120th page to its website. The site is now more than ten times larger than it was when it was launched three years ago.

"The amount of information on the site has increased by much more than ten times since 1998, because some of the pages we have now are larger than the entire site when we started out," according to website manager Jonathan Bennett. "We have become one of the Internet's major safety and health portals. The site features scores of our own factsheets and news reports, plus pages that display more than a thousand categorized, annotated links to related news and information on the Internet."

There is a steady increase in the number of visitors to the

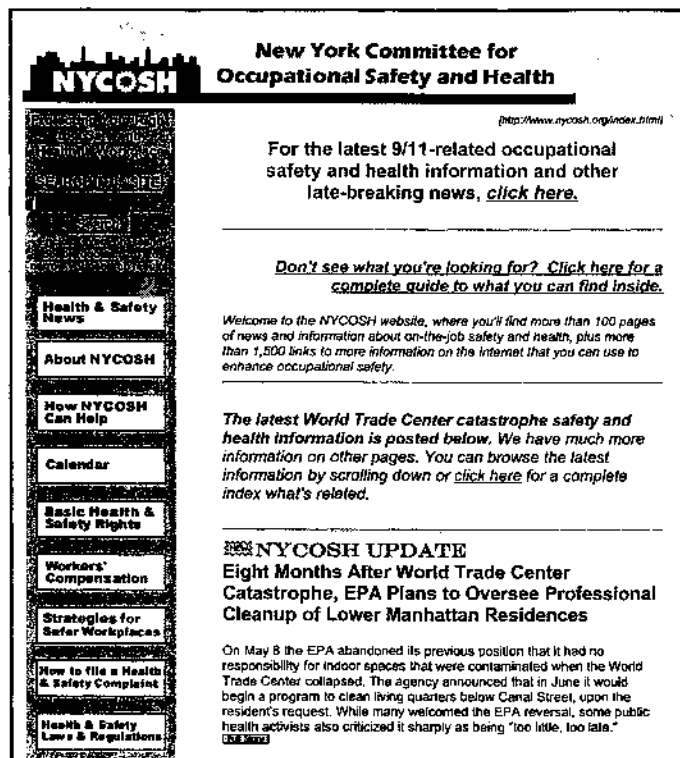
site, as it grows in size and detail. "We didn't have any way to measure the number of visitors to our website for more than a year after we opened it up," said Bennett, "so we can't compare our current traffic to the volume in the site's earliest days, but since we began to measure it two years ago, the number of visitors to the site has quadrupled."

The NYCOSH Internet server makes it possible to get an overall picture of what brings visitors to the site and what kind of information they are looking for. The server does not collect any information that could be used to identify a visitor, but it does make it possible to see what prompts visitors to come to the site and which pages are visited most.

"We can make some interesting generalizations about visitors to our site," says Bennett. "For one thing, the vast majority of pages on our site are opened by people who are looking at one of our pages already. That means that when people come to our site, they almost always look at additional pages before leaving it. I take that as a sign that visitors find the site to be useful."

An increasing number of visitors come back to the site at least once after their initial visit. The site is getting about ten thousand visitors a month, roughly half of whom have visited the site at least once before in that same month.

"We have found that many visitors to the site have come there because they are trying to solve safety and health problems. They discover our site through other safety and



NYCOSH Safety Rep

Safety Rep, a quarterly publication, is free to members.

Non-member subscription is \$40 per year.

Editor: Jonathan Bennett

Contributors: Jeanne Blomberg, David Kotelchuck, Ethan Young

Printing: 1199, National Health & Human Service Employees Union, SEIU, AFL-CIO

Counsel: Larry Cary, Esq., Vladeck, Waldman, Elias, & Engelhard, P.C.

Executive Director: Joel Shufro

This publication made possible, in part, by a grant from the New York State Dept. of Labor Occupational Safety and Health Training and Education Program

Copyright 2002 NYCOSH

health-related or union websites," says Bennett. "We get a steady stream of visitors who come to the NYCOSH website through links in sites like the AFL-CIO's website, the 'Typing Injury Frequently Asked Questions' site and 'Latex Allergy Links.'"

AT THE TOP OF THE LIST

Most of the web users that come to the NYCOSH site from elsewhere on the Internet find it by using a search engine such as Google or SearchMSN. "I assume that some of those people aren't looking for our kind of website, but I'm confident that a lot of them find what they are looking for," said Bennett. "Many search engines list NYCOSH close to the top when they respond to queries that are specifically related to safety and health. For example,

if you type 'occupational AND safety' in the America Online search engine, the NYCOSH site is first on the list that comes up. Or if you query the Google search engine, 'What is PESH in New York State?' the first site on the list that come up is the State Labor Department's and the second site on the list is ours."

Since its inception, the NYCOSH website (www.nycosh.org) has been partially funded by a grant from the New York City Council, which has been renewed four times. "The City Council grant has made it possible for us to devote resources to posting as much practical and up-to-date information as we can," said NYCOSH Executive Director Joel Shufro. "Based on what we know about the site's visitors, the City's money is being well spent." ❖

200 activists attend WTC conference

(continued from back page)
Trauma Center, described the conference as an important step for grassroots activism in New York City. "The people and organizations who were represented have a sense of the pulse of the city that far surpasses the Office of Emergency Management, FEMA or the mayor," she said. "I hope we can all continue to network and that a forceful policy statement will be issued."

Participants expressed deep concern about environmental dangers and enthusiasm for an effort to build broader coalitions in the fields of public health and safety and defense of the urban environment. Four panels and two working sessions brought into focus diverse views and experiences on how to approach post-9/11 strategic planning:

TOXIC AFTER EFFECTS

The first panel examined the impact of the World Trade Center catastrophe in terms of toxic after-effects and the revelation of a crisis in New York City's emergency preparedness and response system. Lisette Morton, spokesperson for Congressman Jerrold Nadler (D-NY), described how the Environmental Protection Agency responded to the downtown cleanup with conflicting positions and failure to enforce the federally mandated National Contingency Plan, which directs the work of federal agencies in disaster situations.

Other panelists included Don Carson, Director of the Hazmat Program of the International Union of Operating Engineers; Stuyvesant High School Parents' Association activist Rachel Lidov; Lee Clarke, American Federation of State,

County and Municipal Employees District Council 37 Senior Safety Coordinator; former lower Manhattan City Council member Kathryn Freed, and David Newman, coordinator of the NYCOSH World Trade Center Health and Safety Project.

In the second panel, the discussion turned to physical and mental harm resulting from the catastrophe. Dr. Stephen Levin, co-director of Mt. Sinai-Selikoff Center for Occupational and Environmental Medicine, pointed out the risk of lung disease brought on by dust contaminated with fine asbestos fibers. He noted that asbestos insulation used in constructing the World Trade towers had been a public health concern for decades. "The only way to determine the extent of the problem is systematic testing, integrating results from both indoor and outdoor environments," he concluded.

Chinese Progressive Association Director Mae Lee called attention to an outbreak of asthma among children in Chinatown (short blocks from Ground Zero) since 9/11. She decried the absence of media attention to the impact of 9/11 on Chinatown, and told of street signs posted in the neighborhood announcing reimbursements for apartment cleanups by FEMA . . . in English only.

Panelist Eva Usadi assessed New Yorkers' potential emotional damage on the basis of the experience of Oklahoma City. "By conservative estimate, in the months to come there will be at least 500,000 people in need of mental health services as a result of the disaster," she said. "Rescue and recovery workers, family members, and hundreds of children have already presented post-traumatic

stress symptoms. If untreated, these can result in mental health problems that can persist for many years. Yet the city has taken a wait-and-see approach to disaster preparedness. We need active intervention to let people know how and where to get help in the event of some future disaster."

Other health experts and community activists on the panel included Roger Cook of United Church of Christ National Disaster Ministries; Roy Grant, Director of Research for the Children's Health Fund, and Julie Hyman of the Center for Independence of the Disabled.

SECURITY COVER-UPS

Panel 3 included NYCOSH Public Affairs Director Jonathan Bennett; Public Employee Federation health and safety specialist Shawn Bobb; NYCOSH Youth and Immigrant Outreach Coordinator Omar Henriquez; Joel Kupferman of New York Environmental Law and Justice Project; Sanford Lewis of the Safe Hometowns Initiative, and Sean Moulton, senior policy analyst for OMB Watch. The panelists discussed the problem of information access, noting that the public's right to know about hazards resulting from 9/11 has been virtually ignored by government agencies and the mainstream media. Moulton sounded a warning about the current administration's assault on the Freedom of Information Act. "National security gave the state carte blanche for cover-ups," he said. "Information is disappearing from government web sites, and public documents are being destroyed."

At the fourth panel, the problem of planning long-term solutions to the environmental

New York Committee for
Occupational Safety and Health

NYCOSH

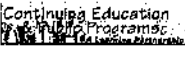

**BEYOND
SEPTEMBER 11**

**ENVIRONMENTAL
AND
PUBLIC HEALTH
POLICY**

**A WORKING
CONFERENCE**

MAY 9, 2002
8:30 AM - 5 PM
CUNY GRADUATE CENTER
5TH AVENUE
BETWEEN 34TH & 35TH STREETS
NEW YORK CITY

WHO SHOULD ATTEND:
LEADERS AND ACTIVISTS FROM
ENVIRONMENTAL, LABOR,
PUBLIC HEALTH, EDUCATION,
IMMIGRANT, COMMUNITY, TENANT,
& FAITH-BASED ORGANIZATIONS



health crisis was addressed. NYCOSH Director Joel Shufro spoke to OSHA's decision to exempt the World Trade Center area cleanup from the agency's own regulatory standards after 9/11: "The regional OSHA administrator emphasizes that they are making every effort to distinguish the decision not to enforce the law at the World Trade Center site as a special circumstance, but we are concerned that the precedent will be used by others to turn the clock back 30 years on OSHA enforcement. Rather than using the agency's prestige and access to the press to provide workers the information they needed, OSHA limited itself to advising employers to comply with standards that were not sufficient to protect workers' health and safety." Referring to the Bush Administration's record of gutting environmental and occupational health laws, Shufro said: "It is time that we demand in-

(continued on page 9)