Avoiding False Security:
Analyzing The Limitations of "Protective" Contract Language

Contract language that establishes "employee involvement", joint labor-management committees or "partnership" programs often includes clauses that claim to protect against company domination of the program and ensure the rights and role of the union. Many of these clauses, however, provide little real protection for union bargaining and representational rights, and may lull members serving on joint committees into a false sense of security which could leave the union unprepared, ineffective and vulnerable. The basic question that needs to be asked is whether the contract language helps the union, as a collective voice, effectively bargain over any changes in conditions of employment that may emerge. Does the language give the union leverage or help the union build leverage by providing access to information, resources and real decision-making? Does it help build the union's internal capacity to prepare for and engage in bargaining over changes in the workplace? And finally, does the language help protect union values and unity/solidarity?

Below are some of the more commonly negotiated "protections" followed by analysis of how these might be less protective than they seem. While these clauses can support a union involved in a joint process, and therefore may be worth negotiating, their limitations need to be deeply understood.

1) **The involvement groups will not discuss anything that is covered by the contract or that violates existing contract language.**

Involvement programs are designed to create a discussion of unanticipated issues that arise during the course of the contract or of changes that are occurring in the workplace. These discussions are therefore generally of issues that are not settled in the contract. By barring involvement groups from discussing anything covered by the contract, this "guarantee" is essentially saying that the groups <u>can discuss</u> anything that is not specifically mentioned in the contract. Discussable issues would then include issues that are legally bargainable under the National Labor Relations Act, since practically any change in the work process will have impacts on mandatory subjects of bargaining (ie - conditions of employment.)

The union should never (and cannot) give up its right to bargain over issues as they arise. If the protection were re-written to say that the groups cannot discuss <u>bargainable</u> issues - in other words, any issue that affects wages, hours or conditions of work that should be discussed directly with the union - the groups would be left with very little to talk about.

Contract language should present involvement as continuous bargaining - with the union as the sole bargaining representative. Committees should not have the right to change the contract, but all discussions with the company should be seen as a form of bargaining. There is, therefore, a need to educate the members about continuous bargaining and create an independent union structure to monitor and carry out the discussions. (See UMass Lowell Labor Extension Program Fact Sheet on Continuous Bargaining.)

2) **The Union will have 50% representation on all committees, thereby assuring that the union will be an equal partner.**

Having an equal number of people on a committee does not give the union equal power. In contract bargaining for example, we often have as many people as (or even more than) management. The implication that the union has equal say can cause serious problems if unpopular changes are implemented with the union's apparent "stamp of approval." The 50% rule merely disguises the fact that in most cases, unless the union has a clear plan to leverage the discussion, management rights prevail (or at least that's what management believes). We should not negotiate language that hides this reality. It should be clear where decision-making power ultimately lies.

Committees should have <u>at least</u> equal representation, but we shouldn't be fooled by a guarantee of equal numbers.

We should have at least equal representation on any committee, but we should also ensure that the final decision-making mechanisms are made clear.

3) **Union representatives may attend any involvement session or team meeting.**

We certainly should have the right to attend any and all meetings that our members are involved in. But this protection implicitly treats the union as an outsider to the process, rather than as the recognized representative of the workforce. If the process of discussion is thought of as bargaining, the union cannot and should not be an outsider. One of the key challenges of joint or involvement committees is to "take the union into" all discussions with management by building the union in all of the members.

Worse than being an outsider, the union can be seen as a "cop" who comes in to "enforce" the contract against the process and even against the members. The union is set up for dissension and division if projects or suggestions that members have worked on are shut down.

The union needs time to turn any and all committee members into union representatives - to organize them into activism. This means that there should be provisions for union-only training, caucuses and preparation time built into any joint program. <u>Mainly, the union should have the right to appoint all members of committees</u>. Rather than the right to visit, the union needs the right to be involved and the resources necessary to effective involvement.

4) **The union will choose its own facilitators/coordinators.**

This is a critical right. But it doesn't go nearly far enough. Union facilitators or coordinators can be an important resource, but only if they feel accountability to, and are held accountable to, the union. Union facilitators who work on company property, in offices surrounded by company people, providing training with company views, will invariably tend to be drawn over to a company view of the issues. The only thing that can counteract this tendency is if the facilitators are responsible to the union and only to the union. A key right is the right to appoint and <u>un-appoint</u> any union facilitators/coordinators.

Union facilitators should "live with" and be accountable to the union. Without clear accountability, including the right to remove, it is better not to have a union coordinator or facilitator position that is

union in name only.

5) **All training sessions will be co-taught by members of the bargaining unit.**

This doesn't guarantee that the content will have any union values built in and may only give credence to a management message. It also doesn't say who will choose the bargaining unit members who will be involved in the training. Accountability and content are key. But it is also critical that union-only training be part of any and all joint processes. Even the best trainer cannot create a union strategy within joint sessions.

Joint training should be limited and all content should be carefully bargained. Resources for union-only training are critical and should be a deal-breaker.

6) **The program is designed to strengthen both the union and the company; the goals include increased productivity, improved quality, higher skills and increased worker satisfaction.**

These clauses purport to ensure that the program is accountable to both union and company goals. But accountability (and enforceability) is exactly the problem. The company goals of productivity and quality are highly measurable and quantifiable. The union goals of, for example, skills and satisfaction are more difficult to quantify and implement. It is generally true that things that can be counted are the things that count. A question to ask is whether the goals language is enforceable. In other words, would an arbitrator support a union claim?

It should be recognized that it is possible to meet short-term goals of the membership in ways that undermine the union over the long run. If specific goals of union-building are not recognized (and they rarely are), the tendency will be for the program to ignore or bypass union institutional concerns.

Finally, the question of strength is confusing. Relative strength between labor and management is the critical measure. Therefore, a clause that creates a goal of strengthening the union and the company is meaningless.

The goal of the program should be to set up a system of ongoing bargaining to deal with issues of workplace change. The company and the union each have their own goals which they pursue in bargaining and which do not have to be negotiated or jointly approved.

7) **The program is voluntary for individuals.**

While this protection seems to be "democratic", the reality is that it can lay the basis for dividing the union and turning control of the program over to the company. In practice, this protection often means that strong union people who are nervous about the program (often with good reason) have the option of walking away, leaving those who are more sympathetic to management or more vulnerable in the hands of management.

Whatever we do, we should do together as a union. Bargaining is not voluntary and is not done by individuals. It is only as a union that we should engage in discussions of the future. Otherwise we have no strength. This does not mean that only union officers can be in the discussion, but it does mean that volunteers should be screened and selected by the union rather than by management.

8) **No one will be laid off or downgraded as a result of the program.**

This protection is generally meaningless. Layoffs can almost always be blamed on something other than the program. Furthermore, downsizing that is achieved by attrition still undercuts the strength of the union and does away with decent union jobs. In the long run, protection of good unionized employment is critical, not just protection of the jobs of current union members.

Language such as no layoff protections which only seem to provide protection should not be negotiated unless it is enforceable and unless the limitations are made clear from the beginning. Otherwise, their only impact may be to lull the union and the members to sleep.

9) **The Program will not be used to discipline employees.**

Formal discipline is rarely part of involvement programs - but informal discipline and peer pressure are almost always involved. The key problem is that the peer pressure is too often exerted to enforce management, rather than union, needs and values.

Clauses that bar discipline from the program are fine, but they should not be allowed to create complacency about informal discipline and peer pressure issues that will arise.

10) **Any consultants will be mutually agreed upon.**

This is both a critical right and a false security. There are few consultants out there who know how to work with unions, who are committed to building unions, and who are not fundamentally loyal to management. Therefore, picking a consultant almost inevitably means picking the lesser of two evils. And having the right to pick (or to mutual agreement) may leave us (or the members) with an unwarranted sense that the consultant is union-friendly, and that we can therefore let down our guard.

No consultant, no matter how "union-friendly", displaces the need for union-only strategies and activities. The right to veto the choice of consultant doesn't give the union control over the consultant. Having a union-friendly consultant, while it might be useful, will tend to lead the union to let down its guard.

Use consultants only where necessary and only for particular tasks. Keep an eye on them and watch out for the Tricks and Traps – the techniques they use to control the discussion and move it in the direction that they want (for a full discussion of the dangers of consultants and their techniques, see "Employee Involvement: Watching out for the Tricks and Traps", available through the Technology and Work Program at UMass Lowell). If you have this protection in your contract, try to apply it to all consultants that have anything to do with how work is done - not just the "labor-management" consultant.

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