



Contract Language on Workplace Change

New technologies such as computers, telecommunications, cellular phones, robots, and computer-controlled equipment; new materials such as plastic piping and optical fibers; and new forms of work organization such as Lean Production, teams, cells, Kaizen, just-in-time (JIT), Six Sigma and statistical process control (SPC) are all examples of changes that are arriving in our workplaces. As the rate of change in the workplace increases, many unions are finding that their traditional contract language is not providing the necessary protection for their members. Bargaining unit definitions, seniority clauses and job classification structures devised in the 1960's, 70's or 80's are failing to protect workers in the changing environment we are seeing today. In response, more unions are looking at ways to gain the right to bargain over workplace change, and to make their contracts more protective in the face of change.

Unfortunately, the most common form of language on workplace change today is the Management Rights Clause which is designed to exclude the union from bargaining over change - giving sole discretion to management. Although unions have the legal right, and management has the legal duty, to bargain over the *impacts* of change, the reality is that: 1) this right is hard to enforce, 2) unions often have little leverage when it comes to mid-term bargaining, 3) unions often don't have the internal mechanisms they need to effectively bargain over change and 4) bargaining over impacts is often too little, too late. Nevertheless, unions should use their rights to bargain to push their way to the table - regardless of their language.

The second most common piece of contract language on workplace change is employee involvement or labor-management clauses that generally give the union very little in the way of concrete rights. These can be worse than no language at all if they appear to put a union stamp of approval on changes that are hurting the membership without giving the union any substantive voice.

While there are many good examples of workplace change language, in order to be most effective, a clause must be written and negotiated with the concrete conditions of the union, the firm and the industry in mind. A change clause should be designed to give the union greater opportunity to put union concerns such as job protection, skill, training, and health and safety on the table and to increase the union's ability to bargain over change. A good clause on workplace change should contain:

- A **Definition** of workplace change,
- Provisions for **Advance Notice**,
- Union access to **Information**,
- Union access to **Resources**
- A process for **Negotiation**, and

Basic **Protections.**

The stronger each of these sections is, the better off you will be when it comes to discussing change with management. While it is likely that you won't win the language you want the first time around, the goal should be to have each of these areas covered, and to have a plan for making them stronger with each successive contract.

DEFINITION

The definition of workplace change that is written into the contract forms the basis for the operation of the whole clause. The definition needs to be broad and comprehensive so that it covers all types of change. It should be written to include changes in techniques, machines, controls, materials, software, processes and work organization.

If the definition isn't broad and inclusive enough, the rest of the clause may never kick in when a key new technology or new way of organizing work is being planned and introduced. Sections that limit the changes which are covered by the clause should be avoided. These include “*if*” language (such as “*if* the change affects 50 or more people”; or “*if* the change leads to a layoff”) and language that refers only to “major” or “significant” change.

ADVANCE NOTICE

Advance notice of change is crucial if the union is going to play an effective role in bargaining over the change. The obvious question is: How far in advance does the union need to be notified? The goal has to be to get as much notice as possible and specifically to get notice before decisions are made or locked in. The actual length of time can vary based on the industry and the type of changes involved. Ideally, notice should be given as soon as a change is first discussed by management or as soon as the planning process begins. In any case, notice should be required far enough in advance of installation to give the union time to respond to potential problems and to influence the outcomes -- 3 months, 6 months, or even better, one year.

Remember that companies typically plan technology acquisitions, work re-organizations and other such initiatives well in advance. For example, next year's and the following year's budget allocations (and capital expenditures) are already being determined.

INFORMATION

In order to evaluate potential changes, formulate options, and develop a bargaining position, the union will need concrete and in-depth information about what is being proposed. The goal should be to get as much information as possible, and to get it in a usable form.

You want to get information about the change's:

- purpose
- function
- cost, and cost justification
- possible connections to other systems planned or in place.

Understanding or anticipating the company's long-term goals in implementing the change, and not just its immediate impact, are important to negotiating appropriate protections. Since companies often look at several different alternatives when discussing changes in work processes, information on other options which were explored (and rejected) can be helpful in analyzing the company's goals. Knowing how the change links to other plans that management has is important to seeing the whole picture and negotiating over the right issues.

Information should also be available on the change's calculated impact on:

- jobs (both inside and outside the bargaining unit)
- job content and pace of work
- skills and training needs
- sub-contracting of work
- health and safety

Descriptions of planned training programs connected to the change, including duration, content and who will perform the training should be made available.

RESOURCES

As the rate and scope of change grows, dealing with it will take an increasing amount of union time, energy and attention. Union-based training is necessary for union officers, stewards and members who are involved in monitoring, and negotiating about, change in the workplace. Time is needed to investigate and evaluate management's plans and proposals and to prepare for any meetings or bargaining sessions that will be held. Money to bring in technical experts to help understand the impact of various changes being proposed and to help develop options.

In order for the union to be able to play an active role, it is important to negotiate access to resources including lost time for training and preparation, right to bring in experts and money to pay them, etc.

NEGOTIATION

There needs to be a process for negotiation between the union and the company. The goal is to provide union input into the process of change. In this section of the clause, what is negotiable, how it is

negotiated, and the dispute resolution mechanism should all be spelled out.

Many current clauses put severe limits on what can be discussed, leaving the key decision-making in management's hands. Other clauses allow broad discussion but specifically limit the process to an advisory role. Both of these should be avoided where possible.

One approach to ongoing negotiation is to establish a joint technology or workplace change committee that meets on a regular basis and has special meetings as technology issues arise or are identified. It is important that the union members of this committee have the right to call meetings, to put items on the agenda, to caucus during meetings and to chair or co-chair the meetings. It is also important that the union approach these meetings, whatever they are called, as bargaining sessions between the two parties. It is critical that all union personnel on any committee be appointed by the union, and that there are union-only meetings of the committee members.

PROTECTIONS

Even with a good mechanism for negotiating over change, it is important to have basic protections written into the contract. These can include no-layoff provisions, rate and pay protection, guarantees of retraining, health and safety rights, and limits on displacing bargaining unit work. These and other issues should, if possible, be taken out of the discussion. If the contract clearly provides, for example, for retraining of the existing workforce on any new technologies, then the union negotiators can focus on other issues like improving working conditions, health and safety, job security, etc.

In most cases, provisions like those described above will not all be won at once, and they will not be as strong as you want the first time around. But getting some language is better than having none, and each step can help build for the next. Access to information and resources, for example, can help build the union's capacity to analyze change in the workplace and develop conscious union strategies, thereby better protecting the members and helping to prepare for the next round of contract bargaining.

It should be noted that contract language on workplace change does not work on its own. It requires concerted effort by the union, a union strategy, and a structure within the union to make sure that the rights built into the language are actually used by the union to their fullest.

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