NEW YORK COMMITTEE FOR OCCUPATIONAL SAFETY AND HEALTH

FACT SHEET

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UNION RIGHTS TO HEALTH AND SAFETY INFORMATION AND TO ACCESS TO EMPLOYER'S PREMISES UNDER FEDERAL LABOR LAW

The National Labor Relations Act (NLRA) guarantees a union the right to obtain information from the employer, including health and safety information. This right is not explicit in the NLRA - the United States Supreme Court interpreted Section 8 (d), which requires employers and unions to bargain collectively, to provide a union with the right to information in order that it be able to fulfill its responsibilities to negotiate, monitor, and enforce contracts. Because health and safety is a mandatory subject of bargaining, employer refusals to provide health and safety information, or unreasonable delays in doing so, constitute unfair labor practices and violate Section 8(a)(5) of the NLRA. In situations where necessary information can best or only be obtained by physical inspection of the worksite, the union's right to information under NLRA has been interpreted by the National Labor Relations Board (NLRB) and by the courts as conferring a right of access to the employer's premises.

In Minnesota Mining and Manufacturing Company v. OCAW Local Union No. 6-418, the NLRB ordered the employer to honor the union's request for health and safety data.(1) The Board said "Few matters can be of greater legitimate concern to individuals in the workplace, and thus to the bargaining agent representing them, than exposure to conditions potentially threatening their health, well-being, or their lives." The Board noted that the union needed the information to intelligently discuss health and safety concerns with the employer and to negotiate in a meaningful fashion.

The NLRB and the courts have also ruled that an employer may be required to grant union representatives reasonable access to its premises where access is necessary for the union, as the employees' collective bargaining representative, to adequately inspect health and safety conditions. In NLRB v. Holyoke Water Power Co. v. Local 455, IBEW, the NLRB ordered the employer to grant access to its premises to measure noise levels.(2) The Board reasoned that "the employees' right to responsible representation entails the union's obtaining accurate noise level readings for the fan room to ascertain the extent of the hazard and to suggest means of ensuring that the employees are properly protected."

In another case, the NLRB ruled that an employer must permit a union to enter its facility to investigate industrial accidents, to conduct health and safety inspections, and to conduct tests to determine the presence of toxic or hazardous vapors or fumes.(3) The Board has also said that an employer must permit a union access to the worksite to investigate employee allegations of unhealthy conditions, since physical inspection was the only way the union could determine the accuracy of employee complaints.(4) In another case, the Board noted that union members lacked the specialized training necessary to qualify them conduct a proper health and safety inspection and that an employer's offer to hire an independent expert was not likely to address all areas of employee concern, and therefore ruled that the union could bring in its own health and safety expert to conduct inspections and tests.(5)

In these and other cases, the Board has established the principle that a union's right to bring in an industrial hygienist is not subject to ultimate refusal by the employer, who can negotiate conditions for the union-sponsored inspection but in the end must permit entry. Nor is the union's right limited because of other inspections which may have taken place

because the union's inspection may uncover additional information that a prior inspection overlooked.

(1) 261 NLRB 27 (1982), enf'd, 711 F.2d 348 (D.C. Cir. 1983).

(2) 273 NLRB 1369 (1985), enf'd, 778 F.2d 49 (1st Cir., 1985), cert. denied, 447 U.S. 905 (1986).

(3) Hercules, Inc. v. International Chemical Workers Union, Local No. 271, 281 NLRB 961 (1986).

(4) Gilberton Coal Company v. UMWA, 291 NLRB 344 (1988).

(5) Klein Tools Inc. v. International Brotherhood of Boilermakers and Forgers, AFL-CIO, CFL, NLRB 13-CA-31825 (1994).