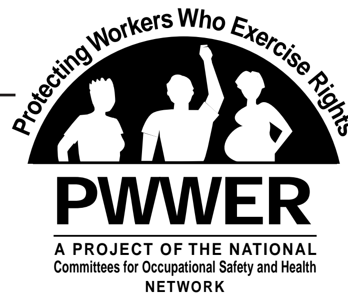

Health and Safety and the National Labor Relations Act

FACTSHEET OF THE "PROTECTING WORKERS WHO EXERCISE RIGHTS" PROJECT OF THE NATIONAL COSH NETWORK

The National Labor Relations Act (NLRA), enacted by Congress in 1935, is the law that gives private sector workers legal rights to join unions and bargain collectively with their employer.Its provisions give workers (including those who aren't in unions) the right to act "collectively" (in groups of two or more) to improve workplace conditions, including health and safety conditions.

NLRA rights and protections extend to those who refuse unsafe work, but only in certain circumstances. Workers who suffer employer retaliation for health and safety activities including for refusing unsafe work can file a charge with the National Labor Relations Board (NLRB) ***as well as*** a complaint with the Occupational Safety and Health Administration (OSHA). Workers' ***strongest*** protection against employer retaliation for health and safety activities is a union contract.

Who Is and Isn't Covered by the National Labor Relations Act?

Private sector workers are covered by the NLRA unless they are:

1) Covered by the Railway Labor Act
2) Supervisors
3) Independent Contractors
4) Domestic servants in the home
5) Persons employed by parents or spouses
6) Agricultural workers

Employees of state, county, city and town governments are not covered by the National Labor Relations Act, but many state's labor relations laws have adopted provisions similar to those in the NLRA.

Federal employees are not covered by the NLRA, with the exception of employees of the U.S. Postal Service. Postal workers have the right to file charges against illegal employer actions under the NLRA, but do not have the legal right to strike under the Act.

Workers' Rights Under the NLRA - Section 7

Section 7 of the NLRA states that:

> *"Employees shall have the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection....."*

The rights granted by Section 7 are protected against employer interference by Section 8, which details and prohibits five specific employer "***unfair labor practices.***"

Unfair Labor Practices Under NLRA - Section 8

Section 8 of the NLRA defines employer unfair labor practices. Five types of employer conduct were made illegal:

1) Employer interference, restraint, or coercion directed against union or collective activity *[Section 8(a)(1)]*
2) Employer domination of unions *[Section 8(a)(2)]*
3) Employer discrimination against employees who take part in union or collective activities *[Section 8(a)(3)]*
4) Employer retaliation for filing an unfair-labor-practice charges or cooperating with the NLRB *[Section 8(a)(4)]*
5) Employer refusal to bargain in good faith with union representatives *[Section 8(a)(5)]*

The National Labor Relations Board and Remedies Under the NLRA

The National Labor Relations Board (NLRB) is the federal agency that enforces the NLRA.
If the NLRB determines that an employer has committed a unfair labor practice, the Board can order an employer to:

- Stop violating worker and/or union rights under the NLRA
- Order job reinstatement and back pay for workers who have been fired for unlawful reasons, and
- Reverse any action taken against a worker because the worker engaged in activities protected by the NLRA

It is important to note that it usually takes ***years*** to settle a NLRA violation. You will not get any immediate action as a result of filing an unfair labor practice charge.

NLRA Rights for Unions to Get Health and Safety Information

One of the most useful tools provided by the NLRA is the right of unions to obtain information from the employer, including health and safety information. This right is not explicit in the NLRA — the U.S. Supreme Court interpreted Section 8(d) (which requires employers and unions to bargain collectively) to provide union rights to information in order to fulfill unions' responsibilities to negotiate, monitor and enforce contracts. Since health and safety is a "mandatory subject of bargaining," employer refusals to provide health and safety information, or unreasonable delays in doing so, are unfair labor practices in violation of Section 8(a)(5) of the NLRA.

Examples of health and safety information that employers must provide to unions include: accident reports, company manuals and guides (including health and safety-related rules and policies), health and safety inspection records, health and safety investigative reports, and material safety data sheets (MSDS's).

Note that this right to information is for ***unions***, not individual workers. Also note that unfair labor practice charges filed with the NLRB regarding an employer's failure to provide information are generally settled much faster than other unfair labor practice charges.

NLRA Rights for Worker Involvement in Health and Safety Activities

Workers who engage in health and safety activities can be protected against employer retaliation under the NLRA if the health and safety activity is ruled to be "concerted activity."

"Concerted activity" under the NLRA includes:

- Activities engaged in by employees for their mutual aid or protection — such as for their health and safety.
- Activities that occur when a worker speaks for or acts on behalf of one or more other workers.

This concept of "concerted activity" is not limited to workers who belong to labor unions. This NLRA protection applies to all workers covered by the Act, whether or not they are in a union.

The best way to act in a "concerted manner" is to have two or more workers (the more the better!) who are in agreement, act together. If you are acting as a "spokesperson" for a group, you should make sure that others are willing to back you up if needed!

If employer retaliation occurs against workers engaged in concerted activity, workers must file an unfair labor practice charge under Section 8(a)(3) of the NLRA against the employer with the NLRB within 180 days of when the retaliation occurred.

Right To Refuse Unsafe Work

The National Labor Relations Act includes protection against employer retaliation for workers involved in work refusals regarding unsafe work under the following circumstances:

1) The work refusal is in ***good faith***. It does not have to involve a so-called "serious" hazard, and it covers any work the worker ***believes*** is hazardous whether or not it can be proven so.
2) The work refusal must be ***concerted*** — that is, it must involve more than one worker. Two workers refusing a job together is "concerted." Some National Labor Relations Board (NLRB) decisions have protected single workers who refuse work which is also done by other workers, but those decisions have not always been upheld by higher courts.
3. The work refusal must not be in violation of a "no strike" clause in a union contract. However, the NLRB has held that ***brief*** work stoppages to avoid a particular job hazard are not prohibited by no-strike clauses and are protected under the National Labor Relations Act. If the hazard poses an abnormally dangerous threat, a strike against it will be protected despite the presence of a no-strike clause under Section 502 of the NLRA.

If employer retaliation occurs, workers can pursue an unfair labor practice charge against their employer under NLRA Section 8(a)(3). Charges must be filed with the NLRB within 180 days of when the employer's retaliatory action occurred.

> ***CAUTION:*** *It can take years for the NLRB to settle a work refusal case and there are no guarantees that workers will win their jobs back and/or win back-pay.*

Using NLRA Rights If You Have Been Retaliated Against By Your Employer For Health and Safety Activities

- Inform and involve your Union, if you have a union. ***The strongest protection workers have against employer retaliation for health and safety activities is a union contract.***
  Talk with your steward about filing a grievance. Specific contract language can give workers much stronger protection against employer retaliation for health and safety activities including refusing unsafe work than the protections offered workers under the NLRA and OSHA.
- Workers who are not in unions and want assistance in pursuing health and safety rights under the NLRA can contact a COSH group (Committee on Occupational Safety and Health) in their area. ***For the number of the COSH group nearest you, contact NYCOSH at (212) 627-3900.***
- Document the retaliation and what led up to it. 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?
- File an unfair labor practice charge with the NLRB within 180 days of when employer retaliation occurred. The NLRB's six-month limitation rule on filing unfair labor practice charges is strictly enforced.

  Note for Unions: the NLRB has a deferral policy regarding certain unfair labor practice charges. This requires the NLRB to defer to the union's grievance procedure if the union has filed, or can file, a contract grievance against the employer's alleged wrongful activity and if arbitration is available under the contract. The NLRB then waits to see if the matter is resolved under the union's grievance procedure. Two types of unfair labor practice charges are generally ***not*** deferred: charges that allege an employer's refusal to provide a union with information; and charges alleging employer retaliation against workers for filing unfair labor practice charges against them at the NLRB.
- Workers who pursue legal remedies should keep in mind that under the NLRA they have 180 days from the time a retaliatory action occurred to file an "unfair labor practice" charge against their employer with the National Labor Relations Board (NLRB), and under the Occupational Safety and Health Act they have 30 days from the time retaliation occurred to file a complaint with OSHA. Workers can file charges or complaints with both agencies in cases of employer retaliation.

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