

BNA's Daily Reporter System

DAILY LABOR REPORT

ANALYSIS
SECTION**COLLECTIVELY BARGAINED SMOKING POLICIES
SEEN BY UNIONS AS FAIREST ALTERNATIVE**

U.S. labor unions continue to hold to the position that the best workplace smoking policies are ones that are negotiated, while labor union officials acknowledge that smoking policies generally are becoming more restrictive.

But a tough policy, even one that totally bans smoking, need not preclude bargaining, according to union officials interviewed for a BNA special supplement on workplace smoking. As long as employees are consulted, and accommodations made for those who smoke, unions generally are prepared to go along with quite restrictive policies.

The entire workplace smoking issue has become much less contentious in the last two or three years, labor officials agreed. "It's not as controversial as it was," said David LaGrande, health and safety director for the Communications Workers of America. "People are more accepting of policies restricting smoking. Smokers don't see it as an imposition to go somewhere else to smoke," he said.

Non-smokers also seem to be accepting of the rights of their co-workers who smoke, according to union officials. "It's a matter of reaching an accommodation, with the goal of achieving a smoke-free environment without trampling on people's rights," said James August, health and safety specialist for the American Federation of State, County and Municipal Employees. There are methods of accommodating smokers, he said, that will satisfy even fairly militant non-smokers.

What unions are not prepared to accept is the unilateral imposition of a smoking ban.

The Washington Federation of State Employees, an AFSCME affiliate, last year fought a ban imposed by the Department of Social and Health Services for its offices around the state. In January, the Washington Personnel Board ruled that the department had committed an unfair labor practice by implementing the ban without first negotiating with the union and ordered the department to bargain over the policy.

Pat Sisco, a union area representative who recently negotiated separate policies for employees in two agencies within SHS, said both policies reflect the strong sentiment within the general population that workers are entitled to breathe clean air. The policies also had to fall within the strictures of the state's 1985 Indoor Clean Air Act, which prohibits smoking in common work areas.

The two negotiated policies nonetheless take different approaches in addressing the issue, Sisco said. At the division of support enforcement offices in Olympia, management agreed in a contract ratified in September to construct pre-fabricated gazebo-type shelters outside the building where smokers can smoke. The agency had just moved to a new building, Sisco said, and an employee poll showed that employees did not want smoking in the building. "They're really quite attractive," Sisco said of the smoking shelters.

In contrast, union members working for the community services division wanted to accommodate interior smoking, the union negotiator said. The solution was smoking lounges vented to the outside and designated smoking and non-smoking lunchrooms on different floors.

In both cases, Sisco explained, the objective of the union is to try and resolve conflicts within the membership. "We try to be sensitive to non-smokers and still maintain some sense of realism" in accommodating smokers, she said.

Arbitrator Upholds Total Ban

Unlike the situation in Olympia, the Communications Workers of America lost its fight to have Michigan Bell bargain over a policy that totally bans smoking in company buildings and vehicles.

The company imposed the ban in July 1987 leading the union to file a series of grievances on behalf of smokers. In May 1988 arbitrator Robert Howlett upheld the ban, finding that the union had waived its right to negotiate over the policy because it had failed to request bargaining after it was notified initially of the company's intention to institute the policy. The company had argued in instituting the ban that it had a responsibility to provide a healthy and safe environment for its workers.

Donald Lindemier, administrative assistant to the international vice president for CWA's District 4 in Michigan, said the company has accommodated smokers by permitting them to go outside to smoke on their breaks. "They're very unhappy. They feel really put upon," Lindemier said of the smokers. "It's cold as hell outside in the wintertime."

Lindemier credited the company, however, with providing smoking cessation programs for those who want to quit. According to the arbitration record, about 25 percent of the workforce were smokers at the time the policy was imposed.

The union is now facing the possibility of yet another imposed ban, according to Lindemier. Ameritech Publishing, which publishes the Yellow Pages for the Ameritech region, told the union that it is instituting a designated smoking area policy as of Oct. 1 and a total ban on Jan. 1, 1990.

Some of the company's offices previously had designated smoking areas and the union sees this as a reasonable way of accommodating smokers, Lindemier said. However, it opposes a total ban and has written a formal letter to the company to this effect.

When the company first announced its decision, the union demanded to bargain. While the union has yet to convince management to modify its position, Lindemier said "I feel there has been good faith bargaining and there will be further talks" before the target Jan. 1 date when the ban is set to go into effect.

Lindemier speculated that there are probably fewer smokers at Ameritech Publishing than there were at Michigan Bell, where he said the jobs are not as stressful. Consequently a total ban would not upset as many employees. Nonetheless, the union will continue to demand that other alternatives be used, he said.

CWA's LeGrande conceded that while a total ban is not what the union would want, when such a policy is imposed "there is not a lot we can do; it doesn't leave us with a whole lot of options."

LeGrande said that all of the major telecommunications companies with which CWA bargains now have some form of smoking policy. In general, "bargaining has worked," he said.

LeGrande said that in CWA's bargaining this past summer with American Telephone & Telegraph Co. and more recently with the various regional Bell operating companies, holding down the cost of health care and preventing cost shifting to employees was a major objective of the union. Smoking is a recognized health hazard, known to result in more illness and lost work days, LaGrande said. Reducing smoking among workers can produce savings in health costs in the millions of dollars for a company the size of AT&T, he said.

If the union and its members expect the company to continue to pay the full cost of health care, there has to be cooperation on smoking policies. People now recognize this and "are making the link between the advantages of not smoking and health," he said.

Indoor Air Quality

Union officials who spoke to BNA were quick to point out that workplace smoking policies cannot be separated from the broader issue of indoor air quality.

Too often, restrictive smoking policies are used as an excuse not to address inadequacies in the design and maintenance of building ventilation systems, said Bill Borwegan, health and safety director for the Service Employees International Union. "Employers think they can remedy the problem [of poor air quality] by banning smoking, but that doesn't deal with other air contaminants," he said. "Dealing with indoor air quality is a multi-faceted problem and smoking is only a part of it."

Borwegan observed that the air quality issue has emerged in the last three years as a leading health and safety concern for those among SEIU's 925,000 members who work in office settings. In negotiating and servicing contracts the union has gone beyond smoking policies, he said, to address the broader air quality issue.

The New Hampshire State Employees Association, SEIU Local 1984, for example, has been pushing for the last 10 years to get proper ventilation in the Concord, N.H., building which houses the state department of health and human services. While smoking initially was seen as part of the poor air quality problem in the building, it quickly became apparent that there were serious deficiencies in the heating and ventilation systems, according to Dennis Martino, Local 1984 director of education and training.

Characterizing the structure as a classic case of sick building syndrome, Martino said employees working in the building have suffered from respiratory problems, rashes, and burning eyes as a result of the poor ventilation.

The building cost about \$8 million to construct, Martino said, but in the last 10 years the state has spent at least that much again in efforts to correct ventilation deficiencies. The joint labor-management health and safety committee pushed for the initial \$200,000 study to determine what the problems were in the building. Since then the committee has testified several times before the state legislature for capital expenditure bills to rectify the problem. A letter-writing campaign initiated by the committee generated 1,000 letters of appeal to the governor to include money for building renovation in his capital budget message.

"Without the health and safety committee pushing from day one the state would have been inattentive," Martino said. "The committee just kept at it."

Copies of the special supplement, *Workplace Smoking: Corporate Practices & Developments* (38 pages, including an eight-page appendix) may be purchased for \$25.00 each from BNA PLUS; telephone: (800) 452-7773; in Washington, D.C., (202) 452-4323.

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