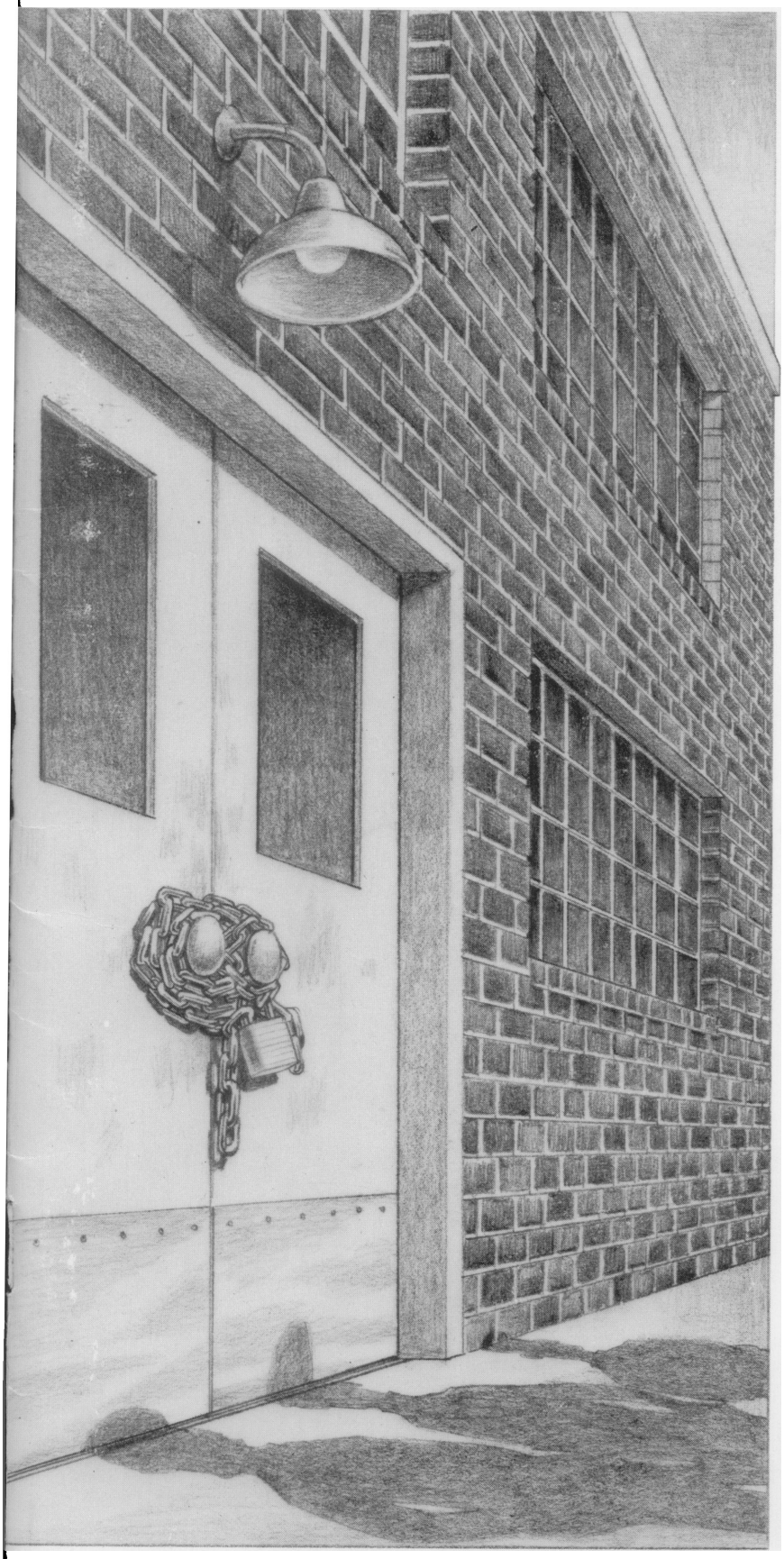

PLANT CLOSINGS AND TECHNOLOGICAL CHANGE:

A GUIDE FOR UNION NEGOTIATORS

by
Anne Lawrence
and
Paul Chown

Center for Labor Research and Education.

Institute of Industrial Relations, University of California (Berkeley)

Labor Training Series, Part II

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Cover artwork by Kircher and Associates,
provided courtesy of the AFL-CIO Federationist

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INTRODUCTION

American industry today is undergoing a massive transformation which gravely threatens the job security, wages, and benefits of union workers. Economic recession, the flight of capital overseas and to low wage areas, the declining competitiveness of domestic industry, and the introduction of labor saving technologies are producing an epidemic of plant closings and layoffs.

The problem of plant closures is stunning. The federal government does not count shutdowns directly, but estimates based on private research data show that over four million jobs a year were lost in the early 1970s as a result of plant closings and migrations. For every ten large manufacturing plants open in 1969, three had closed by 1976. No single area of the country was spared.[1] Since then, hundreds of thousands more workers -- from steelworkers in Lackawanna, New York, to insurance company data processors in San Francisco; from autoworkers in South Gate, California, to tire builders in Akron -- have joined the victims of plant closings.

Technological change also poses a major threat to workers' job security. The development of the microprocessor, or "computer on a chip," has made possible an unprecedented transformation of the workplace. Electronic scanning devices at the supermarket, word processors in the office, electronic transfer of mail at the post office, robots on the assembly line, and numerically controlled machine tools in the shop threaten the jobs of the checkout clerk, secretary, postal clerk, autoworker, and machinist. **Business Week** has estimated that within the next decade, new technology may transform as many as 45 million jobs, half of them now unionized. As many as 25 million of these jobs may be completely eliminated.[2]

Faced with the major job losses caused by plant closings and technological change, many unions have sought through collective bargaining to check further layoffs and lessen the hardship for those who are already out of work. Job security has always been a major concern of union negotiators. But today, with the highest unemployment since the Great Depression, it has moved to the top of the bargaining agendas of many unions. Provisions such as advance notice of shutdowns and layoffs and restrictions on management's rights to close plants, transfer work, and displace or downgrade workers are increasingly being used by unions to prevent or postpone layoffs. For workers who lose their jobs, unions are seeking improved severance pay, extension of health care benefits, transfer rights, and retraining assistance.

This manual is designed as a practical guide for union negotiators responsible for bargaining contract language on issues related to plant closings, transfer of operations, and technological change. The manual is organized by contract clause, such as advance notice or severance pay. Each section contains an introduction to the major bargaining issues and a checklist of items negotiators may wish to cover. The manual then provides samples of actual contract clauses recently negotiated by unions in a variety of different industries. Model clauses, included for each topic, may be used by negotiators in framing their own proposals for contract bargaining.

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[1] These estimates are based on Dun and Bradstreet data, and appear in Barry Bluestone and Bennet Harrison, **The Deindustrialization of America** (NY, Basic Books: 1982), Ch. 2.

[2] "Robots Join the Labor Force," **Business Week**, June 9, 1980, pp. 62-76.

Naturally, each union's situation is unique, and not all samples and models provided here will be relevant to every reader. But we hope they will communicate a sense of the range of issues being negotiated by innovative unions today in response to the problems posed by disinvestment in American industry.

In order to keep the manual as straightforward as possible, we have eliminated from the text most footnotes and references to other sources. For readers who wish to pursue this topic further, we have included a "Note on Sources" which summarizes our research methods and lists other available materials.

By emphasizing collective bargaining, we do not mean to downplay the importance of legislative and direct action strategies for easing the problems of job loss. Several states, including Wisconsin and Maine, have passed plant closings legislation which requires corporations to give advance notice of shutdowns and to pay certain minimum benefits to laid off workers. Similar laws are currently under consideration in a number of other states. Coalitions of unions, community activists, and religious groups have formed in many areas and are organizing to halt plant closures, encourage alternative economic development, and aid laid off workers. Collective bargaining must be seen as a key part of a broader labor strategy -- which includes such organizational and legislative initiatives -- aimed at protecting job security and guaranteeing benefits to those who lose their jobs as a result of plant closings and technological change.

1. ADVANCE NOTICE OF PLANT CLOSINGS AND LAYOFFS

Checklist for Negotiators

- ✓ Is advance notice required?
- ✓ How much advance notice is required?
- ✓ Of what events must the employer give notice (for example, plant closing, partial closing, layoff)?
- ✓ How are plant closings, partial closings, and layoffs defined for the purpose of advance notice?
- ✓ Is the employer required to negotiate the decision to close all or part of a plant or lay off workers?
- ✓ If the closing or partial closing is inevitable, is the employer required to negotiate with the union over the terms of the closure?
- ✓ How are any outstanding disputes resolved?

Discussion

One of the most important preventive clauses a union can negotiate is one which requires the employer to give advance notice of any decision to reduce employment levels. Unions have won advance notice clauses which give them forewarning of plant closings, partial plant closings, and layoffs as much as eighteen months before the decision will take effect.

Knowing management plans in advance is crucial to building an effective strategy to fight a plant closure. The union needs time to organize its membership and the community. If forewarned, it can discuss with the employer possible alternatives to a shutdown--such as the development of new product lines or even an employee "buy-out" of the plant. When a closure is inevitable, the crucial months between the announcement and the shutdown give workers a chance to seek additional training or look elsewhere for work, and the union can use this time to bargain for improved severance pay, pensions, transfer rights, retraining and other termination benefits for its members.

About 15% of all union contracts now require advance notification of plant closures or union participation in the decision to close. Many more contain less specific language which requires some notice of layoffs, for whatever reason.

A number of major national agreements now include advance notice provisions. For example, the current contracts negotiated by the United Food and Commercial Workers (UFCW) in the packinghouse industry, by the United Automobile Workers (UAW) with Ford and General Motors, by the Rubberworkers (URW) in the rubber tire industry, and by the International Union of Electrical Workers (IUE) and the United Electrical Workers (UE) with General Electric and Westinghouse all require six months' notice of closure. Some local agreements call for even longer advance notice.

Union agreements differ on what events trigger the advance notice provision. For example, the advance notice provisions negotiated by the UAW can be invoked only when an entire plant, distribution center or depot is completely and permanently closed. This can create problems, since the employer can avoid giving notice by closing only part of its

operation. The packinghouse agreement addresses this by requiring notice of department closures as well as complete plant shutdowns. The Rubberworkers' contract permits the application of the plant closure provisions to the permanent layoff of more than 10% of the workforce at a plant for over a year.

Advance notice provisions are often coupled with other clauses which give unions the right to negotiate with the company about the decision to close down, or if the closure is inevitable, about the manner in which it will be carried out. Most such clauses make no additional requirement that the parties reach agreement. A few contracts, however, go further, and require that closures can occur only when management and union representatives agree, in effect giving the union veto power over the closure. The Teamsters' (IBT) Master Freight Agreement provides in their "change of operations" clause, for example, that terminals cannot be transferred without permission of a joint labor-management committee. Other contracts, while not requiring agreement as a condition of closure, specify dispute resolution procedures in the event that negotiations are not successful. The Oil, Chemical, and Atomic Workers Union (OCAW), for instance, has won a clause in several of its agreements which gives the union the right to strike in the event plant closures negotiations fail.

The strongest contract language provides for advance notice of closures, partial closures, and layoffs; for union participation in the decision to close and the right to negotiate over the terms of closure; and for dispute resolution procedures in the event no agreement is reached.

Sample Clauses

• Employer required to give at least six months' notice of plant closing

The Company will give the Union notice of a Location Closedown as soon after such a decision has been made as practical. This notice shall be given at least six months in advance of the Location Closedown Date unless because of conditions over which the Company has no control, it is unable to do so. Such notice will include identification of the location to be closed; the local or locals which represent the employees involved; the anticipated Location Closedown Date; and the date when termination of represented employees because of the Location Closedown is expected to begin. This notice will be provided to the Union, the local or locals involved, and the employees at the location to be closed.

IUE/UE and Westinghouse, letter of agreement, 7/26/82

• Employer required to give six months' notice of plant closing

The Company shall give notice in writing to both the International and Local Union of the closing of the plant or a division of a plant at least six (6) full calendar months prior to such closing.

UFCW and Armour and Co., exp. 8/31/82

• Employer required to give at least six months' notice of plant closing when possible

In the event of a full, permanent closing of any plant, parts distribution center or depot, tractor supply depot or other individual facility or group of facilities....the following provisions shall apply: When possible, the Company shall provide the National Ford Department advance notice of closing at least six months prior to the date of cessation of production operations. Following such notification, the National Ford Department shall have the right to discuss the closing decision with the Company and the Company shall consider information (including suggested alternative courses of action) the Union may supply having a bearing on the decision, provided such information is submitted within thirty days of the date of notice...In the event the Company decides that the closing cannot be averted, Company representatives shall meet with National Ford Department and local union representatives to review the manner in which the closing shall be effected...

UAW and Ford Motor Co., letter of agreement, 2/13/82

• **Employer required to give 18 months' notice of plant closing**

In the event that circumstances require the company to close a plant with the resulting cessation of cigarette manufacturing operations, the company agrees to give the union 18 months' notice of any plant closing...

BCTW and Brown and Williamson Tobacco Corp., exp. 3/80

• **Employer required to give at least six months' notice and to bargain with the union over the decision to close and the terms of the closure**

This will confirm the Company's commitments with respect to the closure of a plant covered by the Uniform Agreement. In the event a full plant closure occurs during the life of this Agreement:

1. The Company will notify the Local and International Union at least six months prior to cessation of production operations.

2. Following such notification, the Local and International Union will have the right to explore with the Company any possible means of averting the closure.

3. If attempts to avert the closure are not successful, Company and Union representatives will meet to negotiate the manner in which the closure is carried out.

URW and B.F. Goodrich Co., letter of agreement, 4/21/82

• **"Plant closing" defined as either termination of all company operations or termination of all workers represented by the union**

The terms 'plant closing' and 'to close a plant' mean the announcement and carrying out of a plan to terminate and discontinue either all Company operations at any plant, service shop or other facility or those Company operations which would result in the termination of all employees represented by the Union at that location when those employees do not have displacement rights.

IUE/UE and General Electric, exp. 6/30/85

• **"Plant closure" defined as complete and permanent discontinuation of operations at a local plant; plant closure provisions may be applied in case of layoff of 10% or more of workforce for one year or more**

'Plant closure' shall mean when operations at a local plant covered by this Agreement shall be completely and permanently discontinued while this Agreement is in force. In the event a product commodity line or lines is permanently discontinued at a local plant covered by this Agreement while it is in force and results in the layoff of ten percent or more of the total work force and has continued for at least one year, and it has been determined that there is no reasonable likelihood that the employees on layoff will be recalled, the Company and Union will meet to discuss the possible application of the Plant Closure provisions of the Agreement to the employees involuntarily laid off. The one year period may be shortened by agreement of the parties.

URW and B.F. Goodrich Co., 4/21/82

• **Operations shall not be transferred without approval of a joint labor-management committee**

Present terminals, breaking points, or domiciles, shall not be transferred or changed without the approval of an appropriate Change of Operations Committee. Such Committee shall be appointed in each of the Conference Areas, equally composed of Employer and Union Representatives. The Change of Operations Committee shall have the authority to determine the seniority of the employees affected and such determination shall be final and binding.

IBT and Trucking Management, Inc., National Master Frieght Agreement, exp. 3/31/82

• **Union has the right to strike over management decision to close, in the event that negotiations are unsuccessful**

If after such meeting [to discuss a refinery closure--ed.] Union is dissatisfied with Employer's determination of aforesaid questions, employees under the Master Agreement may exercise a right to strike thereon if Union serves upon Employer, no later than thirty days after the date of layoff, a sixty day written notice of the intention of such employees to strike on the expiration of such sixty days...

OCAW and ARCO, letter of agreement, 1/79

Model Clauses

▪ Employer required to give two years' notice of full or partial plant closure or of layoffs affecting 10% or more of the workforce, and to provide all relevant information

In the event of a full or partial closure of a plant, or of a layoff affecting 10% or more of the workers at a plant, the company agrees to give the union two years' advance notice and to provide all relevant information.

▪ Employer required to meet with the union to discuss alternatives to the closing

The company and union agree to meet promptly to discuss the closing and any alternative strategies proposed by the union to maintain employment.

▪ Employer required to negotiate in good faith on terms and conditions of the closing; all unresolved issues referred to binding arbitration

In the event that agreement cannot be reached on the closing or an acceptable alternative, the company and the union agree to negotiate in good faith on the terms and conditions of the closing. In the event that agreement cannot be reached between the parties within one year of the date of the closing, either party to this agreement may refer all unresolved issues to binding interest arbitration.

2. ADVANCE NOTICE OF TECHNOLOGICAL CHANGE

Checklist for Negotiators

- ✓ Is advance notice of technological change required?
- ✓ How much advance notice is required?
- ✓ How is technological change defined?
- ✓ Is mutual agreement required before new technologies may be introduced?
- ✓ Is the employer required to negotiate with the union on the impact of the technological change on its members?
- ✓ Does the contract provide for a special committee on technological change?
- ✓ How are any outstanding disputes resolved?

Discussion

Unions require advance notice not only of plant closures, but also of technological change which will affect the number and nature of jobs. Forewarning of automation is critical if unions are to have any influence over the pace and character of technological change or its impact on the quality and quantity of jobs in the bargaining unit.

As in the case of plant closures, these provisions vary in their time requirements. One of the strongest clauses, calling for six months' notice of any major technological change, has been negotiated by the Communications Workers of America (CWA). The UFCW has won notice of "at least 120 days" in several of its contracts, and some agreements in the printing industry call for 90 days' notice.

It is important to define technological change as broadly as possible in the contract. Otherwise, the employer may argue that certain changes in machinery or work processes are not covered under the advance notice provision. Some unions have succeeded in expanding the definition of technological change to include not only the introduction of new machines, but also changes in the organization of work itself. Taking a different approach, other unions define technological change as any change in production methods which decreases the number of jobs in the bargaining unit. A clear and inclusive definition of technological change, which encompasses all changes in the work process as well as the introduction of new machinery which affects employment levels, will help unions utilize technological change clauses under a wide range of conditions.

The next step after receiving advance notice of technological change is to require negotiations or joint consultation on the impacts of the proposed changes on bargaining unit members.

Because decisions involving the implementation of technological changes are frequently complex and require a good deal of expertise, contracts sometimes call for the formation of a specialized standing committee of labor and management representatives to negotiate these issues. Since this committee is permanent, its members have an opportunity to develop knowledge of the industry's technology as well as working relationships with others in the group. This approach was pioneered in the packinghouse industry by the UFCW, which since 1959 has jointly administered with the employers a special committee on new technology. Similar committees have also been negotiated by the CWA and the Amalgamated Clothing and Textile Workers Union (ACTWU).

Some contracts additionally provide that the employer shall make available to the joint committee or directly to the union any information necessary to study or negotiate over the issue of new technology. The current meatpacking agreement, negotiated in December 1981, includes a new clause which requires the employer to make available information on the company's plans for capital spending, which should prove extremely helpful to the union in anticipating and negotiating over technological change. The meatpacking agreement also authorizes the joint labor management committee to use employer funds to analyze company information and collect its own data if necessary.

One particularly difficult area for unions has been defining the topics that may be taken up by the technology committee. Employers generally insist that such committees limit their negotiations to the impact of technological change on the wages, job security, or job classifications on bargaining unit employees -- that is, to the effects of new technology rather than to its design or implementation. No union has yet won the right to negotiate over the actual design of new technology. Several, however, following the lead of some European unions, have formulated proposals along these lines, and some have won restrictions on management's rights to use new technologies to measure worker productivity. The CWA, for example, in 1980 won a pledge from Bell Telephone that the employer would not use sophisticated computer equipment to monitor worker performance from remote locations.

What if the company and the union can come to no agreement on new technology? Contracts specify a wide range of dispute resolution procedures. The UFCW has developed a complex fact-finding procedure to help resolve disputes over technological change without resorting to costly arbitration. Other contracts simply call for binding arbitration within a specified period of time. In one of the most innovative agreements, the Typographical Union (ITU), recognizing the complex nature of contract interpretation and administration in this area, has agreed to appoint a single individual known for his experience in the printing industry to arbitrate all disputes for the duration of the contract.

The strongest language on this issue defines technological change broadly, calls for advance notice of at least six months of any such change and full union participation in deciding what technologies will be adopted and how they will be implemented, and provides for procedures for resolving any disputes which may arise.

Sample Clauses

• Employer required to give six months' notice of technological change

The Company will notify the Union at least six (6) months in advance of planned major technological changes.

CWA and Bell Telephone, 8/10/80

• Employer required to give 120 days' notice of a material change in any job

It is agreed that should the Employer intend to institute any new methods of operation that would result in a material change in any job presently being done and covered by this Agreement, the Employer shall give to the affected union or unions, at least 120 days' written advance notice by certified or registered mail setting forth the nature of such intended changes and/or methods of operations.

MCBW and Food Employers Council, no date available

• Employer required to give 90 days' notice of technological change and to meet with the union to discuss related matters; no implementation until considered by joint committee

The Employer agrees that he will not change its present method of production before giving ninety (90) days' notice of such proposed change...

The Employer agrees to meet with the [joint technology--ed.] committee at any time, after such notice, upon request for consideration of the manning of such machines or handling of such processes, the condition of work, wage scales and any other matter relating thereto. In the event of failure of the Employer to comply in each respect with the terms hereof, the Employer agrees that such equipment or process shall not be operated until the committee takes this matter under advisement.

GAIU Local 280 and Printing Industries of Northern California, exp. 5/7/78

• "Technological change" defined as a change of method decreasing the number of jobs

A technological change is defined as a change in plant, process, equipment, or method of operation diminishing the total number of employees having more than six months service required to operate...the department or departments affected by the change. An increase in productivity of employees diminishing the total number of employees having more than six (6) months of service required to operate the given department will be considered a technological change. The term shall not include layoffs caused by denier changes, variations in customers' requirements, shutdowns for plant repairs, curtailment of production, or temporary or seasonal interruptions of work.

ACTWU and Avtex Fibers Production and Maintenance Unit, 8/1/80

• Employer required to meet with union to discuss the implementation of technological changes

If requested to do so, the employer will meet with the Union to discuss the implementation of such [technological--ed.] changes before putting such changes into effect.

RCIA and Giant Food Stores, no date available

• Employer required to meet with union to discuss the implementation of new technology

Whenever the installation of mechanical equipment, change in production methods, the installation of new or larger equipment, the combining of jobs or the elimination of jobs will have an effect on the job status of one (1) or more employees, the Company will give the Union reasonable advance notice of same and upon request by the Union will promptly meet with the Union to review and explore the effects of such installation or installations or change or changes upon the working force.

CLGW and Lehigh Portland Cement, 10/6/81

• Provides for a joint committee on technological change

The Company and the Union recognize that technological changes in equipment, organization, or methods of operations have a tendency to affect job security and the nature of the work to be performed. The parties, therefore, will attempt to diminish or abolish the detrimental effects of any such technological change by creating a joint committee to be known as the Technology Change Committee to oversee problems and recommend solutions of problems in this area as set forth below...Such committee will consist of not more than three representatives of the Company and not more than three representatives of the Union...The purpose of the committee is to provide for discussion of major technological changes...which may affect employees represented by the Union...

CWA and Bell Telephone, 8/10/80

• Employer and union shall appoint committees on technological change

The (Clothing Manufacturers) Association and the Amalgamated Clothing and Textile Workers Union shall each appoint a committee which jointly shall study and seek to resolve the problems attendant upon such [technological--ed.] change.

ACTWU and Clothing Manufacturers Association of the USA, 10/1/80

• Employer will disclose detailed capital investment plans

By or before December 31, 1981, the Company will deliver to the Union a copy of the Company's plans for capital investment for the following five years. By or before January 31 of each year, commencing January, 1983, the Company will give to the Union a report, showing by item and amount, the capital investment expenditures and also, separately, expenditures for maintenance and repair, which it has made in each plant during the preceding calendar year.

UFCW and Armour Co., 8/31/81

• **Employer will provide funds for study of the effects of technological change**

The Committee [on technological adjustment–ed.] is also authorized to utilize the Fund for the purpose of studying the problems resulting from the modernization program and making recommendations for their solution, promoting employment opportunities within the Company for those employees affected...

UFCW and Armour Co., 8/31/81

• **Employer will not monitor workers from remote locations**

As an indication of our mutual determination to achieve goals of improvement [in the quality of work–ed.] we have committed that observations in the operating services offices commonly known as "diagnostic monitoring" will not be performed from remote locations.

CWA and Bell Telephone, letter of agreement, 8/9/80

• **Disputed issues relating to new technology will be referred to binding arbitration**

If agreement is not reached in such negotiations [on new methods of operation–ed.] on the subjects set for in the preceding paragraph within the first 30 day period of the 120 day period described above, the parties shall submit all those unresolved issues to a fact-finding panel during a second 30 day period ...Upon receipt of the confidential report of the factfinders, the parties shall resume negotiations for a period not to exceed a third 30 days. In the event the parties do not reach agreement within such third 30 day period, then all unresolved issues in regard to job classifications, wages, working conditions, and/or the disposition of displaced employees shall be submitted to final and binding arbitration.

MCBW and IA Retail Distribution, 11/4/79

• **A permanent arbitrator for all technology disputes shall be appointed**

In order to expedite decisions and because of the complexities involved, the parties recognize the desirability of regularly submitting disputes to a person whose knowledge and experience can provide needed continuity to interpretations of this Special Agreement [on new technology--ed.]. Consequently, the President of the Union and Publishers Association of New York City shall designate an arbitrator ("the designated arbitrator") to whom any and all disputes arising from any part of this Special Agreement shall be referred for final and binding decision...

ITU and New York Times and New York Daily News, exp. 3/30/84

Model Clause

Note: Clauses 1 through 5 of this model are based on language drafted by the International Association of Machinists and included in their document, "Suggested Language for Technological Change." It may be ordered from the I.A.M. Dept. of Research, 1300 Connecticut Ave., N.W., Washington, DC 20036. For additional model language relevant to technological change, see Chapter 12, "Training, Retraining, and Job Market Assistance."

▪ **Technological change defined as material change in any job or any change which reduces employment; employer required to provide advance notice of not less than six months and any relevant information, and to meet promptly to negotiate the effects of the changes; a joint committee shall be established; any outstanding disputes shall be referred to arbitration.**

1. Technological change shall be defined as any change in equipment, materials, product, methods, or work design which results in a material change in any job or which diminishes the number of workers in the bargaining unit.

2. The Company will advise the Union of any proposed technological changes prior to the time of final decision, but not less than six months prior to the institution of such change.

3. The Company shall be required to provide the Union with full information regarding the proposed technological changes in order to determine the effect on the bargaining unit.

4. The Company will meet with the Union promptly to negotiate regarding the effects of the proposed technological changes.

5. There will be established a Joint Union-Management Committee for Technological Change, comprised of equal representation from the Union and Management, to study the problems arising from technological change in relation to the effect on the employees in the bargaining unit. The Union shall be entitled to all necessary information relevant to the proposed technological change including any new or increased health hazard associated with the new technology. The Committee shall meet at the request of either party.

6. In the event that the Company and the Union cannot reach agreement on the introduction of new technology, either party may refer all outstanding disputes to binding interest arbitration.

3. RESTRICTIONS ON MANAGEMENT'S RIGHTS TO CLOSE PLANTS OR TRANSFER WORK

Checklist for Negotiators

Does the contract provide any restrictions on management's rights to:

- ✓ Close plants or parts of plants under various conditions?
- ✓ Move machinery or equipment from their present locations?
- ✓ Import products produced elsewhere into local markets?
- ✓ Subcontract work?

Discussion

Some unions have gone beyond advance notice and won actual restrictions on mangement's rights to determine where and when plants will be closed or work shifted out of the bargaining unit. Such clauses take a variety of innovative forms, from outright prohibitions of plant closures to language which prevents the employer from moving machines and equipment out of the plant, importing competitive products into the local market, or subcontracting work.

A few national agreements -- but still only a very few -- prohibit management outright from shutting plants. In the packinghouse industry, the UFCW in 1981 negotiated a one year moratorium on plant closures. Since the Master Packinghouse Agreement already included a clause which provided for six months' advance notice of any closure, the new provision effectively gained an eighteen month halt to plant shutdowns for unionized pork industry workers.

In a similar provision, the UAW in 1982 negotiated a two year moratorium on all plant closings resulting from "outsourcing" (buying parts from another company), although closures due to a change in market conditions or consolidation of operations will still be permitted. The union also negotiated an experimental "lifetime job security" plan at several selected Ford and General Motors plants, under which 80% of the workers will be protected from layoff for the duration of the contract. Both the UAW and the UFCW made significant wage and benefit concessions in exchange for these job security measures.

Clauses which prohibit plant closures outright are highly unusual. More common are those which place limited restrictions on management's rights to locate its facilities.

One approach, common among some garment trades unions, is to prohibit the movement of plants beyond a certain distance without union consent. Within a specified geographical area, though, management retains its authority to determine plant location. Other contracts in the garment industry bar the employer from physically removing machinery or equipment from the worksite premises. Such a provision makes a transfer of operations from one location to another very expensive, since the employer would have to replace his machinery -- although presumably he could still close the shop completely and take a tax write-off on the equipment loss.

Another indirect approach is "sheltering the market" by specifying that the employer will not sell or distribute competitive goods produced at another facility in a geographical area traditionally served by the plant covered by the agreement. This tactic has been used successfully by the Brewery Workers to protect the jobs of workers threatened by the importation of beer from out-of-town plants into local markets.

Many unions indirectly restrict the employer's rights to close plants by prohibiting or limiting subcontracting -- the performance of bargaining unit work by non-bargaining unit employees. Some unions have won an outright ban on any subcontracting without union consent. Others have won more limited provisions, which permit the transfer or work only under certain conditions and require that the union be notified in advance and that any disputes be adjusted through the grievance procedure. While subcontracting clauses will not prevent a shutdown, they can limit management's ability to shift work gradually from a unionized to a non-unionized facility during the life of the agreement.

One problem with subcontracting clauses is that they usually do not protect a union where the employer decides to close down a plant **in anticipation of** later shifting work to another facility. In these situations, the company in effect subcontracts the work after the termination of the agreement, so workers are not protected even if their contract includes strong subcontracting language. To prevent this from happening, the UFCW has negotiated a provision in their Master Packinghouse Agreement which prevents the subcontracting of work within five years after a plant closure.

A variety of approaches is open to unions in limiting the rights of employers to close plants or transfer production out of the bargaining unit. No union has yet succeeded in negotiating a long-term ban on all shutdowns, but clauses which place restrictions on management rights can postpone or reduce the impact of plant closures.

Sample Clauses

• Employer will not close any plants for one year

On December 31, 1981, the Company will cancel and revoke any notice of closing then outstanding with respect to any plant, department, or division, and agrees that no notice of closing will be issued during the period from January 1, 1982 to and including December 31, 1982.

UFCW and Armour Co., exp. 9/85

• Employer will not close any plants as a result of outsourcing for 24 months

For the first 24 months of the term of the new Collective Bargaining Agreement, the Company will not close, beyond those for which announcements have already been made, any plant, parts distribution center or depot, tractor supply depot or other individual facility or group of facilities constituting a bargaining unit...as a result of outsourcing the product manufactured in the facility. Closings would be permitted for volume related reasons attributable to market conditions or other reasons beyond the control of the Company, or internal Company consolidations of operations within the units represented by the UAW.

UAW and Ford Motor Co., letter of agreement, 2/13/82

• Summary of pilot program on lifetime job security

80% of the workers at two selected plants will be guaranteed "lifetime job security." Under this concept, employment levels may be reduced only by attrition or alternative work assignments for the duration of the agreement.

UAW and Ford Motor Co., letter of agreement, 2/13/82

• Employer shall not move plant out of the city without union consent

During the term of this Agreement the Employer agrees that he shall not, without the consent of the Union, remove or cause to be removed his present plant or plants from the city or cities in which such plant or plants are located.

ACTWU and Clothing Manufacturers Assoc. of the USA, 10/1/80

• Employer shall not remove machinery or equipment from the premises without union consent

The Employer shall not, during the term of this agreement, remove its shop or machinery, equipment or fixtures, from the present location without the consent of the union. If the employer violates this non-removal provision, it shall be subject to the machinery of adjustment and arbitration provided for herein, and in addition, it shall be liable for the loss of all wages and fringe benefits, attorney's fees and legal expenses incurred by the union.

LGPN and Ladies' Handbags and Leather Novelties Cos., N.Y., exp. 4/81

• Employer will not import product for sale into markets traditionally served by the plant, if layoffs will result

The Employer will not import beer from plants not covered by this contract to service areas traditionally served by the Employer from plants and depots covered by this contract which is the cause for layoff of employees covered by this contract.

Brewery Workers and Schlitz Brewing Co., no date available

• Union must give express consent to subcontracting

The Employer and the Union agree that stabilized employment is an important objective to be attained. Therefore, the Employer agrees that during the life of this Agreement, no work or services performed or thereafter assigned to the collective bargaining unit will be subcontracted, transferred, leased or assigned in whole or in part to any other plant, person, or non-unit employees unless the express permission of the union is obtained.

IBT and California Dental Service, exp. 5/81

• Subcontracting issues shall be subject to the grievance procedure

The Company agrees that it shall not sub-let its contracts for work which can be satisfactorily and more economically performed within its own plant, provided it has the facilities for doing the work, the space, the equipment and available personnel, and further agrees that within the terms and conditions of the grievance procedure such subcontracting matters are a proper subject for review between the Company and the Union.

AIW and Eaton Corp., Transmission Division, exp. 9/81

• Employer must notify the union in writing in advance of any subcontracting

1. It is agreed that any classified work customarily performed by employees of the Company shall not be contracted out as long as the Company has the necessary equipment and so long as there is the normal complement of qualified employees available from among present or laid-off employees...

2. Before commencing any contract job to be performed on the premises, the Company will notify the Workmen's Committee of the Union, in writing, the nature and scope of the job, the area or areas in which the job is to be performed and the probable duration of the job...

OCAW and Farmers Union Central Exchange, exp. 1/81

• Employer will not "subcontract" work within five years after the closure of a plant

If the Company closes a plant or division or department of a plant, it will not, within five years after the closing, arrange to secure the same or substantially the same products from another producer within the same plant or from another producer at any other plant located within 100 miles of the closed unit. If the Union believes that a violation has occurred or is about to occur, the Director of the Packinghouse Department may meet with management, will be furnished all documents and information necessary to determine whether a violation has occurred, and may submit the issue to immediate arbitration. The arbitrator will have authority, if he finds a violation, to direct whatever action is necessary to prevent the violation or to provide appropriate compensation for any violation that has been committed.

UFCW and Armour Co., exp. 9/85

Model Clauses

▪ Employer shall not close any plant or department without union consent

The Employer shall not close any plant, in whole or in part, during the term of this agreement without the written consent of the union.

▪ Employer shall not move any equipment without union consent

The Employer shall not move its shop, machinery, equipment, or fixtures from their present locations during the term of this agreement without the written consent of the union.

▪ Employer shall not import competing products into the local market without union consent

The Employer shall not import any product produced at plants covered by this agreement for sale in the markets traditionally served by these plants during the term of this agreement without the written consent of the union.

▪ Employer shall not subcontract work without union consent

The Employer agrees that during the term of this agreement, no work or services performed or thereafter assigned to the collective bargaining unit shall be subcontracted, transferred, leased or assigned in whole or in part to any other plant, person, or non-unit employees without the written consent of the union.

4. RESTRICTIONS ON MANAGEMENT'S RIGHTS TO LAYOFF OR DOWNGRADE WORKERS DISPLACED BY TECHNOLOGICAL CHANGE OR LACK OF WORK

Checklist for Negotiators

- ✓ Does the contract place restrictions on management's rights to lay off workers whose jobs are eliminated by technological change?
- ✓ If technological layoffs occur, does the contract specify they will occur by a union negotiated seniority plan?
- ✓ Does the contract provide for worksharing in the event of lack of work?

Discussion

Unions often attempt to protect their members against layoffs resulting from technological change by negotiating various sorts of job security provisions. When layoffs are inevitable, unions can negotiate a procedure by which they are carried out.

Comprehensive contractual protections against technological layoffs were pioneered in the 1960s by unions in the west coast longshore and New York City newspaper industries, both of which faced the prospect of rapid mechanization and widespread job losses by their members. In 1960, the International Longshoremen's and Warehousemen's Union (ILWU), representing waterfront workers on the west coast, negotiated the well-known Modernization and Mechanization Agreement. Under its terms, the union gave the employers almost complete freedom to increase productivity on the docks by mechanizing the loading and unloading of cargo. In exchange, the union won job guarantees for its fully registered members, as well as a mechanization fund which provided early retirement, cash vesting, death benefits, and a wage guarantee for working members. The flat guarantee of no technological layoffs won by the ILWU in these negotiations was a first in American collective bargaining at the time.

Four years later, printers at the three major daily newspapers in New York City, represented by the Newspaper Guild and the ITU, negotiated a special agreement which won a similar pledge of lifetime job security for all regular employees. The printers also won a six month paid "productivity leave," built in wage and cost of living increases, and early retirement bonuses. Since the negotiation of this agreement, computer technology has transformed the pressroom. No printers have lost their jobs, but by the time the agreement expires in 1984, it is estimated that only one fourth as many printers will be employed as were at work a decade earlier. Similar agreements have been negotiated in other parts of the country in the newspaper industry.

Other unions, although facing less dramatic technological changes than those in the longshore and printing industries, have also negotiated clauses which guarantee job security in the face of automation. Recently, library workers in New York City, represented by the American Federation of State, County, and Municipal Employees (AFSCME), won a clause prohibiting layoffs resulting from the introduction of computers and other new technologies. The UFCW has won similar guarantees for supermarket checkout clerks threatened by the introduction of electronic scanning devices. Such language also appears in contracts negotiated by the Cement, Lime, and Gypsum Workers (CLGW).

Most unions, however, have so far been unable to win such broad prohibitions on technologically induced layoffs. More common are contract clauses which state a common labor management objective to minimize job loss due to technological change. The Seafarers' Union (SIU), for example, has negotiated language which states an intention to work with management to reduce job loss. The ACTWU, which has witnessed extensive technological change in the clothing and textile industries, has negotiated a general commitment from the employers' association not to lay off workers in the event of technological change, although this commitment is not binding. Such statements of a policy intent are useful, but do not serve to guarantee jobs as do mechanization and attrition agreements.

Finally, unions have also negotiated procedures to be followed if technologically induced layoffs occur. Most common are clauses that state explicitly that seniority will be followed. Other unions have sought to make it possible to suspend strict seniority considerations in stuations where older, more senior workers prefer to retire, while younger, junior workers wish to remain on the job. The ILWU, ITU and other unions have negotiated generous retirement bonuses and early retirement and seniority-linked severance pay plans, for example, which facilitate early departure from the workforce for workers who so choose.

Other contracts make available the option of voluntary worksharing or reduced hours in lieu of layoffs. Some states, such as California, permit workers working short weeks under such plans to receive state unemployment insurance benefits for the hours or days each week they are laid off. Some of the strongest worksharing provisions have been negotiated in the printing industry, where unions have in some cases won the right to institute a worksharing program unilaterally.

Sample Clauses

• Present job holders will not be laid off for any reason other than a permanent closure

A Guaranteed Employee [a person employed as of the date of the agreement who continues to seek and be available for full time work–ed.] shall not be subject to a decrease in the force. This guarantee survives the term of this Special Agreement and the Contract...Only in the event of a permanent suspension of the Publisher's newspaper will the employment guarantees of this Special Agreement cease.

ITU and New York Times and New York Daily News, exp. 3/30/84

• No worker shall be laid off or downgraded because of technological change

The Union shall be kept currently informed of the Library's program for automation. No staff member shall be involuntarily terminated or demoted as the result of the introduction of automation to the Library's services or procedures. When services or procedures are automated, the Library will make every effort to train staff members assigned to the performance of those activities or procedures.

AFSCME Local 1930 and the New York Public Library, exp. 6/30/82

• Employer required to notify union of intent to use electronic checkout systems; no worker to be laid off because of such systems

Should the Employer intend to substitute electronic checkout systems for existing equipment in any store, the Employer agrees to notify the Union in advance and to provide the Union a list of all employees regularly assigned to the store on the effective date of the utilization of said system. Said employees shall not be removed from the Employer's payroll as a result of the installation of such system.

RCIA and Giant Food Stores, no date available

• No worker will be terminated as a result of technological change

Employees will not be terminated by the Company as the result of mechanization, automation, change in production methods, the installation of new or larger equipment, the combining of jobs or the elimination of jobs.

CLGW and Lehigh Portland Cement Co., 10/6/81

• **Employer and union will work together to minimize layoffs**

Recognizing both the need for continued technological improvements to maintain a competitive position within the industry as well as the possible effects such changes may have on employment opportunities, the Canner and the Union mutually agree...to work together to minimize the displacement effect of any such change...

SIU and Star-Kist Foods, no date available

• **Employer and union reaffirm general policy that technological change will not lead to layoffs, downgrades, or wage reductions**

The Union has long cooperated with Employers in the introduction of new machinery, changes in manufacturing techniques, and technological improvements in clothing plants. This policy has been established by mutual agreement, generally on a market level, between the Employer and the Union. Underlying such agreement has been the recognition of these basic conditions: (a) grades...(and) (b) wages of the affected workers were not to be reduced, and (c) workers were not to be thrown out of employment. Such policy is reaffirmed...

ACTWU and Clothing Manufacturers Association of the USA, 10/1/80

• **Layoffs which result from technological change will take place in accordance with seniority**

...when a reduction in the number of employees is compelled because of technological changes, employees will exercise seniority rights in accordance with the seniority provisions...

IUE and Ingersoll-Rand, no date available

• **Union has the right to institute a worksharing program unilaterally**

If the Union determines to institute a work sharing program and notifies the Employer in writing thereof, journeymen employees on the Attrition List shall be permitted to lay off without pay for not more than one (1) scheduled shift per work week in favor of an unemployed, competent substitute who is acceptable to the foreman in accordance with present practice. Provided, any such substiute must be available to work at the applicable shift straight-time wage rate and without penalty of any kind whatever.

San Francisco Web Pressmen and Platemakers' Union No. 4 and S.F. Newspaper Printing Co., attrition agreement, exp. 7/31/82

Model Clauses

▪ **Employees guaranteed lifetime jobs; employer's commitment endures indefinitely**

The Employer agrees that all present employees will be guaranteed a full week's work in any week in which they make themselves available for a full week's work. This guarantee shall remain for the rest of their working lives unless sooner terminated as a result of retirement, resignation, death or discharge.

The individual rights of present employees shall remain in full force and effect for as long as such employee remains a member of the bargaining unit and in the employ of the employer. This commitment shall endure beyond the term of any specific collective bargaining agreement executed between the parties.

▪ **No worker shall be laid off or downgraded because of technological change; all reductions to be accomplished by attrition***

During the term of this agreement, no member of the bargaining unit shall be laid off or downgraded as either the direct or indirect result of technological change. Any reduction in the work force made necessary by technological change shall be accomplished by attrition. The term "attrition" shall be defined as the reduction of the work force by such natural means as death, voluntary quits, or retirement.

* Based on IAM model language

- **Union has the right to propose a worksharing program**

In the event of substantial layoffs for lack of work, the Union shall have the right to raise with the employer the institution of a worksharing agreement, supplemented by unemployment insurance so as to assure maximum income for all affected workers. Such worksharing arrangements shall be accomplished by mutual agreement between the Union and the Employer. In the event of any differences over the worksharing plan, they shall be submitted to binding interest arbitration through the dispute settlement mechanisms specified elsewhere in this Agreement.

5. SEVERANCE PAY PROVISIONS

Checklist for Negotiators

- ✓ Under what conditions are workers entitled to severance pay benefits?
- ✓ Who is eligible for severance pay?
- ✓ How is the benefit calculated?
- ✓ When and how is the benefit paid?
- ✓ Do dependents or survivors receive severance pay?
- ✓ What happens if a worker is recalled?

Discussion

Severance pay is a sum of money paid to workers when they are laid off. Such provisions may help prevent plant closures or layoffs, because severance payments increase their cost to management. When negotiated as part of a termination agreement, severance payments supplement unemployment insurance and help support laid off workers while they are looking for new jobs. Severance pay formulas are currently found in over a third of all union contracts. They most commonly appear in manufacturing agreements, such as those in the communications, food, rubber, electrical machinery, chemicals, printing, and petroleum industries.

Severance benefits are typically paid in the event of a full or partial plant shutdown or other circumstances, such as technological change, which lead to layoffs. The strongest contract language specifies a wide range of circumstances which entitle workers to severance pay. The Grain Millers (AFGM), for example, has a broad clause in its master agreement with General Mills which calls for severance pay for workers permanently laid off because of technological change, any other change in production methods, or the complete or partial shutdown of a plant or department.

Generally, eligibility for severance benefits is limited to workers who have met certain seniority requirements and are not eligible for alternative benefits, such as a pension or transfer to another job in the company. The CWA's recent contract with Bell Telephone, however, permits workers who have been displaced by technological change to choose severance pay instead of transfer, if the switch would be to a lower paying job. Some contracts also require that workers stay on the job until the plant closes in order to receive severance pay. This can be a real hardship to workers who want to leave early to take another job before they are terminated. To address this problem, the IUE and UE contract with General Electric requires local management to give "due consideration" to a worker's request for early termination to take another job without jeopardizing his severance benefit.

Some contracts indicate that a worker's dependents or estate may receive the benefit if he or she dies before collecting the full amount. The UFCW's agreement with Armour, for example, names the worker's dependents as beneficiaries of any severance benefits.

Most severance pay packages are calculated on the basis of a combination of seniority and wages. The most common formula is one week's pay for each year of service. But some unions have won more generous provisions. The 1982 contract negotiated by the IUE and UE with General Electric calls for a full two weeks' pay per year of service, plus additional benefits based on seniority, for workers with fifteen or more years of

service who are laid off in a plant shutdown. Many contracts provide sliding scale formulas, based on seniority.

Some severance benefits are paid in a lump sum, either at the time of layoff or when unemployment insurance runs out; others are paid in weekly installments, usually in the amount of the worker's usual weekly wage for as many weeks as provided for in the severance pay formula. The strongest clauses allow the worker to choose the time and method of payment.

Sometimes workers who are receiving severance pay benefits are recalled. Some contracts anticipate this possibility and discuss how the benefit will be handled if the worker accepts his job back. Usually, contracts require workers either to pay back the benefits received or accept the date of rehire as the effective seniority date for any future payment of severance benefits, on the assumption that severance pay is an earned benefit that can only be used once.

Sample Clauses

• Workers laid off because of technological change, new production methods, or full or partial closures shall receive severance pay

Employees...who are...permanently laid off due to lack of work caused by management action in initiating any of the following changes, shall be eligible for severance pay:

a. Technological improvements in facilities or equipment.

b. Changes in methods of production, processing, shipping, receiving, materials handling, or distribution, etc.

c. Permanent closing of a plant, department, or part of a department or other permanent reductions in the total plant working force.

AFGM and General Mills, Master Agreement, exp. 4/1/84

• Workers with one or more years of service laid off because of a reduction in force or technological change or partial plant closing shall get severance pay

Separation allowances...shall be paid to employees who have one or more years of continuous service..., who are permanently dropped from the service because of a reduction in forces arising out of the closing of a department or unit of the business, or as a result of technological changes and when it is not expected that they will be reemployed...

UFCW and Armour Co., exp. 8/31/82

• Worker transferred to a lower paying job or forced to change residence because of technological displacement may choose severance pay instead

If during the term of this Contract, the Company notifies the Union in writing that technological change [defined as changes in equipment or methods of operation--ed.] has or will create a surplus in any job title in a work location which will necessitate reassignments of regular employees to different job titles involving a reduction in pay or to locations requiring a change in residence..., any regular employee...may elect not to accept such reassignment...and shall be paid a termination allowance.

CWA and Bell Telephone, 8/10/80

• Employer required to give "due regard" to worker request to leave job early for other employment, without sacrificing severance pay

Such employee [who is eligible for severance pay--ed.] may request that his date of termination be advanced so that he can accept other employment and the local management will give due regard to this request.

IUE/UE and General Electric, exp. 6/30/85

• Dependents shall receive severance pay if worker dies before collecting

Severance pay to which an employee is eligible will be payable to an employee's dependents or estate in the event of his death after he becomes eligible and before he has been paid severance pay and before he has been recalled for active work.

OCAW and General Mills Chemicals, exp. 3/81

• Severance benefit of two weeks' pay per year of service plus additional benefits for workers with 15 or more years' seniority

An employee with fifteen or more years of continuous service [who is laid off in a plant closing--ed.] will...be eligible for Severance Pay computed on the basis of two weeks' pay for each of the employee's full years of continuous service plus 1/2 of a week's pay for each additional 3 months of continuous service at the time of termination.

IUE/UE and General Electric, exp. 6/30/85

• Severance benefit of one week's pay per year of service, plus supplemental benefits

The Company will make a lump sum severance payment of one week's regular wages for each full year of continuous service, adjusted for completed months, as determined by the Company's personnel records, to employees with two or more years of continuous service who are actively at work at the time of the termination of their employment as a result of closing the plant...In addition to the severance pay provided (above), each employee will receive a lump sum supplemental severance allowance at time of termination based on last employment date according to the following schedule:

Employees hired on/after 7/1/78 . . . . . $400
Employees hired on/after 7/1/71 and before 7/1/78. . . . . $525
Employees hired on/after 7/1/61 and before 7/1/71. . . . . $825
Employees hired before 7/1/61 . . . . . $1075

ILWU and Colgate Palmolive Co., Berkeley, Ca., termination agreement, 3/81

• Severance benefit of one week's pay per year of service plus supplemental benefits

...One week's pay for each complete year of regular service, and in addition, an Income Protection Supplement to provide for the following payments:

For Completed Years of Regular Service:	Weeks of Pay:
5 - 9	15
10 - 14	20
15 - 19	22
20 - 29	24
30 +	26

A week's pay shall be the employee's base rate at time of separation and shall include any temporary cost-of-living allowance in effect at time of separation but shall exclude any shift differential and shall be based on the hours in the employee's normal work week. [Goes on to specify that workers are ineligible who: leave job without authorization; choose to transfer; or are eligible for disability retirement--ed.]

BCTW Locals 182-T, 183-T, and 192-T and the American Tobacco Co., Virginia Branch, termination agreement 5/14/81

• Severance pay shall be paid after the exhaustion of unemployment insurance benefits

Without affecting an employee's seniority, employees laid off on or after March 2, 1964 because of a reduction in force arising out of the closing of their department or units of the Plant, as a result of technological changes, will be paid a severance payment at the expiration of the maximum continuous period for which the employee would be eligible for unemployment compensation benefits and such employee applied for such benefits on the date that employee was laid off...

MCBW and Campbell Soup Co., exp. 3/80

• Establishes the principle that credited service for severance pay can only be used once; recalled workers have the option of repaying or losing credit for severance pay in next layoff

Any individual who receives separation pay and is recalled in less than one (1) year shall have the option of repaying the separation pay and having future separation pay computed from the original date of employment or may use the rehiring date as a basis for computation of future separation pay. It is further understood that should an employee elect to use the rehiring date for computation of future separation pay, it shall in no way affect his seniority, pension rights, vacation rights, or any other rights provided in the agreement.

OPE and Hospital Service Plan of New Jersey, exp. 5/82

Model Clauses

▪ Severance pay to be paid to workers with one or more years' seniority laid off because of technological change, full or partial closure, or other permanent reductions of force; method of payment optional; dependents eligible if worker dies

1. An employee shall be eligible for severance pay if laid off permanently because of technological changes in facilities of equipment; changes in methods of production, processing, shipping, receiving, materials handling, or distribution; or the permanent closing of a plant, department, or part of a department or other permanent reductions in the total plant working force.

2. All workers shall be eligible for severance pay who have at least one year's seniority at the time of layoff and who are not eligible for retirement.

3. The severance pay benefit shall be calculated according to the following formula: (detail benefits according to what is appropriate at the time the contract is negotiated)

4. Each employee will have the choice of receiving the severance pay benefit in one lump sum or in weekly installment payments in the amount of his or her weekly wage.

5. In the event of the employee's death, his or her estate or dependents shall be eligible to receive the benefit.

▪ Worker electing transfer will have 90 days to revoke decision and opt for severance pay

(For multi plant bargaining unit only) In the event of job openings in another facility of the employer, the worker shall be offered the right to transfer with full seniority rights and service credits for all fringe benefits including penison rights. If the employee elects the transfer, he or she shall have 90 days in which to revoke this decision and accept the severance pay benefit in place of the transfer.

6. SUPPLEMENTAL UNEMPLOYMENT AND GUARANTEED INCOME STREAM BENEFITS

Checklist for Negotiators

- ✓ Who is eligible to receive SUB/GIS benefits?
- ✓ How much is the benefit?
- ✓ How is it calculated? (Maximum and minimum? Duration?)
- ✓ How is the benefit funded? (Pooled or individual?)
- ✓ Who administers the fund/program?

Discussion

Supplementary Unemployment Benefits (SUB) are designed to ease the impact of temporary layoffs by supplementing a worker's unemployment benefits. Typically, a SUB benefit pays a certain percentage of a worker's takehome pay, less any state unemployment benefits received. The funds were pioneered by the UAW in 1955, and have since become common in industries in which temporary layoffs are frequent. About one in seven of all major union contracts -- and one in four in manufacturing industries -- now include some form of SUB benefits, up considerably from just a few years ago.

Unfortunately, the SUB funds were not designed to deal with massive unemployment and plant closures, and the SUB funds in auto and other industries have in recent years run dry or dangerously low. In response to this limitation, several unions have recently experimented with lifetime income guarantee programs.

One such plan, the Guaranteed Income Stream (GIS) benefit, was negotiated by the UAW in their 1982 agreements with Ford and GM. GIS benefits are designed to meet directly the needs of workers impacted by plant closures. Under this program, qualifying workers who are laid off are guaranteed 50% or more of their gross pay until retirement, provided that they are able and available to work and accept "reasonable" employment offered by the company or a state agency. Although only high seniority workers are eligible, this benefit does ease the blow of plant closures for longer periods than do SUB benefits, which are limited to a certain number of weeks following layoff.

The IUE and UE won a similar provision in their 1982 agreement with General Electric. Under the electrical industry plan, workers who are laid off in a plant closing and who meet certain age and seniority requirements become eligible to receive a "special continued severance pay" benefit. The SCSP, which may be as much as 50% normal monthly straight time pay, less other benefits received, is paid as long as the worker is unemployed and ineligible for retirement or social security benefits.

A "supplemental income protection" benefit negotiated by the CWA provides 40% of the weekly wage of high seniority workers displaced by technological change, up to a certain ceiling.

Sample Clauses

• Summary of supplemental unemployment benefits (SUB) negotiated by the USWA

Laid off workers receive a weekly supplemental unemployment benefit equal to 26 times the average straight time hourly earnings plus additional allowances for dependents, less (under certain circumstances) any state unemployment insurance or trade readjustment allowance received. The duration of the SUB benefit depends on the number of credit units a worker has accumulated on the basis of weeks worked or on approved leave, with extra units for high seniority workers. To be eligible for SUB, a worker must be laid off because of a reduction in force or a permanent plant shutdown, have at least two years of service, and must report to a designated location to receive the benefit. The benefit is financed by company contributions to a SUB fund according to a negotiated formula.

USWA and US Steel Corp., 8/1/80

• Summary of supplemental unemployment benefits (SUB) negotiated by the UAW

Laid off workers receive a SUB benefit equal to 95% of their weekly after-tax pay, less state unemployment benefits, other compensation, and $12.50 to cover work related expenses not incurred. Workers are eligible for regular SUB benefits if they are on layoff, are receiving state unemployment insurance or have exhausted such benefit, or are ineligible for state UI for agreed upon reasons. Duration of benefits depends on the number of credit units accrued on the basis of weeks worked or on approved leave; workers with 10 or more years of seniority can earn credit units for up to 104 weeks of SUB pay. The SU benefits are supported by a company financed SUB Fund.

UAW and Ford Motor Co., 2/82

• Summary of supplemental unemployment benefits (SUB) negotiated by the URW

Laid off workers receive 80% of weekly straight time pay, less any state unemployment benefits or other compensation received or receivable. Duration of benefits depends on the number of credit units accrued; it ranges 52 to 208 weeks, depending on seniority. The SU benefits are supported by a company financed SUB fund; however, no benefit will be paid if the fund falls to 4%.

URW and B.F. Goodrich Co., 4/21/82

• Supplemental income protection (SIP) provided for high seniority workers laid off because of technological change

If during the term of this agreement, the Company notifies the Union in writing that technological change (defined as changes in equipment or methods of operation) has or will create a surplus in any job title in a work location, which will necessitate lay-offs or involuntary permanent reassignments of regular employees to different job titles involving a reduction in pay or to work locations requiring a change of residence, or if a force surplus necessitating any of the above actions exists for reasons other than technological change and the Company deems it appropriate, employees under the age of 62 (whether or not eligible for a service pension) in the affected job titles and work locations who have at least twenty years of net credited service and whose age and years of net credited service, in sum, total seventy-five or more as of the date of the Company's notice to the union, may elect, in order of seniority, and to the extent necessary to relieve the surplus, to leave the service of the Company and receive Supplemental Income Protection benefits...For employees who so elect...the Company will pay monthly as Supplemental Income Protection payments, $8.00 for each year of net credited service (including a pro-rated amount for any partial year of net credited service) pays 40% of the employee's final basic weekly or equivalent wage rate but, in no case to exceed in aggregate a total of $375.00 per month. The Maximum amount of SIP benefits payable shall in no event exceed a total of $18,000...

CWA and Ohio Bell, 8/22/80

• Summary of guaranteed income stream (GIS) benefit negotiated by the UAW

Eligible workers with 15 or more years of seniority who are laid off will receive 50% or more of gross pay until retirement or age 62. The benefit is subject to three main conditions: the worker must have 15 or more years seniority, be working as of 1982, be able and available for work, and must accept any "reasonable" employment arranged by the company or a state agency. The GIS benefit is equal to 50% of the employee's hourly rate received as of the last day worked, with rate increases for higher seniority workers, up to a maximum benefit of 75% of the weekly wage or 95% of after tax pay less work related expenses, reduced by other replacement benefits and/or 80% of earnings from other employment.

UAW and Ford Motor Co., letter of agreement, 2/13/82

• **Special continued severance pay (SCSP) provided for high seniority workers laid off in plant closing**

In lieu of any other benefits...an employee whose employment is terminated because of a plant closing and who had attained age and continuous service requirements as set forth in the table below at the time of such termination, may elect, prior to the date of termination for plant closing, to receive a monthly Special Continued Severance Pay benefit...[table requires combined age and service ranging from 65 to 75 years, depending on age; only workers 50 or over eligible–ed.]...

The Special Continued Severance Pay benefit shall be paid monthly in an amount equal to the product of 2% of monthly straight time earnings multiplied by the number of full years of continuous service at the time of such plant closing, provided that in any event such amount shall not exceed one-half of the employee's normal monthly straight time earnings [minus any GE pension received before age 62 and any state or federal unemployment insurance, social security benefits, worker's compensation or sickness or accident benefits–ed.].

IUE/UE and General Electric, exp. 6/30/85

NOTE: No model clauses are provided, since specific supplemental unemployment and guaranteed income stream benefits vary so widely among industries and unions.

7. EXTENSION OF MEDICAL, DENTAL, AND LIFE INSURANCE BENEFITS

Checklist for Negotiators

- ✓ Does the contract provide for the extension of health, dental, and life insurance benefits following layoff?
- ✓ Who is eligible for the extension of benefits?
- ✓ For how long will the benefits be extended?
- ✓ Under what conditions, if any, may the employer terminate coverage?
- ✓ Can workers convert to the group rate at their own expense? For how long may they continue the group rate?

Discussion

One of the most devastating immediate effects of a plant closing for many workers is the abrupt termination of medical, dental, and life insurance benefits. Many studies have shown that because of the stress of joblessness, the rate of various illnesses go up following layoff. But at precisely the moment that the individual is most likely to need medical benefits, these benefits are terminated, and the cost of individual premiums is often out of reach. Many find themselves uninsured just when their need for coverage is increasing.

Recently, a number of unions have been successful in winning provisions which extend medical and life insurance benefits for workers laid off as a result of a plant closure or technological layoff. The URW, for example, in 1982 negotiated a two year extension of medical benefits following a plant closure, with the option of continued coverage at group rates at the worker's own expense for an additional six months. The 1982 auto industry agreements permit an extension of up to two years, depending on seniority. The 1982 Westinghouse contracts won by the IUE and UE permit unlimited extension of medical and life insurance benefits for workers who choose early retirement following a plant closing, until they are covered by Medicare or another insurance plan. Other unions have negotiated benefit extensions as part of specific termination agreements.

Sample Clauses

• Medical insurance will be extended for 30 months for workers laid off because of a plant closure

An employee who is terminated because of a plant closure and while covered by medical benefits... will have his medical, dental, vision, and major medical benefits at termination continued for 24 consecutive months following the earlier of the date of such termination...or the date of layoff preceding the date of such termination. The employee may continue the coverage for an additional six months by paying in advance...the monthly group rate determined annually...The maximum period of coverage provided...shall be thirty consecutive months...

URW and Goodyear Tire and Rubber Co., 7/16/79

• Medical and life insurance benefits will be extended for up to 24 months after layoff, depending on seniority

Hospital-surgical-medical-drug-vision-hearing aid (and life insurance coverages)...shall be provided for a laid-off employee and his eligible dependents, without cost to the employee, during a layoff...in accordance with the following tables...

Years of Seniority	Months of Benefits
under 1	0
1-2	2
2-3	4
3-4	6
4-5	8
5-6	10
6-10	12
10+	24

UAW and Ford Motor Co., letter of agreement, 2/12/82

• Worker who elects early retirement following plant closing will be eligible for continuation of life and medical insurance

If an employee who has been laid off because of a Location Closedown is eligible for and has elected early retirement...the employee will be eligible to receive special insurance benefits including... 1. Continuation of life insurance. 2. Continuation of personal hospital expense, surgical operation, diagnostic x-rays and laboratory examinations, maternity and major medical protection benefits until eligible for Medicare benefits. (If the employee is employed by another employer, the Westinghouse Insurance Plan will become a secondary payor if the employee is covered by a medical insurance plan of his new employer.) 3. Continuation of Dependent Insurance on behalf of eligible dependents. (If the employee is covered by another employer, the Westinghouse Insurance Plan will become a secondary payor if dependent coverage is provided by his new employer.) 4. Availability of continuation of dependent coverage should the employee who has retired die.

IUE/UE and Westinghouse, 7/12/82

• Medical benefits will be continued for up to 39 weeks at company expense and up to 12 months at the worker's expense for workers laid off because of technological change

An employee eligible for T.A.P. [Technological Adjustment Plan–ed.] benefits shall be deemed eligible for Hospitalization, Medical, and Surgical benefits at Company expense for the period of time that he is eligible for T.A.P. benefits [26-39 weeks, depending on seniority–ed.]. For a period of twelve (12) months following exhaustion of T.A.P. benefits, an employee may carry Hospitalization, Medical and Surgical coverage on a Continuance Basis at his own expense...

UFCW and Armour Co., exp. 8/31/82

• Medical benefits will be continued for 9 months and dental benefits for 6 months following a plant closure

The Company agrees to the continuation of coverage for hourly participants in the above plants, including dependent coverage for which the participant was enrolled at time of termination, in accordance with the following schedule:...Employees Hospital, Surgical and Medical Plan...a full nine months ...The Company will pay the full cost of such continuation...Prescription Drug Expense Insurance Plan ...a full nine months...Kaiser Foundation Health Plan and Kaiser Prescription Drug Plan...a full nine months...Dental Expense Assistance Plan...a full six months...

ILWU and Colgate-Palmolive, Berkeley, Ca., termination agreement, 3/81

• Medical coverage will be continued for 90 days following termination

For those employees terminated (other than voluntarily) on October 1, 1981, the Company will extend current Medical Coverage for a period of 90 days or until the employee is covered by insurance plans of his or her new employer, whichever comes first. If an employee is hospitalized on the 90th day (the day benefits terminate) the Company will be responsible for expenses related to such specific hospitalization until employee is discharged from hospital.

BCTW Locals 182-T, 183-T, and 192-T and American Tobacco Co., termination agreement, 5/14/81

Model Clause

▪ Medical, dental, and life insurance benefits shall be continued for 24 months following layoff; and may be continued thereafter at group rates at worker's expense

An employee who is terminated because of a plant closure, or who is laid off as a result of a reduction in force, shall have all medical, dental, and life insurance benefits continued without cost to the employee for 24 consecutive months following the date of such termination or lay-off. Thereafter, the employee may arrange to continue coverage at group rates at his or her own expense.

8. PENSIONS AND EARLY RETIREMENT

Checklist for Negotiators

- ✓ Does the contract provide for early retirement?
- ✓ Under what conditions may a worker retire early?
- ✓ How is eligibility for early retirement determined (by age, years of service, or a combination of the two)?
- ✓ How many years of service are required for vesting? Will the number of years required be reduced in the event of a plant closing or technological layoff?
- ✓ In the event of a plant closing or technological layoff, will the employer provide extra service credits?

Discussion

Plant closures hit older workers hardest. Despite their skills and experience, older workers are less likely to find new jobs after a shutdown. It is more difficult for them to return to school to retrain for a new line of work, and frequently employers shy away from workers who might soon be eligible for pension benefits. Too often, however, older workers are unable to retire because they are not fully vested in the pension plan or are not eligible for full benefits.

To ease the plight of the older worker who is laid off, some unions have won provisions which permit early retirement for those who have reached a certain age in the event of a plant closure. For example, when the International Harvester plant in San Leandro, California, closed in 1975, the UAW negotiated a provision which permitted special early retirement for workers 55 or older. Other contracts permit early retirement for workers who have reached a certain seniority level. Several URW agreements permit all workers with 25 or more years of service to retire early, whatever their age, in the event of a shutdown.

Some unions have devised formulas which base eligibility for early retirement on a combination of age and years of service. Such provisions allow both the middle aged worker of high seniority, and the older worker with moderate seniority, to retire before it would otherwise be possible. For example, under the terms negotiated by the ILWU when the Colgate-Palmolive plant in Berkeley, California, closed, an individual under age 55, but with 70 or more years of age and service (for example, a 45 year old with 25 years in the plant) became eligible for immediate retirement with a slightly discounted annuity. Those over 55 with 70 years of age and service were able to retire immediately with full benefits. Other special provisions were negotiated for those with fewer years of age and service. Because of this closure agreement, many workers were able to retire earlier than would otherwise have been possible.

Sometimes it is necessary to alter the vesting provisions of the contract to permit a higher proportion of workers to become vested in a pension plan before a shutdown occurs. For example, the 1982 Westinghouse contract negotiated by the UE and IUE reduces the time required for vesting from ten to seven years for workers laid off in a plant closing.

Another useful provision is to permit workers to continue to accumulate service credits for the purposes of the pension plan even while on lay off. For example, the CLGW has won contract terms which credit laid off workers with up to two years of pension credits.

Sample Clauses

• Special early retirement provided after a plant closure for workers 55 years of age or older

The Company agrees to...offer the opportunity for Special Early Retirement...

An Employee who has attained age 55 but not age 65 will be granted an option by the Company to elect to be retired under the SER provisions of the...Retirement Plan, or he may elect to be retired under the Regular Early Retirement provisions of such Plan or take a job offer under this Agreement...

UAW Local 76 and International Harvester, termination agreement, 1975

• Special early retirement provided for workers with 25 or more years of seniority; workers age 55 may retire after 5 years of service

In the event of a plant closure (including a partial plant closure...): An employee who then has 25 or more years of credited service...shall be eligible for an immediate pension... An employee who then shall have attained age 55 and completed 5 or more years of credited service shall be eligible for a pension...

URW and Firestone, 7/14/79

• Early retirement provided based on a combination of age and seniority (summary)

For workers 55 or over with 85 or more years of age and service, an undiscounted annuity and a pre Social Security supplement; for workers 55 or over with 70 or more years of age and service, an undiscounted annuity; for workers 55 or over with less than 70 years of age and service, an annuity reduced by increments according to age; for workers under 55 with 70 years of age and service, an annuity reduced by increments according to age; for workers under 55 with seniority of ten years or more, but age and service less than 70 years, an undiscounted annuity at age 65 or a reduced annuity at age 55.

ILWU and Colgate-Palmolive Co., Berkeley, Ca., termination agreement, 3/81

• Early retirement provided following a layoff or closure, or when disabled, based on age and seniority

Under certain circumstances, a participant who has at least 15 years of continuous service may retire before he has reached age 62, and receive a Special Payment and a Regular Pension if: he has reached age 55 and the total of his age and continuous service equals at least 70 (rule-of-70), or the total of his age and continuous service equals at least 80 (rule-of-80)...

The circumstances under which a participant may retire under the Rule of 70 or Rule of 80 are: when his continuous service has broken because of a layoff or disability, or because of a permanent shutdown; or during a layoff elected at the time of a shutdown, or during the first 90 days on a job with the Company taken while on such layoff; of when he is absent due to disability or layoff and the Company determines that his return to active employment is unlikely; or when he and the Company agree it is in their mutual interest for him to retire.

USW and Bethlehem Steel Corp., exp. 8/83

• Vesting rights provided for all workers with seven or more years seniority in a plant closing

An employee who is laid off because of Location Closedown will receive a vested pension if, at the time of layoff, the employee has seven (7) years of credited service.

IUE/UE and Westinghouse, 7/12/82

• Service credits for pension for up to two years provided for laid off workers

Credited Service shall be given a Member at the rate of eight hours per day, not to exceed 40 hours per week for...layoff not exceeding two years...

CLGW and Alpha Portland Industries, exp. 4/81

Model Clause

Note: The range of variation in pension plans is so great that no one model clause is appropriate. The following model provides for reopening the pension agreement in the event of a plant closing or major layoff, with the right to arbitrate all unresolved issues.

- **Union has right to reopen the penison agreement in the event of substantial layoffs**

In the event of any action of the employer which will result in substantial layoffs of employees in the bargaining unit with little or no chance of recall to work, the union shall have the right on 30 days notice to reopen the pension agreement and seek changes and amendments. The parties shall negotiate upon these proposed changes and if after 90 days no agreement is reached, all unresolved issues shall be referred for resolution to binding arbitration. The method of selecting an arbitrator shall be the same as that specified in the grievance machinery of the contract.

9. INTERPLANT TRANSFER PROVISIONS

Checklist for Negotiators

- ✓ Does the union agreement give workers the right to transfer from one plant in the company to another?
- ✓ If so, under what conditions may such a transfer take place?
- ✓ Among which plants, or within what geographical area, may the transfer take place?
- ✓ Does the union agreement provide for preferential hiring for laid-off workers?
- ✓ Do workers have interplant bidding and/or bumping rights?
- ✓ Do workers have the right to refuse transfer and accept severance benefits instead without penalty?
- ✓ If a plant is moved, does the union agreement move with the work?

Discussion

Many unions, particularly those which negotiate nationwide agreements covering large segments of an industry, have won for their members the right to transfer to another facility when a plant or part of a plant is shut down. Interplant transfer provisions are currently included in about 35% of major collective bargaining agreements and cover almost half of all union members. Although transferring means hardships for laid-off workers and their families -- pulling up roots, selling a home, learning a new job -- it also offers the chance for continued employment and retention of seniority for benefit plans and other purposes.

Transfer provisions present unions with a troublesome set of problems. Frequently, the interests of workers in the plant which is shut down -- who want to transfer to a new job with full seniority rights -- conflict with those of workers at the receiving plant, who may be "bumped" off their jobs by incoming transferees. A union which represents both groups is likely to be faced with conflicts among various units within its jurisdiction.

There are three main ways in which unions have sought to resolve the complex set of issues surrounding interplant transfer: preferential hiring, bidding rights, and bumping rights. A change of operations, in which part or all of a plant is moved, is a special case.

The most common transfer provision is one in which the company agrees to give preference to workers laid off in a plant closure when hiring at its other plants. Sometimes these clauses specify that the worker must meet certain requirements to receive preferen preferential consideration, such as ability to do the job or learn it within a reasonable period of time; others are based strictly on seniority. Most preferential hiring clauses state that a worker who transfers will be allowed to carry with him seniority only for the purposes of calculating benefits, but for all other purposes will have seniority dated from the date of hire at the new plant.

A less common approach is to allow workers to invoke company-wide seniority to bid onto job vacancies in other plants, but may not use their seniority to displace or bump others already at work. Some contracts go a step further, and allow workers to bump others with less seniority at other plants or facilities, even when this means workers at the receiving plant may be downgraded or laid off as a result. Only 24% of contracts with interplant transfer provisions permit bumping.

If possible, the contract should specify that transfer is not compulsory, and workers have the choice of accepting a transfer or severance benefits. Once a worker has transferred, he or she should have the right to revoke this decision within a certain period and instead receive separation pay, early retirement, or retraining if the new placement is not satisfactory.

The situation where a company closes down one facility and opens a new one in another location to manufacture the same or similar products presents less problems, since there are no workers at the receiving plant whose jobs are threatened by transfer. To cover such transfers of operations, unions have won strong clauses which automatically extend the contract to the new location and give workers the right to "follow the work." Such language may help prevent companies from "running away" to evade a union agreement.

Sample Clauses

• Preferential hiring of workers laid off in a plant closing; seniority for benefits only

An employee who is released from employment as the result of the complete and permanent closure of a local plant covered by this agreement, who makes written application for employment at other plants covered by this agreement within sixty (60) days of such release from employment, will be given preference in hiring over new employees in such other plants for work on which he is qualified, provided such employee has not assumed the status of a retiree, accepted a Special Distribution or a S.U.B. Separation Payment...Any such employee who is hired will be hired as a new employee without service credit for seniority purposes. For all other purposes, he will be credited with the amount of continuous service he had at the time of his realease from employment...

URW and Goodyear Tire and Rubber Co., 7/16/79

• Preferential hiring of workers on layoff

An employee of a steel plant continuously on layoff for sixty (60) days or more who had two or more years of Company continuous service on the date of his layoff and who is not eligible for an immediate pension and social security shall be given priority over other applicants...for job vacancies... at other steel plants of the Company located within a limited agreed-upon geographical region...and covered by an agreement between the Company and the International Union...

USWA and US Steel, 8/1/80

• Preferential hiring by seniority

If the total number of transfer opportunities available at or before the time of closing of the plant, division or department of the plant is smaller than the number of employees permanently severed as a result of the closing, such opportunities shall be offered to eligible employees in order of plant seniority. In allocating transfer opportunities among the eligible employees who are entitled by plant seniority to have such offer made to them, the Company, to the extent permitted by the number of transfer opportunities available, shall follow the designated plant preferences of those who are entitled to transfer and who have designated a plant preference; such choice shall be made in order of plant seniority.

UFCW and Armour Co., exp. 9/31/82

• Bidding rights based on seniority for jobs open in other plants

In case of a permanent discontinuance of any plant or plants in the Transmission Division, employees in the plants so closed shall be entitled to invoke their entire Company seniority to obtain a job in the plant or plants continuing operation. The employee so desiring to invoke his Company seniority must have the ability to perform the job to which his Company seniority would entitle him, which then becomes his bid-in job.

AIW and Clark Equipment Co., Transmission Division, exp. 5/83

• Right to bump workers at other plants on the basis of seniority

Employees, who have seniority, as of the date of layoff, and who have been laid off from their respective plant because of lack of work, for a period of 6 weeks, may exercise their seniority at either

one of the other locations in the labor or production classification. Such employees may replace the most junior employees at either one of the other plants, as the case may be, provided they are qualified to do the work...Employees so assigned shall have their seniority transferred to the other plant and shall be considered employees of that plant.

AIW and Kelsey Hayes Co., Jackson, Mi., exp. 1/80

• Unit-wide bumping rights in multiplant agreement

Layoffs shall be in reverse order of seniority, first in the store of employment, then by bumping the least senior employee in another store of the employer on a district-wide basis or in a mutually agreed upon geographical area, and finally on a bargaining unit wide basis, provided the employee is capable to perform the work of the displaced employee and is available for the hours required to be worked.

UFCW and Pathmark and Shop-Rite Supermarkets, Interstate, exp. 4/81

• Right to bump probationary workers only

Seniority employees laid off as a result of the closing who cannot exercise their seniority in any other unit shall be given the right to apply within 30 days of layoff for preferential placement on available work, or if none is available, the opportunity to displace probationary employees, on jobs for which they are qualified or could qualify within a reasonable period of time in other plants covered by the Agreement in the same labor market area...or in plants covered by the Agreement in different labor market areas as might be specified by mutual agreement between the Company's Labor Relations Staff and the National Ford Department.

UAW and Ford Motor Co., letter of agreement, 2/13/82

• Right to bump workers hired after layoff notice given

Any eligible employee...who would have been permanently separated from service under circumstances which entitle him to separation allowance...and who is physically fit...and who has the ability to do the job or to learn the job available within a reasonable length of time, shall have the right to displace the junior employee hired on or after the displacement date specified for each plant...

UFCW and Armour Co., exp. 9/31/82

• No worker shall be penalized for failure to accept transfer

Transfer of employees to other cities outside of the counties in which they are employed, shall not be compulsory, nor shall any employee be penalized for failure to accept such transfer.

UFCW and Food and Liquor Agreement, Sacramento, Ca., exp. 2/80

• Right to 'follow the work' with full seniority

Whenever a center or hub is opened or closed or partially closed in the same local union area, the employees affected will be entitled to follow their work and carry their company seniority in that area to the new location.

IBT and United Parcel Service, Upstate NY, exp. 4/82

• Right to transfer with full seniority in event of transfer of operations

In the event the company elects to permanently transfer operation(s) or jobs from one plant covered by this agreement to another plant covered by this agreement, an employee affected by such change shall have the right to transfer with the job(s)...Any transfer of employees resulting from this provision shall be on the basis that such employees are transferred with full service and seniority rights.

UAW and Rockwell Interstate Corp., exp. 2/80

• Right to transfer with seniority when plant moves; employer will recognize union

If the employer moves his plant or a department within the above listed counties, the Employee will continue to recognize the IAM and employees may take their seniority rights with them to the new location, but shall receive no severance pay...

IAM District 115 and California Metal Trades Assoc., 4/1/80

NOTE: No model clauses are provided, since specific transfer arrangements vary so widely among industries and unions.

10. RELOCATION ALLOWANCES

Checklist for Negotiators

- ✓ Under what conditions are workers entitled to a relocation allowance?
- ✓ Who is eligible for the relocation allowance?
- ✓ What formula is used to calculate the allowance? (Are all expenses covered, or are there limitations ? Is the payment adjusted for marital status or distance?)
- ✓ When is the allowance paid (before or after the move)?

Discussion

Relocation allowances -- reimbursement for the expenses of moving -- are often paid to workers who must transfer to another plant in the company as a result of a closure or technological change. Provisions for moving expenses -- a standard practice for most management employees -- are now increasingly common among unionized workers. Relocation benefits currently appear in 41% of all contracts which contain some sort of interplant transfer provision, up from 35% when the issue was first surveyed by the Department of Labor in 1969.

Typically workers are entitled to relocation allowances when transferred after a layoff due to technological change, a plant closure, a change of operations or simply company convenience. Generally, any employee who is eligible to receive a transfer is also eligible to receive a relocation allowance. Some contracts restrict the benefit to workers transferring to a plant which is more than a certain minimum number of miles away; others set minimum seniority requirements.

There are three main ways of computing relocation allowances: lump sum; lump sum based on some combination of the worker's marital status and the distance to the new plant, and reimbursement of actual expenses.

Some contracts simply give transferring workers a lump sum, sometimes called a "transfer benefit," to compensate partially for moving costs. More common are formulas that base the benefit on some combination of marital status and distance. For example, the 1982 UAW agreement with Ford provides for a relocation allowance ranging from $580 for a single worker moving less than 100 miles to $2025 for a married worker moving 1,000 miles or more.

The strongest clauses provide that the company will reimburse the worker for the actual costs of moving. For example, the Teamsters' Master Freight Agreement simply states that the employer shall "move the employee." Others catalogue in greater detail the specific items covered, such as premoving expenses, movement of household goods, personal transportation for the worker and his or her family, and closing costs associated with the purchase of a new home.

Sample Clauses

• Relocation allowance when worker is transferred

Where an employee is required to transfer to another domicile in order to follow employment as a result of a Change of Operation, the Employer shall move the employee...

IBT and Trucking Management, Inc., National Master Freight Agreement, exp. 3/31/82

• Relocation allowance when worker transfers after a shutdown

In the event of a permanent refinery shutdown, when an employee exercises the continued employment privilege and thereby is compelled to move, the Employer will pay the cost of moving...

OCAW and Atlantic Richfield and ARCO Pipe Line Co., exp. 1/7/81

• Lump sum relocation allowance

An employee relocated...between operations of the company (as a result of 'the transfer of major operations between plants')...will be paid a lump sum relocation allowance.

UAW and International Harvester P&M Unit, exp. 9/82

• Sliding scale relocation allowance, based on marital status and distance

An employee who is on the active employment roll on or after Sept. 1, 1961, shall be eligible for a Moving Allowance if he is thereafter offered and accepts a transfer from one plant of the Company... to another plant of the Company...(T)he amount of an employee's Moving Allowance shall be the amount shown in the following table:

Miles between locations	Marital Status	
	Single	Married
50-99	580	1290
100-299	645	1420
300-499	700	1490
500-999	845	1760
1000 or more	980	2025

UAW and Ford Motor Co., letter of agreement, 2/13/82

• All moving costs, one way transportation, and closing costs of new home

An employee who is laid off as a result of a permanent plant closing and who accepts employment ...at least 25 miles from the plant being closed, and who changes his permanent residence as a result thereof, shall be entitled to the following:

(a) Movement of normal household goods, arranged for by the Company...

(b) Reimbursement for the reasonable one-way transportation for the employee and his dependents to the new residence...

(c) Reimbursement by the Company for reasonable legal fees and other fees and closing costs of a new home up to a maximum of $500.

USW and American Can Co., exp. 2/19/84

• Cost of moving of household goods, appliance service, and extra allowance for camper, trailer, or boat

The Company will arrange for a reputable mover to move household goods and other personal items from Richmond, Virginia to either Reidsville or Durham, North Carolina. The expenses will be paid by the Company. The Company will pay for normal appliance service for washers, dryers, refrigerators, and freezers as part of the moving process by the moving line. The Company will provide insurance coverage to protect household goods and other personal belongings while they are in the hands of the moving line. If an employee moves a camper, trailer, or boat such an employee will be paid an additional mileage allowance of seven cents per mile.

BCTW Locals 182-T, 183-T, and 192-T and American Tobacco Co., termination agreement, 5/14/81

Model Clause

▪ Employer required to pay all reasonable relocation expenses

Any employee who chooses to transfer (under the terms of the interplant transfer provision of the contract) and who moves his/her permanent residence as a result of this transfer, shall be entitled to full reimbursement of all reasonable expenses incurred in relocating. These expenses shall include, but shall not be limited to, the following: movement of household goods, personal transportation for the employee and his or her dependents, housing search, and fees and closing costs associated with the purchase or rental of a new home, up to a maximum of (amount to be determined according to local housing market conditions).

11. WAGE RATE PROTECTION ("RED CIRCLE" RATES)

Checklist for Negotiators

- ✓ Does the contract provide for protection of earnings ("red circle" rates) when a worker transfers to a lower paying job because of a full or partial plant closing?
- ✓ Does the contract provide for red circle rates when a worker is being retrained because of technological change?
- ✓ Are vacations, holidays, and all other fringe benefits calculated at the red circle rate?
- ✓ For how long do such guarantees last?
- ✓ Are future pay and benefit increases and cost of living increments added to the red circle rate as they are negotiated?

Discussion

Red circle rates have for many years been used to protect the income of workers who are temporarily transferred to lower paying wage jobs for the convenience of the employer. Recently unions have successfully applied the same principle to the earnings of workers adversely affected by technological change or plant closings. Red circle rates may also apply when dislocated workers bid on or are transferred to skilled jobs requiring a long apprenticeship at reduced rates. In such instances, some employers guarantee a percentage of the worker's previous earnings during the training period.

The form of wage rate protection varies greatly from agreement to agreement. Some contracts call for partial wage protection, based on a percentage formula, when a worker transfers to a lower rated job. Others have developed complex formulas for the gradual reduction of rates over time, based on a worker's seniority. Some protect downgraded workers by assigning them to the maximum rate in the range. In a few instances the red circle rate is frozen so that workers get no further pay increases until general increases or cost of living adjustments bring the actual job rate up to the red circle rate.

The strongest contracts do not permit **any** decrease in wages or benefits when a worker is transferred to a lower job classification as a result of a plant closure, layoff, or technological change. For example, the new CWA accord requires that workers with fifteen or more years of seniority who are downgraded due to technological change continue to be paid their old rate for the term of the agreement. The IUE and UE have won 90% wage protection for all workers displaced by technology for 26 weeks.

Sample Clauses

• General statement of policy that the employer is committed to no wage reductions

The Union has long cooperated with Employers in the introduction of new machinery, changes in manufacturing techniques, and technological improvements in clothing plants...Underlying such agreement has been the recognition of these basic conditions: (a) grades...(and) (b) wages of the affected workers were not to be reduced...

ACTWU and Clothing Manufacturers Assoc. of the USA, 10/1/80

• Employer will make every effort to transfer a worker to another job paying the same or more

In the case of employees who are laid off from their regular jobs for lack of work, every effort will be made to transfer them to related jobs having an equal rate or to available openings on jobs having higher rates.

IUE/UE and General Electric Co., exp. 6/30/85

• **95% rate protection for one to five years, depending on seniority**

Whenever an employee is no longer needed on his regular job as a result of (technological change) ..., such employee will have...(the) right to bump into any job or jobs within the bargaining unit on which an incumbent has less seniority...The rate of pay for such employee shall not be less than ninety-five percent of the rate for the regular job from which he was displaced irrespective of the rate of the job which he applies for and obtains. The ninety-five percent of rate protection shall apply for a minimum period of one year, or a period equal to one third of an employee's seniority up to a maximum of five years.

CLGW and Lehigh Portland Cement Co., 10/6/81

• **Full rate protection for 26 weeks for workers displaced by technological change**

An employee whose job is directly eliminated by a transfer of work, the introduction of a robot or the introduction of an automated manufacturing machine and who is entitled to transfer or displace to another job shall be paid on any job to which transferred in the plant at a rate not less than the regular hourly daywork rate...of the job eliminated for up to 26 weeks immeidately following the transfer.

IUE/UE and General Electric, exp. 6/30/85

• **90% wage rate protection for workers being retrained because of technological change**

Notwithstanding any other provisions of this contract, the amount payable during each hour worked on such retraining and/or reassignment for hourly employees on daywork and for salaried employees shall be no less than 90 percent of the job rate of the job on which he last worked on the workweek immediately prior to his starting on such training or reassignment.

IUE/UE and General Electric, exp. 6/30/85

• **Wage rates will be reduced over a time period based on seniority; no wage rate reduction for workers with 15 or more years of seniority**

If, because of force surplus adjustments, employees are assigned to vacancies where the rate of pay of the new job is less than the current rate of pay of the employee's regular job, the rate of pay will be reduced over a period of time [13-65 weeks--ed.] based on the employee's length of service...An employee with fifteen (15) or more years of net credited service who, due to technological changes, is assigned to a vacancy with a lower rate of pay than the then current rate of the employee's regular job shall during the term of this agreement continue to be paid in the lower paid job, an amount equivalent to the rate of pay of the higher paid job in effect at the time of the downgrade...

CWA and Bell Telephone, 8/10/80

• **Transferred worker shall receive at least the maximum for the rate**

If reduction in the work force or regression would result in a wage decrease from some employees, these employees may accept a layoff instead of such decrease. However, if an employee accepts a lower classification, the employee shall receive the maximum of the rate range for that lower classification.

IAM and General Dynamics Corp., Convair Division, exp. 4/81

• **Rate protection, but no future pay increases until the rate paid equals the job rate**

The employee with at least 10 years of service who accepts a job (due to transfer) shall not have his hourly rate of pay reduced, but shall receive no future general wage increases unless and until his rate is equal to the maximum rate for the job in which he is so placed.

UWUA and Ohio Edison Co., exp. 6/80

• **No reduction of pay as result of new technology**

No full-time employee covered by this agreement who has completed his probationary period shall ...suffer any reduction in classification as a result of the introduction or use of automated processes, computer equipment, or new or improved mechanization.

Newspaper Guild and New York Times, no date available

• **No reduction in pay as a result of job transfer**

When an employee is transferred from one store to another, it is agreed that the employee shall suffer no reduction in wages.

RCIA and Non-Registered Drug and General Merchandise Agreement, Portland, Or., exp. 7/80

Model Clause

▪ Displaced, downgraded, or transferred workers shall suffer no reduction in pay and shall continue to receive all scheduled increases*

Employees who are displaced, downgraded, or transferred from their regular job classifications as a result of a plant closure, layoff, or technological change shall suffer no reduction in their hourly rate of pay. Such employees shall continue to receive all general wage increases, cost-of-living allowances, and appropriate skilled trade adjustments, if any.

* Based on IAM model contract language.

12. TRAINING, RETRAINING, AND JOB MARKET ASSISTANCE

Checklist for Negotiators

- ✓ Under what conditions is training, retraining, or job market assistance provided?
- ✓ Who is trained/retrained?
- ✓ What will the worker be trained/retrained for?
- ✓ Who will pay?
- ✓ Is the employee obligated to accept training/retraining if offered?
- ✓ Who/what agency provides and administers the training/retraining?

Discussion

Unfortunately, many workers who are laid off as a result of technological change or plant closings find there is little demand for their skills in the job market. To address this problem, unions have negotiated provisions which require the employer to offer retraining and job counseling services to displaced workers.

When new technologies change the character of jobs in a workplace, workers can be trained to fill new positions which open up, rather than displaced or demoted because their old skills don't match new equipment or techniques. In some cases, union contracts specify that retraining will occur **before** the introduction of new methods or techniques, to equip the worker in advance for jobs created by new technologies. The 1982 UAW-Ford agreement, for example, states that the company will provide training for employed skilled and semi-skilled workers based on present **and anticipated** job requirements. In other cases, the employer has agreed to retrain workers to fill new positions if their old jobs are eliminated by technological change.

When workers are laid off because of a plant closing, the employer may be required to provide training for other jobs, either elsewhere in the company or with other employers. Under the terms of the contract negotiated with General Motors in 1982, the UAW won a generous retraining program for workers laid off as a result of the closings of GM's Fremont and South Gate plants in California. The company provided $4 million, which--along with money raised from federal and state agencies--is being used to train laid off workers for jobs in electronics, computer programming, appliance repair, and other fields. The program is jointly administered by union and management.

Who will pay for retraining displaced workers? In some programs, such as that established at Fremont and South Gate, the employer makes a major contribution to a program funded jointly with government agencies. In other cases, the employer has given grants directly to individual workers for educational purposes. For example, in their 1982 agreements with General Electric and Westinghouse, the IUE and UE won a promise that the employer will reimburse a worker laid off in a plant closing up to $1800 for retraining expenses at an accredited school or skills center. Other unions and employers have agreed together to seek funding from government agencies and other sources to pay for negotiated programs.

Other employers, although not agreeing to retraining, have offered to provide job counseling and outplacement services for displaced workers. Contract language can range from a simple statement of intent to a full description of services to be offered. When the Colgate-Palmolive plant shut down in Berkeley, California, in 1981, for example, the

ILWU negotiated an employer funded Job Opportunity Center, open for three months following the closure announcement, and a three day Career Continuation Program for workers, conducted on company time. Ford agreed in 1982 to provide similar counseling services in the event of a plant closing. The UAW-Ford contract specifies that the affected local union will be consulted in setting up outplacement services.

One possible problem with company involvement in job placement, in some unions' view, is that management may seek to promote its own favorites when writing recommendations and making referrals to other employers. To protect against this, some unions have negotiated language which specifically limits the information a company can give out to prospective employers without the worker's written consent. The ILWU agreement with Colgate, for example, states that the company will not release any information on attendance, disciplinary record, or performance evaluation without the worker's written consent.

In some contracts, the union has won the right to manage the retraining program or outplacement service jointly with management and to refer any unresolved disputes to arbitration. Among the strongest clauses on this issue is one negotiated by the ITU, which sets up a joint committee on training to oversee the company funded program.

The best programs are funded by the company, jointly administered by union and management, and offer the individual worker the choice -- but not obligation -- to accept retraining or job market assistance.

Sample Clauses

• Workers displaced by technological change shall be retrained for available work at employer's expense

If any technological change permanently displaces any person (who has at least one year seniority) in the performance of his job classification...(and such person is qualified)...(the employer) agrees to endeavor to retrain such person for such available job at (the employer's) expense...

OPE and Assoc. of Motion Picture and Television Producers, no date available

• Workers who would otherwise be laid off because of technological change may be retrained

When employees are faced with layoffs or contemplated layoffs caused by automation, mechanization or other reasons and in cases of contemplated plant expansions or changes in plant technology or otherwise, employees with two or more full years of continuous service may be retrained and/or reassigned to acquire necessary skills for jobs requiring such skills.

IUE/UE and General Electric, exp. 6/30/85

• Employer will provide training based on present and anticipated job requirements

(The Employer will provide) training/educational courses...to upgrade/sharpen present job skills (and) provide updating on the state-of-the-art technology for skilled and semi-skilled employees based on present and anticipated job requirements...

UAW and Ford Motor Co., letter of agreement, 2/13/82

• Employer will arrange for or provide retraining for displaced workers

(The UAW-Ford National Development and Training Center will) seek ways of arranging (and in some cases, providing) for training, retraining, and development assistance for employees displaced by new technologies, new production techniques and shifts in customer consumer preference. Similar efforts would be undertaken for employees displaced as a result of facility closings or discontinuances of operations.

UAW and Ford Motor Co., attachment to letter of understanding, 2/13/82

• Employer will reimburse worker for up to $1800 in educational or retraining expenses at an accredited school following a plant closing

An employee with two or more years of continuous service who is terminated as a result of a plant closing will be eligible to receive Education and Retraining Assistance for courses approved by the Company (at an accredited school) which contribute to or enhance the employee's ability to obtain other employment provided that the employee begins the approved course within one year following termination...

An employee will be reimbursed up to a maximum of $1800 for authorized expenses which are incurred within two years following termination provided a passing grade is received in the course. Authorized expenses include verified tuition, registration and other compulsory fees, costs of necessary books, and other required supplies...

IUE/UE and General Electric, exp. 6/30/85

• Employer will pay for jointly approved training program

The Employer will defray the costs of a jointly approved training program for the purpose of promptly training Union Members to learn and utilize new skills that may be required by the introduction of new equipment...

SIU and Pacific Maritime Association, no date available

• Union and employer will seek government funding to underwrite costs of retraining program

The company and the union will make every effort toward the development of a mutually functional, practical and attainable program for such re-training of employees as may be required or deemed desirable as a result of the foundry closing. The union will provide such assistance as is available and will work with the company in an effort to underwrite re-training costs through the availability of government funding programs in which they participate.

UAW and White Farm Equipment Co., termination agreement, 4/70

• Employer will offer counseling and job placement assistance

The Company will make a sincere effort to assist all employees in their transition resulting from the closing of Virginia Branch. Employee counseling and job placement assistance will be offered all employees.

BCTWU Locals 182-T, 183-T, and 142-T and American Tobacco Co., termination agreement, 5/14/81

• Employer will provide Job Opportunity Center and Career Continuation Program, conducted on company time

1. The Company agrees to provide and staff a Job Opportunity Center at the plant for a minimum period of three months following announcement of the closing in order to assist terminated employees by typing resumes, responding to employer requests for job references and by contracting other employers in the Bay Area.

2. The Company agrees to provide a 3-day career continuation program, for all hourly employees, through the services of a group out-placement consultant...The programs will be conducted on Company time...

ILWU and Colgate-Palmolive, Berkeley, Ca., termination agreement, 3/81

• Employer will provide counseling and outplacement assistance, with union consultation

(In the event of a full, permanent plant closure) the Company shall provide employee counseling and outplacement assistance programs. The method of operation of such programs shall be determined by the Company with due consideration given to the timing of the closing, the manner in which it shall be handled, and the nature of operations and number of employees to be affected. Local management shall review plans for employee counseling and outplacement assistance programs with the local union and consider its recommendations and opportunities for its participation as appropriate. Counseling sessions shall be conducted for affected employees concerning income security, retirement, insurance and related benefits program entitlements, as well as placement opportunities...

UAW and Ford Motor Co., letter of agreement, 2/13/82

• **References given to other employers will be limited unless worker gives written permission**

The Company agrees that references given out to prospective employers will be limited to length of employment, jobs performed, special skills, rates of pay and benefits unless the employee specifically authorizes the Company in writing to release information on attendance, disciplinary record, performance evaluation, etc.

ILWU and Colgate-Palmolive, Berkeley, Ca., termination agreement, 3/81

• **Joint committee to administer training; all unresolved disputes to be referred to arbitration**

It is recognized that training composing room employees for the transition from a traditional composing room operation to an automated composing room operation will raise questions and problems not foreseen by the parties. Consequently, a Joint Committee on Training shall be formed at each newspaper consisting of two members designated by the Union and two by the Publisher. Should the Union and the Publisher disagree on matters relating to the development and administration of the training programs, such differences will be submitted to the designated arbitrator.

ITU and New York Times and New York Daily News, exp. 3/30/84

Model Clause *

▪ **Workers shall be trained for new jobs created by technological change or, if this is not feasible, for other jobs in the company or in the wider community; workers will be paid at their established rates during retraining.**

1. When, as a result of technological change, new and/or revised job classifications are introduced into the bargaining unit, the company shall insure that employees will be given the opportunity to acquire the knowledge and skills necessary to qualify for these new and/or revised job classifications.

2. In the event, retraining for the new and/or revised job classifications is not feasible, the Company will provide the necessary training for job classifications not related to the new technologies. This will include training for jobs in other departments in the plant, and if necessary, for jobs at other Company plants.

3. If a job with the Company is not feasible, the Company shall then initiate discussion with appropriate representatives of state and federal unemployment and job placement agencies with regard to job openings and/or skill shortages in the community. Should such openings exist, the Company will undertake to provide the necessary training so that affected employees can qualify for these jobs.

4. The Company shall establish, at its own expense and during regularly sscheduled working hours, an adequate retraining program for affected employees. During the training period, the employee shall be paid at the established rate of pay for the job classification help prior to entering the training program.

*Based on IAM model contract language.

13. HOW OTHER SECTIONS OF THE CONTRACT MAY AFFECT THE ISSUES OF PLANT CLOSINGS AND TECHNOLOGICAL CHANGE

Checklist for Negotiators

- ✓ Does the management's rights clause, if there is one, specify that it may be overriden by other clauses in the agreement?
- ✓ Are "grievances" defined broadly and flexibly?
- ✓ Does the union recognition clause provide for full bargaining rights on all matters, including "other conditions of employment?"
- ✓ Does the agreement include a successors clause?
- ✓ May workers on layoff retain their seniority indefinitely?

Discussion

Many of the sections of the union contract discussed in this manual deal obviously with issues of concern to workers who are facing a plant closure or layoff --advance notice, transfer allowances, severance pay and the like. But there are others which, although not so obvious, can help -- or hurt-- a union seeking to protect its members in the event of a shutdown or major technologial change. These clauses may make the difference between being able to negotiate or grieve issues related to plant closures or not. For this reason it is important to review existing contracts for clauses which may restrict or compromise the union's rights with respect to plant closings, technological change and related matters.

Management Rights: For many years, employers have sought to include a clause in union agreements which defines the rights of management. At first, most of these "management rights" clauses were brief and stated simply that the employer owned the business, was responsible for running it, and assumed all legal responsibilities. But more recently, management rights clauses have tended to list in greater detail various rights of the employer which are not subject to the normal grievance-arbitration process. Some of the most extensive management rights clauses grant the employer authority to determine the number and location of plants, discontinue or transfer operations, or introduce new technologies and production methods with no union recourse to negotiations or arbitration. In other instances, employers ask for "fully negotiated" or "zipper" clauses. These state that the contract is closed, and any subjects not covered by the agreement are specifically excluded from discussion during its term. Unions that have such clauses carry an extra burden when trying to open up the issue of plant closings and technological change.

Management rights clauses should be carefully evaluated for their possible impact on protecting members' job rights in the event of a plant closure of layoffs, and eliminated or rewritten if necessary.

If the employer insists on including a management rights clause, one way to lessen its impact is to include a statement that the management rights clause can be overridden by others in the agreement. That way, if the union is able to win advance notice or other protective language elsewhere in the agreement, an arbitrator will be less likely to invalidate these provisions on the basis of a contradictory management rights clause.

The Grievance Procedure: Another important section of the contract in this regard is the one which defines the grievance-arbitration procedure. It is helpful to define a grievance as broadly and as flexibly as possible. This insures that all complaints and problems of the members, including those which arise out of a plant closure or technological transformation of the workplace, can be taken up through the grievance procedure.

Union Recognition: It is also helpful to define the union's bargaining rights as broadly as possible in the recognition clause of the contract. When the NLRB was first formed, it was customary for union agreements to include a standard clause stating that the union was certified as the exclusive bargaining representative on all matters pertaining to "wages, hours, and working conditions and other conditions of employment." Over time, this language has been eliminated from many union recognition clauses. Such clauses should be included where possible, since they help expand the union's rights to bargain over issues affecting members' job security.

Successors and Assigns: Another clause which may not appear to be related, but may have a major impact in the event of a plant closure, is the "successors and assigns" provision of the agreement. Many closures today are the result of corporate mergers. Major multinationals purchase other corporations, then "milk" their profits for investment elsewhere until they are no longer competitive or shut them down for the tax advantages. To gain some measure of protection in the face of such mergers, some unions have negotiated "successor" clauses which require a new course, a successor clause does not guarantee against shutdowns, and is not always foolproof legally, but it at least insures that any protective language a union has won -- such as an advance notice provision or severance pay -- will remain in force even if the company changes hands.

Seniority Provisions and Recall Rights: The union's seniority provisions are also important to laid off workers. In many contracts, seniority -- and with it, the right to be recalled to the job -- is terminated when a worker loses his job in a shutdown or cutback, or a short time afterwards. In these days of extended unemployment, it is important to retain seniority for as long as possible after layoff. Some unions have won an unlimited extension of seniority rights. For example, the Allied Industrial Workers' (AIW) agreement with American Crucible Products permits workers with over ten years' service to retain their seniority indefinitely. The UAW's contract with Borg-Warner, Rockford division, provides similar protection for workers with five years' seniority, so long as they remain available for work if recalled.

Sample Clauses

• Management's rights clause shall not conflict with others in the agreement

The management of the business and the operation of the plants and authority to execute all the various duties, functions and responsibilities incident thereto is vested in the Employer. The exercise of such authority shall not conflict with this agreement, its purposes, or the supplements thereto.

URW and Goodyear Tire and Rubber Co., 7/16/79

• Grievances may be filed over any action of the employer affecting the workers

Any flight attendant or group of flight attendants hereunder who have a grievance arising from the interpretation or application of this Agreement, or concerning any action of the Company affecting them, shall be entitled to an investigation and hearing...

Assoc. of Flight Attendants and Texas International Airlines, exp. 10/1/82

• Defines a grievance as "any dispute or grievance"

Any dispute or grievance shall be taken up in accordance with the procedure set forth below...

IUE/UE and General Electric, exp. 6/20/85

• **Union is recognized as bargaining agent with respect to rates of pay, wages, hours of employment and other conditions of employment**

The Company agrees to recognize the Union on behalf of and in conjunction with its Locals for those bargaining units of Company employees for which the Union or any of its Locals, through National Labor Relations Board certifications, is designated as the exclusive bargaining representative of employees within such units for the purpose of collective bargaining in respect to rates of pay, wages, hours of employment and other conditions of employment.

IUE/UE and General Electric, exp. 6/30/85

• **Agreement shall be binding on the heirs, successors and assigns of the parties**

This Agreement and the terms and provisions thereof shall be binding upon and shall inure to the benefit of heirs, successors and assigns of the respective parties hereto. If the operation in whole or in part, is sold, leased, transferred, or assigned, the Employer shall require the purchaser, transferee, lessee or assignee to assume the obligations and conditions of this Agreement as a condition of any such transaction...

San Francisco Web Pressmen's and Platemaker's Union No. 4 and San Francisco Newspaper Printing Co., Supplemental Agreement on Job Security and Work Arrangements, exp. 8/1/82

• **Seniority retained indefinitely for workers with over ten years of service**

An employee who performs no work for the Company due to layoff shall be retained on the seniority list in accordance with the following schedule of length of service as of his last day worked: One month to ten years...actual amount of seniority. Over ten years...indefinitely.

AIW and American Crucible Products Co. and Kenco Pumps, Inc., exp. 5/83

• **Seniority will be extended for a length of time equal to the worker's seniority at time of layoff, for workers with five or more years of service**

Seniority, continuous service, and the employment relationship shall be broken and terminated... (i)f an employee with less than five (5) years of seniority is laid off for more than five (5) years or employees with five (5) years or more seniority are laid off for a period of time equal to their seniority, provided in each instance they have been available for recall at any time during such layoff.

UAW and Borg-Warner Corp., Rockford division, exp. 11/82

• **Seniority extended for a period equal to seniority or eight years, whichever is shorter**

An employee shall lose his seniority for the following reasons...He is laid off for a continuous period of one year and as to employees with more than one (1) years of seniority for a continuous period equal to the seniority he had acquired at the time of layoff or eight (8) years, whichever is shorter.

IUE and Chrysler Corp., exp. 4/83

Model Clauses

▪ **Union recognized as a bargaining representative for all issues including 'other conditions of employment'**

The Employer agrees to recognize the Union as the exclusive bargaining representative for the employees in the bargaining unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment and other conditions of employment.

▪ **A grievance is broadly defined as any complaint**

Any dispute, complaint, or grievance shall be taken up in accordance with the procedure set forth herein.

▪ **The employer binds the buyer of an enterprise to the existing union agreement**

This Agreement and the terms and provisions thereof shall be binding upon and shall inure to the benefit of heirs, successors and assigns of the respective parties hereto. If the operation in whole or in part, is sold, leased, transferred, or assigned, the Employer shall require the purchaser, transferee, lessee or assignee to assume the obligations and conditions of this Agreement as a condition of any such transaction.

14. CONCESSION BARGAINING: A SPECIAL CASE

In the past couple of years, "concession bargaining" has become front page news in many basic industries beset by deep recession and loss of sales. Employers hard hit by economic reversals have demanded concessions, takeaways, and givebacks from unions. Even those with no business losses have climbed on the bandwagon and demanded that their unions give up various economic benefits and on the job working conditions.

When an employer demands concessions, the union has the right to ask very detailed questions and demand specific answers. Under the National Labor Relations Act, a union is entitled to whatever information is necessary to deal with the bargaining issues on the table. A union should make clear demands, in writing, for any information it needs to evaluate the employer's claims of financial distress. Teamster unions affiliated with Joint Council 7 in Northern California, for example, have agreed to demand a comprehensive financial data from all companies requesting concessions, including their tax returns, depreciation schedules, analysis of working capital, compensation to management employees, and other information.

Unions faced with unmistakable proof that an employer is in fact in deep trouble have tried to limit their losses at the bargaining table in a variety of ways.

1. **Set a clear date for the restoration of the giveback**: This approach requires the employer to agree to a date when all lost wages and benefits will be fully restored. This is very important to obtain, since otherwise the lower base negotiated in the concessions agreement becomes the point from which all future bargaining must start. The Association of Flight Attendants, which has made extensive use of such provisions, calls them "snap back" clauses, since the contract automatically "snaps back" to its previous terms on a specified date. The UAW has negotiated a similar clause with International Harvester.

2. **Contract reopeners**: Other contracts, while not setting a date for the restoration of givebacks, permit the union to reopen the agreement if company profits reach a certain level. In the UAW's 1982 agreement with the nearly bankrupt International Harvester, the union won the right to reopen the contract any time the company's worldwide, pre-tax profits reached $300 million over any two consecutive quarters. If agreement cannot be reached in 60 days, the union has the right to strike.

3. **Paybacks with interest**: Another approach is to require the employer to reimburse workers for any income foregone during the concessions period after economic conditions improve. The UAW's contract with American Motors, for example, requires that the company pay back with ten percent interest any wages deferred by workers during the austerity period. The Association of Flight Attendants' concessions contract with Aloha Airlines requires the employer to pay back with 5% interest contributions to the pension plan deferred during the term of the special agreement.

4. **Profit sharing**: Where an employer indisputably proves that he cannot afford a pay increase, a number of unions have negotiated programs to share in company profits. There are many varieties of profit sharing plans, some of which yield little benefit to the union. Among the best plans are those that call for "first dollar" profit sharing--that is, distribution to the workers of a portion of gain as soon as the employer shows any before tax profits. The recent UAW settlement with International Harvester, for example, provides that any before-tax profits earned by the company after November 1, 1982, will

be shared with the workers. The higher the profit, the higher the percentage paid out, up to a maximum of 12%. The amount received by each worker is geared to the hours he or she has worked.

5. **Work rule changes proposed by the union**: Employers sometimes attempt to "blame the victim" and suggest that their difficulties are caused by work practices negotiated by the union. Some unions have successfully turned this argument around and shown that unproductive management practices, such as excessive supervision, have contributed to the employer's problems. Several unions have won a reduction in ratios of supervisors to workers in the course of concessions bargaining. First line supervision has been eliminated altogether in the Teamsters' bargaining unit at Western Airlines, where senior mechanics have taken over the previous responsibilities of the supervisors. International Harvester agreed in negotiations with the UAW to require that local managers meet with union representatives to discuss and seek to resolve instances of excessive supervision. The Molders have won similar provisions in a number of local agreements.

6. **Equality of sacrifice**: This approach requires that any layoffs, wage and benefit cuts, or other concessions made by union workers are also made by management employees. Such clauses rely heavily on the employer's good will, however, since managment employees are not -- obviously -- covered by the union agreement.

7. **Access to company information**: Some unions have successfully demanded, as a condition of concessions, that they be granted continuing access to previously confidential information about investment plans, operating costs, and competition. For example, the URW now has the right to audit Uniroyal's books. GM agreed, in its 1982 negotiations with the UAW, to "pass through" all worker concessions to consumers in the form of price reductions. To guarantee its promise, the company agreed to allow an independent auditor to study its books. In a similar move, unions at the **Oakland Tribune** have won the right to regularly audit the employer's books.

8. **Expansion of union rights**: Concessions bargaining puts the shoe on the other foot: the employer is asking and the union is in the position to say no. This opens up the possibility of significant improvements in non-economic areas, in exchange for economic concessions. The Steelworkers, for example, in a recent conference on bargaining goals for the next few years, adopted a two-tier approach to negotiations. For "distressed" companies, the USW proposed a "special noneconomic agenda," which would include advance notice of shutdowns, retraining, improved interplant transfer opportunities, stricter limits on subcontracting, improved seniority rights, and a "justice and dignity" provision which would require that discharged or suspended workers be kept on the job until their grievances are resolved.

9. **Require the company to use funds generated by worker concessions to generate jobs**: A real danger is that a company may use the cash it raises through concessions to invest overseas, expand its non-union facilities, develop new technologies which will eliminate jobs, or pass savings on to stockholders. Some unions have tackled this problem directly. In 1982, the United Glass and Ceramic Workers reopened their contract with Libby Owens Ford and granted the company a number of economic concessions. But in exchange the union won a guarantee that the company's unionized plants would be brought up to full capacity before any work would be shifted to its non-union facilities. In addition, the company agreed to make new investments in some of its facilities to permit an expansion of flat glass production--a move designed to preserve jobs.The 1983 settlement in the basic steel industry contains a similar pledge by employers to apply the savings from negotiated concessions to modernize their steelmaking operations.

Sample Clauses

In cases in which the employer asks for concessions, the Teamsters have agreed to demand the following information:

• Summary of demands for information from employers

a. documents submitted by the employer to banks for the purpose of obtaining loans, including projected balance sheets and income statements;

b. list of buildings and land owned or leased by the employer's business, including a statement of their market value, and information on lease terms and conditions;

c. Financial statements for three years prior, as well as tax returns and current financial statements;

d. depreciation schedules for all depreciable assets, as well as current market values for these assets;

e. analysis of working capital for the last three years;

f. organization chart of all supervisory and executive employees, and a schedule of their total compensation;

g. schedule of total compensation to officers, managers, directors and/or owners;

h. employment contracts, life insurance policies and loans for officers, managers, directors and/or owners;

i. expense reports submitted by officers, managers, directors and/or owners;

j. information on pension and/or retirement plans in which union members are excluded;

k. list of autos owned or leased by the company;

l. list of leisure items such as club memberships and vacation homes provided by the company to executives.

Adopted by Teamsters Joint Council 7 ı from employers adopted by Teamsters Joint Council 7

• Contract will "snap back" to its previous terms on a specified date

The 10% reduction to total gross will continue until December 31, 1982, or at the time the Association and Company conclude negotiations on the next contract, whichever comes first. On January 1, 1983, all rates of pay revert ('snapback') to their contractual levels in the event negotiations have not been concluded.

Association of Flight Attendants and Western Air Lines, letter of agreement, exp. 12/31/82

• Negotiated concessions will "drop dead" on a specified date

This Letter of Agreement [specifying certain concessions--ed.] shall be effective March 15, 1982 and shall remain in full force and effect until December 31, 1982, at which time it shall "drop dead."

Association of Flight Attendants and Republic Airlines, letter of agreement, exp. 12/31/82

• Deferred contributions to the pension plan will be paid with 5% interest

The Company contribution to the (Retirement) Plan...shall be reduced to 0.5% of compensation for the period beginning June 1, 1982 and ending April 30, 1983. On and after May 1, 1983, the regular Company contribution shall again be 10.25% of compensation. On and after May 1, 1983, the Company shall additionally contribute the amount necessary to repay the Plan to contributions deferred...with interest at a rate of 5% over a period not to exceed 5 years.

Association of Flight Attendants and Aloha Airlines, letter of agreement, exp. 4/30/83

• Employer will not shift production to non-union facilities: employer will make investments designed to generate new jobs

In return for the agreement for contractual modifications [concessions–ed.] made by the Union... the Company makes the following commitments regarding plant operations...

The Company will put forth its best efforts to generate the necessary West Coast CID [construction --ed.] flat glass business to make Lathrop [one of the company's plants–ed.] an economically viable operation. [The contract goes on to detail new investments the company agrees to make in the Lathrop plant to make possible a shift from automotive to construction flat glass production–ed.]

United Glass and Ceramic Workers and Libby Owens Ford, 8/9/82

Model Clauses

▪ Employer shall furnish detailed financial information to the union

Upon request by the union, the employer shall make available any and all information concerning the financial condition and competitive situation of the employer's business and any related matters.

▪ Employer shall revoke any concessions granted by the union as of a specified date

It is hereby agreed that the specific concessions granted the employer because of special problems discussed in negotiations and listed herein shall be automatically revoked, and former contractual conditions restored to full force and effect, as of ____.

▪ Workers shall be made whole for all financial losses

The Employer agrees tha all direct financial losses suffered by its employees as a result of efforts by the union to help the employer survive the present financial crisis shall be repaid in full, with interest of ____%, as of _____.

▪ Union has the right to reopen the contract, when profits reach a certain level

The employer agrees that when its before tax profits reach _____ dollars figured on an annual basis, the union shall have the right to reopen the contract for negotiations and to make such economic demands upon the employer as it sees fit. The parties shall negotiate for a period of 90 days. If no agreement is reached, the union shall have the right to strike and/or submit all unresolved issues to interest arbitration in accordance with the arbitration procedure set forth in the contract.

APPENDIX A

Negotiating a Termination Agreement*

When all attempts to stop a plant closure have been exhausted and the shutdown becomes inevitable, the union is faced with the task of negotiating a special termination agreement. Many of the issues which such an agreement will probably cover--severance pay, supplemental unemployment or guaranteed income stream benefits, transfer rights and relocation allowances, extended insurance, expanded pension and retirement rights, and training and job market assistance--are covered elsewhere in this manual. But there are other issues, too, which negotiators should consider. The following checklist includes a number of additional items which a termination agreement may cover. Of course, every union's situation is unique, and some of these issues may not be relevant or may already be covered by the union agreement.

☐ **Expiration Date:** Most termination agreements have no expiration date. The special benefits negotiated for displaced workers should endure into perpetuity.

☐ **Extension of the Existing Contract:** Generally, the existing contract should be extended indefinitely to protect maintenance workers, clean up crews, and others who continue to work until the plant or facility is completely shut down.

☐ **Procedures for Processing Pending Grievances:** In many cases, grievances will be pending under the old contract which are still of importance to the local union and the workers involved. The termination agreement should either settle these grievances or include provisions for resolving them.

☐ **Arbitration of Disputed Issues:** In addition, agreement should provide for a method of filing grievances or disputes which may arise over the termination agreement itself and for a procedure for selecting an arbitrator.

☐ **Protection of Existing Benefits:** Special language should be included to protect existing fringe benefits. Holidays, vacations, and special benefits such as employee discounts and Christmas bonuses were negotiated in lieu of wage increases. Any scheduled benefits still unused by the date of termination should be protected in the agreement, and, if possible, included in any severance settlement.

☐ **Unemployment Insurance:** Unemployment benefit law varies from state to state. The termination agreement should be written in such a way that the severance benefits provided will not threaten a worker's eligibility for unemployment benefits. For example, it may be necessary to state that laid off workers did not have the option of remaining at work and that early retirement was involuntary. Sometimes severance benefits must be labeled an "allowance" rather than "pay," and any vacation pay included in this package.

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*This section is based, in part, on the discussion of termination agreements in **Strategies Against Shutdowns: A UAW Plant Closings Manual.** For more information about this publication, see "A Note on Sources," Appendix B.

☐ **Special Provisions Governing Layoff Procedures and Seniority:**

a. *Voluntary layoffs.* An understanding on the right of workers to leave before the final shutdown and take other work without loss of benefits such as severance pay, extended insurance, and pensions may be necessary.

b. *Seniority for union officers and stewards.* Most union agreements handle this question, but it may be necessary to negotiate additional language to protect the effectiveness of the union during the plant shutdown process.

c. *Letters of recommendation for workers.* The form and content of such letters should be worked out by mutual agreement.

☐ **Worker Health and Safety Rights Protection:**

a. *All medical records furnished to every worker.* The agreement should require the employer to provide each worker with a copy of his or her medical records, if any, in the possession of the employer.

b. *Continued medical checkups at employer expense.* In cases where the law or union agreement requires an employer to pay for periodic medical check ups for workers exposed to health hazards, the employer should be required to continue to provide them. Even though an employee may no longer be exposed to the hazard because of the plant shutdown, the effects of such exposures often take years to show up in the body.

c. *Mailing lists to the union.* The Agreement should provide that the employer furnish updated mailing lists of former employees on some regular periodic basis, so that the union can continue to monitor its members' health.

d. *Union's right to death certificates.* In many cases of suspected deaths caused by toxic substances, evidence is necessary. The union should obtain continuing access to death certificates, when appropriate.

☐ **Resumption of Work Protection:** Such a clause provides that the employer is obligated to notify the union if it intends to resume operations and also agrees to enter into negotiations for a new labor agreement. The rights of former workers to return to work in order of seniority should also be specified.

☐ **Eligibility for Benefits Protection:** In working out the termination agreement, it is advisable to spell out exactly who will get the benefits and when they will be eligible. If this is not done, many disputes may arise. Circumstances will vary greatly with each plant closure. The union may wish to negotiate coverage for workers who are already on layoff, or leaves of absence, or those who have retired early or are about to retire. Provisions may also need to be negotiated for supervisors who "bump" back into the bargaining unit during the shutdown period.

APPENDIX B

A Note on Sources

In order to make this guide as accessible as possible, we have chosen not to use footnotes in the text. We would, however, like to acknowledge the sources of the information reported here for the benefit of readers who wish to pursue this topic further.

□ *Department of Labor.* Since 1964, the Bureau of Labor Statistics has published a series of occasional bulletins (Series No. 1425), each of which summarizes a single selected provision in a sample of contracts covering one thousand or more workers. Particularly useful is Bulletin 1425-20, **Plant Movement, Interplant Transfer, and Relocation Allowances** (July 1981), which includes hundreds of contract clauses, some of which are reprinted here. The bulletin also includes data on the incidence of various provisions in major agreements and discussion of the bargaining issues involved.

Previous issues in this series relevant to plant closings and technological change include ones on severance pay (1425-2, 1965); supplemental unemployment benefits and wage employment guarantees (1425-3, 1965); training and retraining provisions (1425-7, 1969); plant movement, transfer and relocation allowances (1425-10, 1969); seniority in promotion and transfer (1425-11, 1970); layoff, recall, and work sharing procedures (1425-13, 1972); and administration of seniority (1425-14, 1972). Although the clauses cited in the earlier publications are now dated, these bulletins provide a useful guide to some of the bargaining issues involved.

Characteristics of Major Collective Bargaining Agreements, a bulletin published annually or biannually by the Bureau since 1971, contains useful material on the prevalence of various collective bargaining provisions in contracts involving 1,000 ore more workers. Of particular interest are tables on transfer and relocation allowances, advance notice, supplementary unemployment benefit plans, severance pay, and seniority during layoff. Statistics from the most recent issue (Bulletin 2095, May 1981) are cited at several points in this manual.

The **Monthly Labor Review,** also published by the Bureau, provides listings of major contracts expiring each month and a summary of significant collective bargaining developments.

□ *Bureau of National Affairs.* The Bureau of National Affairs, a private research organization based in Washington, DC is the second major source on collective bargaining trends. **Collective Bargaining: Negotiations and Contracts,** a two volume looseleaf resource manual with bi-weekly updates, provides both actual contract language and analysis. Part I, "Basic Patterns in Union Contracts," is an analysis of provisions in a representative sample of 400 collective bargaining agreements. Part II, "Clause Finder," includes thousands of contract clauses topically arranged. Of particular interest are sections on income maintenance (severance pay); layoff, rehiring, and work sharing (layoff procedures, notice of layoff and layoff pay, bumping and transfer to avoid layoff, interplant transfer, work sharing, and rehiring); and management and union rights (closing and relocation of businesses, including special termination agreements). Another publication, **Personnel Policies Forum,** reports on management personnel practices, and provides a good comparative reference to policies covering unionized workers.

The BNA also publishes the **Daily Labor Reporter,** a daily update on current developments in industrial relations. The DLR contains frequent references to plant closures and technological change, as well as summaries of and excerpts from recently negotiated collective bargaining agreements of special significance. It is the best source, other than the unions themselves, for current contract language.

Special publications of the BNA are also frequently relevent. We found particularly helpful a report prepared by the BNA editorial staff, **Labor Relations in an Economic Recession: Job Losses and Concession Bargaining** (Washington, DC: 1982).

For interested unions or other parties, the BNA's Research and Sepcial Projects Division will search for contract language in specific areas, or for material from their extensive clippings files on "distressed industries" and other topics.

□ *AFL-CIO.* The AFL-CIO's Industrial Union Department (IUD) periodically publishes a computerized summary of clauses in current agreements negotiated by its affiliated unions, the **Comparative Survey of Major Collective Bargaining Agreements: Manufacturing and Non-Manufacturing.** Of particular interest are its sections on technical change, transfer and closing, and layoff and severance pay. Editions published since 1980 contain a useful statistical summary of clauses, which indicates the prevalance of

various provisions in the contracts surveyed by the IUD. Actual contract language is not included; but the **Comparative Survey** may be used to identify contracts that contain particular provisions, such as transfer rights or severance pay. The actual contracts may then be obtained from the individual unions involved.

The AFL-CIO's Department for Professional Employees in 1981 published an extremely useful pamphlet, **Technological Change Clauses in Collective Bargaining Agreement,** by Kevin Murphy. This publication includes discussion of the issues involved in negotiating technological change language and a good selection of sample contract clauses, many of which are reprinted in this manual.

▫ *Individual Unions.* Several international unions have published their own analyses of the issues of plant closures and technological change. The UAW's Legal Department has produced **Strategies Against Shutdowns: A UAW Plant Closings Manual** (February, 1981). This manual includes discussion of preparing for negotiations, checklists of issues to cover, and a sample termination agreement. **Shutdowns: Mill Closures and Woodworkers: Collective Bargaining, Political, and Legal Approaches to Plant Closing and Successorship,** written by Bob Baugh for the International Woodworkers of America, includes analysis of preventive language and termination agreements negotiated by the Woodworkers and other unions.

On the issue of technological change, the Machinists have prepared model contract clauses for use by their negotiators, which cover a wide range of issues from advance notice to protection against technological layoffs. This publication, **Suggested Language for Technological Change,** is available from the IAM's Research Department.