THE HARTFORD

Loss Control TIPS

Technical Information Paper Series

*Innovative Safety and Health Solutions*SM

Employer/Employee Safety Committees

In May, 1993, the National Labor Relations Board (NLRB) ruling in the *DuPont* case combined with its earlier 1992 ruling of *Electromation* to create a perception that "safety committees" were illegal, even though the Occupational Safety and Health Act (OSHA) has mandated employee safety committees. Subsequent decisions, particularly EFCO in December 1998, have confirmed these prior decisions.

Recently, there have been many discussions on whether safety committees are illegal now, and of what can or should be done. But when one takes the time to read the specific language of the two decisions, it becomes fairly clear that "true" safety committees are still legal, and both of the decisions against safety committees were really against management devices which were seen to be "shams" established to circumvent the rights of labor organizations.

It is strongly believed that employers may still use labor/management safety committees as long as they are devices for communication and not subterfuges for labor unions. The NLRB's opinion in *DuPont* suggested that if the safety committee does not "deal with" employers, there would be no violation of the Act. Employers can avoid the "dealing with" element if:

- The committee's purpose is merely to impart ideas to management, and management selects which suggestions, if any, to implement;
- The committee consists of a minority of members from management, and the committee is governed by majority-decision making;
- The committee's only purpose is to share information with the employer; or
- The committee makes a good faith effort to avoid discussing "bargainable issues" at committee meetings (Employers whose workers are unionized should state they recognize the union's role and the meetings are not an attempt to undermine the union).

In the *DuPont* case, the NLRB found that the safety committees decided on safety awards and these incentives were "conditions of employment" and thus subject to collective bargaining. Employers may decide to permit safety committee's discussions of safety issues which are not "grievances, rates of pay, hours of employment, or conditions of work".

In *Electromation* it was found that the safety committee's purpose was "the representation of employees," and that this is an issue for a labor union, not a safety committee. As a result, it is felt that employers may choose to consider the following:

- Devise a mechanism which would allow employees to decide which employees will serve on the committee;
- If the company is small enough, allow every employee to serve on the safety committee. If the company is too large to permit this, allow all employees to serve on the committee, but on a rotating basis; or
- Inform all employees that they are not serving in a representational capacity, and that the ideas or suggestions they impart should be their own.

Employers should also take precautions to avoid the element of "employer domination." This was a significant issue in the *DuPont* decision, where management had complete veto power over any suggestions.

In determining whether the existence of a labor/management safety committee is an unfair labor practice and thus violates the National Labor Relations Act (NLRA), two questions must be answered: Is the committee a labor organization, and if it is, does the employer dominate or interfere with its formation or administration or contribute financial or other support to it? According to the NLRB, it is judged to be a labor organization if: a) employees participate, b) it exists for the purpose of "dealing with" employers, and c) these dealings concern "conditions of work" or d) its purpose is the representation of employees. The NLRB cites several examples of committees in which the "dealing with" condition is not present.

- A "brainstorming group" is not ordinarily involved in "dealing." If the purpose of such a group is to develop a host of ideas which management may glean from and even adopt, the committee would not be "dealing" and therefore not be a labor organization.
- If the committee exists for the purpose of sharing information with the employer and is not making proposals to the employer, the element of "dealing" is missing and therefore it would not be considered a labor organization.
- If the committee exists for the sole purpose of planning educational programs, there would be no "dealing."
- Where there is a "suggestion box" procedure, in which employees make specific proposals to management, there is no "dealing" because the proposals are made individually, not as a group.

The NLRB provided additional insight into when there would *not* be "dealing with" management, i.e.:

- If the committee was governed by majority decision making, and
- Management representatives were in the minority, and
- The committee had the power to decide matters for itself, rather than simply make proposals to management, or
- If management representatives participated on the committee as observers or facilitators without the right to vote on committee proposals.

For more information, contact your local Hartford agent or your Hartford Loss Control Consultant.
Visit The Hartford's Loss Control web site at http://www.thehartford.com/corporate/losscontrol/