

# **Unions Helping Workers with Mental Health Conditions: A Guide for Consumers, Providers and Union Representatives**

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# Unions Helping Workers with Mental Health Conditions:<sup>1</sup> A Guide for Consumers, Providers and Union Representatives<sup>2</sup>

## Introduction

Although consumers of mental health services want to work, are expected to work and have the skills to work in meaningful jobs, their estimated unemployment rate, at between 70% and 90%, is the highest among any group in the labor market (Gabriel, 2000, p. 6). Clearly there is a need for active effort to improve this situation. As with all diversity outreach, overcoming stigma and other barriers stands as a major challenge between consumers and competitive employment. Unions have the know-how to be advocates on behalf of the changes necessary to make employment happen. Unions can enhance both their own public image and their social contribution to the community by playing that role. ***The purpose of this report is to describe the potential of Unions as a connection to the workplace that is largely untapped and poorly understood by consumers and the mental health provider system and to explore the mutual interests of the parties in the employment and job retention of workers with mental health conditions. The core issue in this guide is how to create bridges between the community mental health system and labor Unions, so each may leverage the resources of the other to the benefit of the consumer.***

Thanks to advances in medication and vocational rehabilitation services as well as shifts in public policy, employment is a viable outcome for persons with mental health conditions (Akabas & Gates, 2000). Preparation of consumers for labor market participation, however, focuses largely on how the consumer should behave in the workplace. Too frequently this leaves consumers without appreciation for the nuances of workplace culture, an understanding that they have to develop, therefore, on the spot, and often in painful ways. But Unions understand the culture of the workplace and have the unique knowledge and skill to be able to clarify workplace structures and systems for consumers and providers. They can explain the meaning of contractual agreements and offer help in comprehending the behavior of supervisors, co-workers or other organizational units that might be involved in supporting consumers at work. They can establish lines of communication that promote understanding and thus, both reduce the stigma experienced by many workers with mental health conditions and support retention. They can prepare the workplace to be responsive to the needs of people with mental health conditions and can help prepare the consumer to meet workplace expectations by helping to identify and

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<sup>1</sup> In this report mental health conditions are defined as serious, medical conditions that significantly affect the way people think, feel or behave and may create gaps in functioning that can interfere with one or more major life activities including work. Conditions are persistent over time and may be episodic. Treatment often includes medication that helps to control symptoms. Treatment does not cure the condition but enables the individual to function effectively. When individuals with mental health conditions are stable in their conditions, they are considered ready for work. Stability does not mean symptom free. It is defined as 1) being able to put together a block of time in which work is possible, 2) symptoms are predictable so that one may plan appropriately and 3) symptoms are not so pronounced that the individuals cannot relate to the workplace. Despite this focus, everything in this report applies, as well, to those who may experience transient (less than 6 months) but temporarily severely disabling mental health conditions such as severe depression upon the death of a loved one, unmanageable anxiety following a traumatic experience and those who, through their treatment, including medication, may experience an easing of symptoms of unpredictable duration.

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negotiate appropriate accommodation and other supports that are needed for successful job maintenance.

Although Unions have the potential to make all these connections between consumers and their providers of mental health vocational services with the workplace, these connections often are not made. Historically, Unions protected workers from disability by promoting a safe workplace and by assuring financial support, either through Workers' Compensation or by bargaining for long-term disability coverage, for those who were unfortunate enough to become disabled before retirement. Additional protection came from social legislation originating under the New Deal. Thus, a safety net existed, making it unnecessary for Unions to be intimately concerned about employment for persons with mental health conditions. Recent major changes in the socio-economic and the political environment, and the growth of the empowerment movement among consumers, however, mean that these traditional policies no longer fit the needs or expectations of workers with disabilities or their communities.

Public policy has decreed that persons with mental health conditions should work. Replacing the protective paternalism of New Deal days is a body of legislation that removes many of the barriers - discriminatory, financial, lack of skills and otherwise - that have stood in the way of work for this population. Employers and Unions now are required, as a matter of law, to provide equal opportunities to qualified persons with disabilities under the Americans with Disabilities Act (ADA) of 1990 (PL 101-336). Persons with mental health conditions can advance their job qualifications through training provided under the Ticket to Work Work Improvement Incentives Act (TWWIIA) of 1999 (PL 106-170). The same Act, by making it easy to reestablish eligibility for benefits and coverage of Medicaid under specific conditions of inability to work or inadequate earnings levels, assures a modicum of financial security.

### **Need for change**

This new context makes it catch-up time for everybody - consumers and institutional arrangements alike - to review existing arrangements, to explore the implications of these changes on existing policies, procedures and practices and to make the modifications that the changing environment warrants. One of the changes indicated is for all the parties to rethink their relationships to each other (or lack of them), and to consider the civil rights implications of the issue of employment for persons with mental health conditions.

Change is not easy for individuals or organizations (Marrone *et al.*, 1999; Kets De Vries and Balazs, 1999). Fear of the unknown threatens most of us into inaction. We carry long established stereotypes about persons and organizations (in this case about people with mental health conditions and "what is good for them" on the one hand, and about Unions and their interests on the other) in order to organize our environment and increase its predictability (Alport, 1979). Often, we are loathe to surrender these myth-bound ideas.

Education and communication can remedy circumstances under which parties lack clarity about each other that limits their ability to identify and understand their mutual interests (Fisher, *et al.*, 1991). What seems needed is information to provide a basis for shared understanding. Community mental health care providers and consumers need to be introduced to the breadth of Union commitment to its workers. Once they learn more about Unions, their goals and operating procedures, they will understand and respect the hard fought battles that Unions have undertaken

to gain benefits for American workers through collective bargaining agreements (CBAs). They can learn negotiation and bargaining skills from Unions and how to tap into those skills to protect workers with mental health conditions. So too, providers and consumers can use their understanding to work with Unions to access improved apprenticeship, training and work opportunities for recipients of mental health services. Their challenge now is how to activate and integrate with Union systems to maximize the outcomes for people with mental health conditions.

Union representatives are being asked to shift strategies - to join the consumer and community mental health movements on the cutting edge of research and policy. In the past, Unions have operated apprenticeship programs under which they have trained the applicants to meet the rigors of the trade they represent and then have inducted them into journey-worker status and the protections that accompany it (Office of Apprenticeship Training, Employer and Labor Services, 2001). Now Unions are being asked how they can accommodate applicants with mental health conditions in these training opportunities. In the past, tough bargaining by Union personnel resulted in protecting people with enduring mental health conditions by assuring them of receiving continuing disability benefits. Now Unions are being asked if they can turn to using that same bargaining power to assist consumers to gain access to jobs and then to help them sustain themselves in those jobs.

Unions are reinventing themselves constantly in response to the changing economy, work environments, demographic distributions and public policies (Haitt & Jackson, 1997). This suggests that once Unions become aware of the new interests and directions in relation to people with mental health conditions, they will want to take a leading role in forging a path of fairness in employment and access to jobs for mental health service recipients, as they have so successfully done in the past with the special needs of members recovering from alcohol and substance abuse, integration of new immigrants or demands for improved child care.

### **The process and content of this document**

Having introduced the issue and the potential changes that could lead to positive outcomes, the remainder of this guide is directed at making the concept of mutual interest a reality. The guide is a result of a study that included an extensive outreach to Unions and their leaders over a 10 month period, undertaken by The Workplace Center of Columbia University, funded, in part, by the New York Work Exchange. The purpose of the outreach was to explore current Union responses to disability in general and to mental health conditions in particular. As a foundation for the effort, an extensive literature review was completed. The information came from a variety of sources:

- legal texts, which include regulations, judicial decisions and legal commentary,
- Union publications, including newsletters and web sites,
- business publications, including magazines, presentations and reports, and
- general newspaper articles.

Based on the information collected, a plan for open-ended interviews was formulated and these were conducted with key national/international Union representatives who are identified experts on Union activities in this arena. Many of these experts were members of the recently dissolved

President's Committee on Employment of People with Disabilities, a nationally recognized body whose mission covered the consideration of vocational issues facing individuals with disabilities, including those with mental health conditions. This sample of experts was purposive and non-random, and the sample was allowed to grow through snowballing. The questions asked focused both on current Union practice in relation to the needs of members who require care because of a mental health condition and the opportunities, both in apprenticeship programs and other job openings, for people with mental health conditions. The questions specifically sought information on the Unions' experiences in requesting and negotiating for accommodations to the jobs of members with disabilities. Upon completing the national interviews, a second set of interviews was carried out with local Union experts in the New York City area. This sample, too, was selected to be representative of key players in the Union movement rather than random, and the sample was allowed to snowball. Together the two sets of participants included over 40 respondents from national, state and local Unions as well as the AFL-CIO. After completing the interviews and a review of the written materials, current programs and apprentice initiatives, a qualitative data analysis was undertaken to uncover key findings and themes. Additionally, a brainstorming meeting of more than forty representatives of Unions and their Membership Assistance Programs (MAPs), specialized Union job development experts like IAM Cares and NYS AFL-CIO Workforce Development, mental health providers, government officials and consumers of service provided an opportunity to gain reactions to the study findings and to hear recommendations for follow-up action. It is information from all these sources that constitutes the input to this guide.

In the first section, this guide sets the stage by providing background information that introduces the parties to each other - consumers and providers to Unions and Unions to the situation facing consumers and providers. The second section presents practices and the existing supports based on current Union activities and related situations that might be adopted to assist persons with mental health conditions. The final section suggests the opportunities for the future for providers of vocational services, consumers and Union representatives.

This document is not meant to stand alone. Three training curricula and a brief documentary film accompany this guide. They, as well as the guide, have as their goal improved communication among the parties based on shared understanding and respect, and identification of mutual interests (Fisher, *et al.*, 1991):

- The **training for community mental health care providers** underscores both the value of considering apprenticeships and jobs in unionized settings in career planning with consumers and how to work with Union representatives on job maintenance, accommodation and retention issues for people with mental health conditions. Included in this training is a description of Unions, their current activities that can be used to support persons with mental health conditions, information about the importance of the collective bargaining agreement and outside resources available to both providers and Union representatives.

- The **training for consumers of mental health services** presents consumers with answers to the following questions: what is a Union? How do I know if a workplace has a Union? How can a Union help me solve workplace problems? This information helps to build an understanding of the potential for Unions to serve as a source of work options and workplace support to people with mental health conditions.

- The **training for Union representatives** defines mental health conditions and provides the basis for understanding the experiences faced by individuals who are working with a mental health condition, considers the implication of the ADA for Union behavior, explores potential partnering between Unions and people with mental health conditions who are sustaining work and provides examples of activities some Unions are already doing in this area.

- A documentary entitled ***People with Mental Health Conditions and Unions: A Supportive Relationship***, 15 minute film made with the help of UNITE, AFL-CIO, presents a situation in which a Union member develops a mental health condition which places him in job jeopardy. In the context of describing, generally, the Union's support structure, the video offers a view of the way in which the Union's social worker, the shop steward and the worker coordinated to arrange job protection, appropriate treatment and return to work successfully, including assuring acceptance of a worker whose aberrant behavior had, at one time, frightened his shop mates.

## **Setting the Stage: Helping Providers and Consumers Understand Unions**

### **Why and how Unions came to exist in the United States**

Independent guilds of craftspeople began the Union movement in the U.S. in the colonial period. As industry began to move to the factory system in the 19<sup>th</sup> century, small local Unions developed. These small Unions negotiated for workers in the areas of working conditions, hours and wages. Unions floundered throughout the 19<sup>th</sup> century, gaining ground in prosperous times and being swept aside during economic downturns. A series of historic industrial conflicts added to the turmoil and the roller coaster development of Unions until 1935. The enactment of the National Labor Relations Act in that year, for the first time, guaranteed workers the right to organize and bargain collectively for wages, hours and working conditions.

### **How Unions get established in a workplace**

Union activity is protected under the National Labor Relations Act and its amendments. The Act also prohibits employers from certain acts, known as unfair labor practices, such as threatening to fire a worker for Union activity or threatening cuts in pay or benefits. Any group of workers may organize a Union. When 30% of a particular employer's employees, with common duties, interests and pay schedules, sign Union cards, the National Labor Relations Board is required to order an election. A secret ballot election is held, overseen by the Board. If a majority votes to be represented by the Union, it is certified. The employer is required to bargain with the Union in good faith until the parties agree on a contract known as the collective bargaining agreement (CBA). In a workplace covered by a CBA, newly employed workers gain the established protection and benefits once they pass the probationary period.

### **The Collective Bargaining Agreement (CBA)**

The CBA embodies the contractual relationship between the Union and the employer. The CBA is the law of the workplace, uniformly and objectively applied to all situations on behalf of member/workers. Unions struggle to maximize the protection of all members through the CBA. They hesitate to amend the CBA in any way during the life of the agreement because,

once amended, the door is likely to be open to a volume of requests by the employer, using the initial amendment as the basis for further demands. When an accommodation requested by an employee or employer appears as a direct conflict with the contractual obligations of the CBA, such as job restructuring or reassignment, the Unions are understandably reluctant. The conflict arises with reassignment or restructuring because the accommodation requested by one employee affects the rights of other employees.

### **The CBA and the ADA**

The resolution of this conflict depends on the interpretation of two federal statutes that bear on the actions of employers and the Unions. The first, the National Labor Relations Act, is concerned with the interests of the collective group of employees, and their ability to associate and self-organize (U.S.C. §151-169) and obligates both the employer and the Union to follow the terms of the contract. The second statute, the Americans with Disabilities Act, was enacted “to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities.” (42 U.S.C. §12101(b)(1)). The ADA requires employers to provide reasonable accommodation to qualified disabled employees (or prospective employees) who can, with such accommodation, do the “essential functions of the job.”

Congress understood that there was tension between a CBA and the ADA, and sought to give the CBA some, but not determinate, weight in reasonable accommodation analysis. Part of the legislative history of the ADA states explicitly that, “The collective bargaining agreement could be relevant, however, in determining whether a given accommodation is reasonable. For example, if a collective bargaining agreement reserves certain jobs for employees with a given amount of seniority, it may be considered as a factor in determining whether it is a reasonable accommodation to assign an employee with a disability without seniority to the job. However, the agreement would not be determinative on the issue.” (H.R.Rep. No. 101-485, pt.2, at 63 (1990)). Moreover, Congress intended that parties to future collective bargaining agreements draft such agreements in a way that would permit an employer to take all actions necessary to comply with the ADA.

The Supreme Court recently decided a case which weighed a worker's right to a reasonable accommodation against a Union's collectively bargained seniority system. It considered whether or not an employee with a disability could be placed in a job as an accommodation that otherwise would only be available on the basis of seniority. The Court found that the seniority system is a very important piece of the Union's contract and that in most cases, without compelling circumstances, the Americans with Disabilities Act does not require the violation of that seniority system as a reasonable accommodation (US Airways, Inc. v. Barnett, \_\_\_ U.S. \_\_\_, 122 S. Ct. 1516, 152 L. Ed. 2d 589 (2002)). The Court based its reasoning on the importance of a seniority system as a benefit to employees, including “job security and an opportunity for steady and predictable advancement based on objective standards.” It is clear that the duty to accommodate is not without limits. The Court did not, however, rule that the CBA would prevail in all cases, and left the door open for an individual employee to demonstrate special circumstances that would justify modification of seniority rules. There is considerable anecdotal evidence that Unions are open to such discussions in a way which is respectful of the significance the Union places on the CBA and that useful accommodations have resulted when all

parties agree that the accommodation will not constitute precedent. (Personal communication with numerous Union officers, 2002). At this point the best way for the ADA to be harmonized with collective bargaining agreements is for Unions to negotiate into such agreements specific provisions setting out procedures by which accommodations for those workers with disabilities would be evaluated and, if reasonable, would be permitted to take effect notwithstanding other provisions of the collective bargaining agreement.

### **To whom does this apply?**

There are 16.5 million Americans who are members of labor Unions, representing 13.9 % of the workforce. While this is down, proportionately, from the height of Union membership in the 1950's, Union membership in 1999 saw the largest annual increase in 20 years (Union Membership Takes a Hit in Manufacturing, 2000). In New York City over 26% of the workforce are members of labor Unions. This is the highest level of Union penetration in any labor market in the United States. Union jobs are good jobs when measured by the criteria for good jobs, namely good wages, benefits, due process and the likelihood of promotion and career mobility while protecting seniority (Lambert, 1999). Union jobs are in all sectors, public, not-for-profit and private and cover a wide range of industries including construction trades (e.g. plumbing, electrical, ironworkers, painters, carpenters), education, health care, restaurant and hotel, food distribution and maintenance to name just a few.

The New York State Department of Labor statisticians report that many growth occupations are in unionized job settings such as support staff at colleges and universities, workers in hospitals and health services, special trade and general building contractors and social services (Brown, 2002). Almost half the growth in New York City, of Union jobs in 1999, was in the Service Employees International Union (SEIU), a Union that covers many of the jobs that consumers have the skills to fill. (Union Membership Takes a Hit in Manufacturing, 2000) (See Appendix for support letter from this Union). Not only are Unions lodged in growth industries, but the industries in which Unions represent the labor force are likely to experience an unusually high number of job openings in the near future. This is so because many present Union members are part of the aging work force and, therefore, the sectors in which they work will require new workers to fill spots left vacant through retirement (Brown, 2002).

### **The apprenticeship programs: Another entry point to good jobs**

Union jobs have another important virtue to recommend them. Many of the Union settings in New York City offer apprenticeships as the starting point for employment. An apprenticeship is a combination of on-the-job training and related classroom instruction in which workers learn the practical and theoretical aspects of a highly skilled occupation (New York State Department of Labor, 2001). There are over 800 occupations that offer apprentice opportunities, many sponsored by Unions, or co-sponsored with employers (Office of Apprenticeship Training, Employer and Labor Services, 2001). Apprenticeships are available in diverse occupations such as baker, bookbinder, counseling aid, legal clerk, mechanic, medical assistant and plasterer (New York State Department of Labor, 2001). Upon completing an apprenticeship, the worker receives an Apprenticeship Completion Certificate and is recognized as a qualified journey-worker nationwide (Office of Apprenticeship Training, Employer and Labor Services, 2001).

Some jobs such as those in the skilled trades, require completion of an apprenticeship to qualify for employment consideration.

Apprenticeship programs are subject to the Americans with Disabilities Act, and, therefore, apprentices may be eligible for accommodations (42 U. S. C. 12112 (b) (2)). There are real benefits for the consumer in doing an apprenticeship. First, it is paid vocational training. Benefits are the same as those of other employees. Second, apprenticeships offer an important opportunity for training in good jobs with real career paths with higher pay, more stable employment and the potential for moving up a career ladder. Making sure these opportunities are available to people with mental health conditions is an important goal in beginning the process of opening up Union careers to people with disabilities. As indicated, Union jobs offer workers the possibilities of advancement and a career path for their future, as well as access to a living wage. For consumers to have access to some of the best opportunities in the world of work, it is essential to include jobs where employees are organized.

### **Knowing how to gain access to Unions**

Unions are easily available to members and available, with a little research, to non-union members and community mental health care providers. Since Unions typically deal with issues of disability and accommodation on a case-by-case basis there may not be a designated person to contact at any particular Union. The Union movement, however, has several entry points through service agencies that might constitute productive channels through which to establish an initial contact. These agencies provide advocacy and work in liaison with local Unions as part of their services. For example, an aspect of the role of the centralized AFL-CIO Community Assistance Unit is to advocate with the Unions on behalf of the individual in a situation where there are issues of work and disability. A service organization that works very closely with local Unions in New York City is the Central Labor and Rehabilitation Council (CLRC). The CLRC regularly provides back up and information to Union representatives on issues of job jeopardy, termination, return to work, and accommodations. They also act as Member Assistance Program (MAP) providers for many of the local Unions in New York City that are too small to support their own MAP.

The AFL-CIO has a Civil and Human Rights Department in Washington D.C. which assists Unions and individual members who feel their civil rights are being violated. This department is useful to local Unions that have little experience in this area. The new One-Stop Centers, a consortium of state and city agencies, offer services to individuals looking for work. These services include establishing a relationship with local Unions. Finally, the internet is an important way to gain information and contacts at local Unions, as well as learning about Unions in general. For instance, the New York City Central Labor Council website offers a complete list of local Unions in New York City, including telephone numbers and the name of the president of the local ([www.nycclc.org/affiliates.asp](http://www.nycclc.org/affiliates.asp)). Each organization described above also has a website that gives access information.

## **Setting the Stage: Helping Unions Understand Providers and Consumers**

### **People with mental health conditions want and need to work**

Americans with disabilities are the largest minority population, and have the highest percentage of unemployment of any American group (Williams, 2000). Thirty million working age people have disabilities (both physical and mental), of whom only about 26% are employed compared to 82% of the general population. Yet, a poll has shown that 79% of people with disabilities want to work. (Vocational Rehabilitation Branch, Employment and Training Department, International Labour Organization, 1998). The National Institute of Mental Health estimates that there are more than 3 million adults aged 18 to 69 who have a serious mental health condition (as cited in Gabriel, 2000, p. 6). Estimates of unemployment among this group are between 70% and 90%, a rate higher than for any other group of people with disabilities in the United States. For this group as well, surveys report that approximately 70% of them rank work as an important goal (Gabriel, 2000).

Government policy considers work to be an important goal for everyone, including, most recently, people with disabilities. It costs taxpayers more than 200 billion dollars annually to support unemployed people with disabilities (Williams, 2000). If just one million more people with disabilities were to work, the cost of welfare would shrink \$1.2 billion annually, the cost to Social Security would decrease \$1.8 billion annually and the earned taxable income of this group would be up \$21.2 billion annually (Williams, 2000). A major obstacle to employment for so long has been the attitudinal barriers, from disdain to pity to fear, that plague people with disabilities as they try to enter the workplace (Gabriel, 2000). This is particularly so for people with mental health conditions. Unions have demonstrated increasing concern with diversity. It would be helpful to broaden this mind set consciously to include people with disabilities in general, and mental health conditions in particular, to begin to counter these barriers successfully (Whiting, 2001). This requires a review of organizational policies and practices and the establishment of broad based culture change initiatives (Mor Barak, 2000).

### **The extensive resources of the community mental health system can be available to Unions and their members**

The mental health field has changed radically in the last 20 years. People who suffer a crisis in their mental health condition are now hospitalized for a brief time and then receive outpatient treatment as they move toward recovery. Recovery is enhanced by improved medications and increased vocational services from providers. Another ingredient for the change in recent years includes a strong consumer movement as people with mental health conditions demand the opportunity to live in the community and secure employment. The community mental health system has championed this change by developing many services that support people with mental health conditions, including counseling and therapy to individuals and their families, benefits counseling and advocacy, referrals to housing providers, medical doctors, lawyers and other professionals, vocational counseling, training, career planning and referrals to training and educational programs. These ingredients have as their outcome people with mental health conditions who are stable and competent to work. Studies report that one in five families is touched by a problem of serious and persistent mental illness annually (Regier, *et. al.*, 1993).

Building relationships between Unions and the mental health sector can extend a new set of services effectively to Union members and their dependents who may need such assistance.

Union involvement can have other positive outcomes as well. One avenue for partnership might be in educating employers, particularly supervisors and managers, on resources available to give them support in working with people with disabilities (Greig & Bell, 2000). Mental health providers struggle constantly to overcome prejudice. A human resource specialist for Boeing reported, "One of the hardest things to do is to keep an obvious disability from immediately disqualifying an applicant at the operations level. Supervisors often have no experience with disabilities and they need to be convinced that the person can do the job" (Whiting, 2001). Educational efforts appear productive in combating attitudinal barriers and stigma towards people with mental health conditions, thereby allowing for the investment in time required to achieve employment or return to work (Corrigan, & Penn, 1999). People with "a better understanding of mental illness are less likely to endorse stigma and discrimination" and barriers are reduced when supervisors and co-workers "broaden their knowledge and understanding of mental illness when working side-by-side with people with mental illness" (Greig & Bell, 2000). Managers who gain experience working with people with mental health conditions find that the stigma dissipates and consumers get comfortable confiding in co-workers who are then able to offer support (Tanouye, 2001). Both education and contact can help organizations resolve discrimination through workplace culture change initiatives.

### **Emerging Themes**

Although it was clear that some Unions had very extensive programs in response to social issues in the workplace, and that a few had specific initiatives relevant to workers with disabilities, one of the surprising outcomes of the interviews was the consistency with which respondents mirrored each other's experience and statements. What follows in this section is a summary of the major themes that could be discerned from the qualitative analysis, reported in the respondents' own words.

#### **1. Unions' role in supporting and responding to the needs of workers has made them a friend of the mental health system.**

Unions advocate for workers in many areas. As United Auto Workers literature states, "Our Union has never been simply concerned with how much money goes into a worker's paycheck. We have always focused on the whole lives of our members and on issues that affect our entire society." Unions, furthermore, already are involved in advocacy which has an impact on mental health concerns. Unions have vigorously supported:

- the enforcement of the Occupational Safety and Health Act (OSHA) concerning workplace safety,
- late-night workplace violence prevention programs,
- the Family and Medical Leave Act, and advocating for this leave to be paid leave,
- the Mental Health Parity Act of 1996, and
- continued advocacy for comprehensive mental health care benefits. (Gabriel, 2000).

## **2. There is a need for education among Union representatives about mental health systems.**

Union experts report experience helping members, both those with physical disabilities and those recovering from alcohol or substance abuse, receive job changes (reasonable accommodation) from employers. They report little or no experience, however, with members in need of a workplace accommodation because of a mental health condition. Respondents gave numerous examples in the area of physical disability, including a light on the phone for those with hearing disabilities, wheelchair accessible workplaces and rest rooms, and signers (interpreters) at meetings. Other accommodations have been accomplished for members with carpal tunnel syndrome, bad backs and vision problems, to name a few. At one Union the respondent noted that the Union had made many accommodations for those who became disabled on the job. He offered the following example,

*For a forklift operator who could not move his legs, they changed the machine so he could operate it with his hands.*

Accommodation and return to work strategies for members recovering from alcohol and substance abuse are described frequently, done with great conviction, and are successful, as captured by the following comments:

*[We] have experience with alcohol and substance abuse. Workers need scheduling accommodations to attend AA meetings, counseling sessions, inpatient and outpatient treatment.*

*To get members back to work we document completed treatment and enlist the boss to help with aftercare - bosses are very supportive and want their guys back.*

*Even if a member was terminated, we convince the company the person is well enough, we document everything, the members' strengths at work, that they have complied with treatment and have a back to work letter from the program they attended.*

Additionally, many Unions have peer advocacy programs that include extensive education in alcohol and substance abuse counseling.

Despite these reports, and enthusiastic claims of accomplishments, respondents appear not to see the many connections between substance abuse and mental health conditions and make no mention of persons with dual diagnoses. Unions' experts deny experiences with members in need of a workplace accommodation based on a severe and persistent mental health condition.

Respondents' answers include,

*Not much has come up in terms of mental health, ... we have had people with alcohol problems.*

*[We] have no experience with mental health problems.  
I have not heard of any mental health accommodations.*

*We have had very few mental health cases, and I am unclear how they were resolved.*

Interestingly, this is distinct from the great number of mental health services Union respondents

report having secured for family members. There is a high level of denial of the existence of workers with mental health conditions reported by Union respondents concerning members, and confirmed by the researchers in their discussions with Union representatives.

### **3. Union personnel lack guidance because no formal policy exists for the management of members with disabilities.**

Most Unions do not have a formal policy on how to handle accommodation requests, but respond to members, locally, on a case-by-case basis. This theme was repeated from Union to Union. Asked about the procedures for arranging accommodations and job changes, respondents say:

*It happens on an individual basis. There are no national standards. Must ask at local level.*

*Each local has past practice and arbitrations. The national contract does not deal with accommodations.*

*Individual accommodations are done informally, in a case-by-case way, whereas if a factory needs to be revamped, this is done within contract negotiations.*

### **4. Union personnel have extensive knowledge that can be useful to the accommodation process.**

Union representatives are sophisticated about the workplace culture, the response patterns of supervisors and workgroups and the employers' needs. They understand how a particular employer deals with requests, how dependent workers are on each other to get their work done and have learned many lessons from past experience with the employer and direct supervisors. Asked about how they would proceed to negotiate a specific accommodation, respondents indicate,

*Business agents are assigned a territory, know about bosses and workers at the job, hear things about problems.*

*The reps [Union representatives] know what type of culture is in the workplace and what is possible to do in this workplace in terms of contacting the supervisor.*

*Ask steward, local rep or local president, what's worked in the department before? what are the office politics like?*

### **5. Unions find ways to respond to individual needs despite concern about the CBA.**

Unions understand how to develop accommodations either by developing those that do not appear to conflict with the collective bargaining agreement, or by developing a solution outside the contract language. The relationship between the Americans with Disabilities Act's provision of a right to reasonable accommodation and the specific terms and conditions of a Union's CBA have presented challenges to the unionized work setting. Union officials report, however, that in conjunction with Member Assistance Program providers, they have come to know how to balance this relationship. Commentators noted,

*Every CBA is different and there are legal ways to get around obstacles [for people with disabilities]. Sometimes we utilize MOU's (memorandum of understanding - which becomes an amendment to the CBA) and Letters of Agreement, or a provision to open up the contract during the cycle. Employers sometimes adopt a new job title. It depends on the language of the contract and the creativity of the business agent and the employer. We are good at getting dismissed people back on the payroll.*

*Must know each CBA well, then can create new job title.*

*We place a worker with a disability in a job rather than put the job up for bid to person with highest seniority, and then we put the job up for bid that the disabled worker just left.*

*Would consider waiving the job posting policy and transferring the worker with the disability into a job, but would need a memorandum of understanding or letter of agreement with the employer to have this only in this specific instance.*

This implies that the mental health providers need to support the CBA even as they ask Unions to help them supercede it.

## **6. Some CBAs actually contain contract language that can be used to help members receive appropriate accommodations.**

Some CBAs contain examples of contract language that works for people with disabilities. Most of the language, however, is generic and provides the Union and the employer with the opportunity to accommodate a worker. Contract language falls short, however, of the specifics of what types of accommodations are reasonable within the context of the CBA or how far reaching an accommodation can be. The following examples are offered:

*...the Union or Unions involved will cooperate with each other and with the company in working out such modifications, [which he is physically capable to do and in line with his seniority...] even if this should involve transfers from department to department or local to local within the Union.*

*The parties agree to abide by the provisions of the Americans with Disabilities Act. The company shall be required to negotiate with the local Union prior to providing a reasonable accommodation to a qualified bargaining unit employee.*

Model language, which has been proposed in some settings, goes further than demanding basic compliance with the ADA and other non-discrimination clauses. One model clause includes mental disability specifically in its language:

*members with a physical or mental disability have the right to accommodation, including modification of an existing accommodation. Accommodation shall entail any necessary adjustments to physical workspace and modification of any aspect of a member's workload or accepted work practices consistent with normal entitlement to research and sabbatical leaves...*

Some respondents suggested, however, that negotiating for additional contract language on the question of accommodations may be risky. Political issues in a power relationship such as exists between a Union and an employer are complex and may not be subject to straightforward resolution. If a Union loses on a demand, that demand would be considered an “unachieved demand” (a concession the employer will not give). The Union is better off assuming it has the right to negotiate an accommodation for its members rather than build a history of denial which precludes negotiating a particular change.

### **7. Member Assistance Program (MAPs) and other Union service personnel who help workers with substance abuse problems have partnered successfully with community providers to help workers retain their jobs.**

Partnering by the service provider and the Union representative has been successful in helping recovering alcohol and substance-abusing members return to a job. Respondents recognize that accommodation is not an unknown concept among Union representatives or under CBAs. They describe how Member Assistance Program personnel can help arrange accommodations when community providers (physicians, alcohol and substance abuse treatment professionals, mental health providers), let the Union representative know about the success of treatment, completion of treatment, recommendations for aftercare, including meetings and appointments the member is required to attend, the strengths of the worker and the worker’s motivation to return to the job.

### **8. Early communication with Union personnel greatly facilitates the accommodation process.**

Respondents agree that a good, working relationship between the Union and employer is a key ingredient to a successful negotiation for accommodation. In unionized workplaces, this probably means that the community mental health care provider should involve the Union at the same time as they approach the employer about employment or accommodation. Respondents feel that this relationship is fostered when they are involved in a negotiation process from the beginning. Other factors mentioned as contributing to successful accommodation clarified the sophistication of the Union personnel in relation to this issue. They include:

*Being open-minded, knowing the CBA and incentives to bring disabled employees into the workforce.*

*Using examples from the realm of physical disabilities when describing accommodations for mental health consumers.*

*The parties should be well trained.*

*Sometimes you need an educational process for the membership to teach that accommodation is a protection for everyone.*

*There is a job available for the person to move into.*

**9. Apprenticeships that lead to Union membership are available in many job titles.**

Some Union jobs, such as those in the skilled trades, require the completion of an apprenticeship. Individual applicants for apprenticeship programs must be at least 16 years old and meet the program sponsor's qualifications. Selection methods utilized by sponsors include aptitude tests (which must be fair), interviews, school grades and previous work experience. Because apprenticeship programs are subject to the ADA, apprentices are eligible for reasonable accommodations. To get into an apprenticeship, one needs to either respond to a press release carrying notification of the start up of a new class, contact the nearest Department of Labor office to check on available apprentice initiatives or find an employer in the occupational field of interest and negotiate beginning an apprenticeship with that employer. Licensed programs carry pay while learning, and usually train only enough individuals to meet the current demand so that, once an apprenticeship is completed, an individual is likely to gain employment.

**10. A group of model programs, many of the elements of which offer a useful blueprint for the future, are a resource available to Unions today.**<sup>3</sup>

**IAM Cares**, a nonprofit agency established by the International Association of Machinists Union in 1980, is an organization that assists individuals who have multiple barriers to employment. They have developed expertise in the area of helping workers with disabilities, including those with mental health conditions. **IAM Cares** assists individual workers and offers technical assistance to Unions to enable them to help their Union members who have workplace problems. Direct services to individuals include negotiating accommodations with employers, such as accommodation in the interviewing process (e.g., a test reader for an interviewee with difficulty reading), and creating new jobs that the individual is able to perform by combining elements of several jobs. Staff members visit the job site to learn what accommodations can work for both the individual and the employer. Organizational technical assistance that **IAM Cares** provides to Union staff covers training to enhance understanding of the Americans with Disabilities Act, suggestions and draft language to add to collective bargaining agreements to support members with disabilities in negotiating accommodations, and direct assistance in negotiating accommodations for specific situations.

**One-Stop Centers** are a resource from the New York State Department of Labor, which provide services to both employers and job seekers in a single location. **One-Stops** are available to all workers, both Union and non-Union, who are unemployed, under-employed or looking for a job change. Individual services offered to job seekers include career information, job postings, information about education and training, including some apprenticeships, counseling and case management. The Consortium for Workers Education, a private not-for-profit agency that is a consortium of 46 New York City Central Labor Council affiliated Unions, partners with each **One-Stop Center**, giving Unions access to job candidates and job-seekers access to Union jobs and apprenticeship programs. **One-Stop Centers** also have direct links with New York State Vocational Educational Services for Individuals with Disabilities (VESID), and refer individuals who have disclosed their disabilities and who seek additional training directly to VESID. **One-Stop Centers** are a ready vehicle for employers and Unions to expand their labor pools to job

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<sup>3</sup> Permission has been received to describe these opportunities

seekers who are motivated and searching for new career paths.

**The New York City Central Labor Rehabilitation Council (CLRC)**, the social service arm of the **New York City Central Labor Council**, offers support services to Union and non-union workers. They have “sponsorship agreements” with approximately 400 locals of trade Unions too small to have their own Member Assistance Programs. The **CLRC** offers social services including short-term counseling and referrals to community-based providers. Most frequently they help workers who experience stress, anxiety, depression or alcohol/substance abuse. The **CLRC** provides back up documentation to Union representatives for members who are in job jeopardy, have been terminated but want to return to their jobs after treatment or seek workplace accommodations. The back up data usually include information about the strengths of the worker and the successful completion of any treatment programs. Requests for assistance with accommodation are infrequent. The **CLRC** also offers an extensive peer counseling training program and has expressed an interest in, and willingness to include mental health conditions in their current peer-counseling curriculum.

The **New York City Central Labor Council** provides additional social services through the **Community Assistance Unit**. This unit offers advocacy, case management and referrals to unemployed and under-employed individuals (both Union and non-union members). It will advocate with Unions to help individuals with disabilities, including those with mental health conditions, obtain workplace accommodations when necessary.

Other programs exist within larger Unions and are available only to those Union members. The existence of these Union specific programs demonstrates the possibilities for achieving workplace accommodations for people with disabilities, including those with mental health conditions, into mainstream Union work. One program focuses on a return to work initiative that looks to “assist employees who are ill, injured, [or have a disability] to return to productive work with accommodation or permanent reassignment to meet their individual requirements.” This creative program educates management about working with people with mental health conditions, helps modify jobs to accommodate workers with disabilities, and finds mentors to assist with learning new aspects of a job.

In a second program, members are educated around three important issues: the rights of the people with disabilities as guaranteed by the Americans with Disabilities Act, the federal guidelines that determine if someone has a disability, and the availability of reasonable accommodations to help workers meet job requirements. The program’s success in disseminating information has allowed many members to continue to work, who otherwise might not have known about the possibility of accommodation. The program employs a social worker to assist those members with mental health conditions in decisions about accommodations as well as referrals to other services.

In a third program, the Union has set up a national grievance committee to hear grievances based on the Americans with Disabilities Act. The committee consists of three business agents who have experience and have done research in the area of disability grievances. The committee meets three times per year and considers individual grievances in light of whether the company has violated the collective bargaining agreement and whether it is meeting the mandates of the Americans with Disability Act. This committee allows the Union to have a clear position on

disability in dealing with the employers

### **Opportunities for the Future**

The June 12<sup>th</sup> joint meeting of representatives from Unions, mental health providers and government agencies identified the almost total lack of communication among the parties. The potential gains of improved communications and the possible means of developing partnerships, described in the draft of the guide available before the meeting received scant attention as the parties to the June 12<sup>th</sup> meeting used their time together to explore the issues that had kept them apart and to search for some common ground to move forward. The following recommendations are a combination of the results of that process and of the research prior to that event.

#### ***Educate Union officials on mental health conditions and typical workplace accommodations.***

It is very likely that current members are working with mental health conditions or will, at some point, be affected by the onset of a mental health condition. For Union representatives to advocate for their members with mental health conditions effectively, they need to learn more about the nature of these conditions and how they can help support these individuals in the workplace. Thus, they need to know not just about the Americans with Disabilities Act (which most Union reps are aware of), but they need to understand what it means to have a mental health condition, to make a disclosure about that condition at the workplace, and the types of accommodations that help consumers sustain work.

#### ***Utilize an existing structural model to support negotiating workplace accommodations.***

Unions have developed a strong and successful response to helping those members who experience alcohol abuse or chemical dependency. Peers are trained to identify and support those members. Union representatives use the grievance procedures to help recovered members retain their jobs. MAP/UAP providers, along with Union representatives, provide documentation to employers about the members' success in treatment, continuing treatment plan to maintain stability and strength as a worker. Also included in this documentation are any "accommodations," needed by the employee to return to work successfully such as a flexible schedule to attend counseling or AA meetings. Each piece of this system - peer support, use of the grievance procedures and appropriate documentation to help negotiate a return to work - can be adapted to be utilized on behalf of an employee with a mental health condition.

#### ***Explore ways in which Member Assistance Programs can expand their services to include people with mental health conditions.***

Union members with mental health conditions will need continuing support to sustain employment. Workplace accommodations need to be implemented and monitored. Changes in the workplace need to be considered. MAP/ UAP providers are well informed about the prevailing CBA, have the specialized skills and expertise to be effective in offering on-going support within that context to the members who are sustaining work with a mental health condition. MAPs, furthermore, already have systems in place to partner with community service providers and assess and refer workers and their dependents for services. These systems can be

expanded to encompass the needs of people with mental health conditions.

***Review the mission of Unions to insure that people with mental health conditions are embraced in Unions' definitions of diversity.***

To work effectively alongside a person with a mental health condition, and to provide support to such a person, Union members need to put aside stigma and fear and develop attitudes and behavior that accept people with mental health conditions as co-workers. The Union press offers a channel for reaching members to increase their understanding of the ability of people with mental health conditions to function, and to develop empathy for them as colleagues at the workplace. Human and civil rights arguments can be made in support of such positions. Since their inception Unions have welcomed the disenfranchised as members and have recognized and supported their struggle to achieve fairness. To the extent that Unions support the rights of all peoples to equal and fair opportunity in the workplace, support for the rights of persons with mental health conditions is merely a matter of parity. The time has come to include people with mental health conditions among the Unions' wide diversity net.

***Establish uniform policy on how to frame, and advocate for, reasonable accommodation requests.***

Currently accommodations are negotiated on a case-by-case basis. This leaves Union representatives on their own to figure out how to best represent the needs of a particular member. While the specific accommodations in a specific job need to be developed in each case, a uniform policy which spells out who should participate in the negotiation, the member's right to reasonable accommodation, the Union's support of accommodation and the specific procedure of advocating for an accommodation would help Union representatives do their job.

***Adopt specific language in collective bargaining agreements facilitating the implementation of reasonable accommodation and job retention rights for members with disabilities***

Unions have made giant leaps in the contract language that covers family issues such as childcare, elder care and family leave. Many Unions across the United States and Canada have bargained for on-site childcare, emergency/sick childcare, funds for child care costs, and even paid family leave. This contract language can become a model for future language which ensures accommodations to workers with disabilities, including mental health conditions (N. Feinstein, 2002). Unions need to consider adding language into the CBA that clearly entitles workers with disabilities to reasonable accommodation. The model program, IAM CARES, has recommended the following language:

JOB RETENTION: Both parties to this agreement will work cooperatively to retain in employment a worker who becomes disabled on or off the job. Both parties also agree to work together to facilitate the individual's return to work as soon as possible.

REASONABLE ACCOMMODATION: It will be the policy of (name of the employer) to make reasonable accommodation to the known limitations of a worker who has a disability. Such

accommodations may include, but are not limited to such things as workstation modification, adaptation of work schedules and travel/transportation adjustment. The employee with a disability who is affected will be consulted on an accommodation. Any accommodation made will ensure that the work will be performed safely.

***Enhance access to apprenticeship programs.***

Apprenticeship programs are the required first step to most trades and many other job types. Making sure that the information announcing apprenticeship opportunities is available to people with mental health conditions is an essential piece of facilitating access to Union jobs. A list of apprentice occupations in New York State appears at [www.labor.state.ny.us/working\\_ny/apprenticeship\\_training/occupation.html](http://www.labor.state.ny.us/working_ny/apprenticeship_training/occupation.html). Information regarding opportunities for apprenticeship are easily accessible at the New York City office of the New York State Department of Labor (located at 247 W. 54<sup>th</sup> Street, 5<sup>th</sup> floor at (212) 621-0844) or on the Department's JOB BANK.

***Generate educational materials for providers and consumers that explain whom to contact within the Union to discuss issues related to disability and develop a plan for the dissemination of these materials.***

Providers are unaware, generally, of the systems and resources available within a Union. Most Unions do not have a designated person to contact about disability related issues. Because there may be several possible ways to initiate contact, this may be confusing to providers and consumers. Union specific information might help those unfamiliar with the system to navigate it effectively. These materials might also include information about general sources as well (e.g., One-Stop Centers). Unions can consult with provider agencies to determine what information would be most useful to them in helping providers establish contact with Union resources. Providers need to be respectful of Union interests and develop increasing awareness of the role of Unions so that they involve the Union early in the placement/job retention process to maximize the potential of Union support and eliminate the sources of potential conflict with the provisions of the CBA.

***Generate educational materials for Union members on mental health conditions and services available through the Union.***

In order to utilize services effectively, for themselves, their dependents, and others, membership must understand the services available in the community mental health system and feel safe in using these services. The need for mental health care can be presented in a destigmatized manner to encourage the use of such services. Materials that explain the possible role of Unions in the accommodation process and availability of other supports, such as confidential referrals to community mental health services, need to be developed within the workplace and widely disseminated.

***Educate employers on the Union role in the accommodation process.***

Just as providers and consumers need information about the Union's role, employers also need to understand that Unions are important participants in the accommodation process. Unions can help ensure that the process goes smoothly, with all groups working together on behalf of a worker rather than in conflict.

***Create partnership arrangements and referral networks with community mental health care providers, enhancing the options for assistance among Unions members and their dependents.***

Unions can better utilize the extensive community resources by developing relationships with mental health care providers. Mental health conditions can affect anyone at any time. Union members are working with mental health conditions or might experience the onset of a condition while working. To support these individuals it is essential to have an extensive referral network that can be responsive to their mental health needs. To influence the mental health system to provide services attuned to the needs of Union populations, leadership need to build bridges to the governance system of community mental health providers by Board membership and other appropriate connections.

***Develop mechanisms to establish a partnership between Unions and community mental health care providers charged with identifying strategies for gaining public attention and funding for care for the working poor.***

Unions view a vast gap between the needs of members and their dependents and the services offered by the community mental health system. The unions note the lack of resources available to the working poor once they reach the limits, or caps, of their mental health insurance coverage. Working people experience the community mental health system as geared to the indigent, non-working consumer and unresponsive to the needs, life style, expectations and goals of the working person with a mental health conditions who lacks the purchasing power to access the private system. Mental health providers and union personnel have a mutual interest in exploring this dilemma and in partnering to press government, that claims to have as its objective employment for persons with mental health conditions, to assume responsibility for assisting in funding the services needed to maintain working people in viable employment situations.

***Provide assistance to Unions in gaining policy review for the zero tolerance stance of public regulations.***

The zero tolerance policy for return to work of persons with an history of substance abuse and those with dual diagnoses denies "the right to recovery" for Union members, even while the mental health system supports and advocates that right for all other persons experiencing mental health conditions. The Unions believe that this zero tolerance policy warrants reevaluation in light of the severe negative impact of this policy on the capacity of workers to regain employment and the ability to financially support themselves and their families. Providers, with their understanding of the treatment rationale and accomplishments of the "recovery" movement can offer powerful support to Unions in their quest for a reasoned reassessment of this issue.

***Encourage government to play a leadership role in this arena.***

The parties identified the potential contribution of the government in establishing an environment in which communication could take place. The group speculated as to whether the issues of the day provided an arena for the expansion of the welfare to work model, and noted the value of government funding in making the progress that had been made in those circumstances. Identifying that most City and State workers in New York are unionized, they also viewed with favor the potential for the government to serve as a model employer of persons with mental health conditions, offering a setting for developing a paradigm for Union/provider cooperation in retaining workers with mental health conditions.

***Clarify the differences in language and expectations among the parties in the interest of better coordination and cooperation.*** The admitted lack of contact has resulted in the absence of shared understanding concerning the conditions under which these systems operate and the interests each holds most sacred. Union representatives' expectations that caretakers are available "24/7," and the mental health employment specialists' expectations that "light work" is there for people with disabilities regardless of the provisions of a collective bargaining agreement were merely symptomatic of a more general lack of communication. There was universal agreement among the participants that continued dialogue was essential to set any of the possibilities in motion. It was unclear who could serve as convener.

### **Conclusion**

In sum, people with mental health conditions want to work, are able to work and have a right to work. Unions can be a powerful source of support to people with mental health conditions who are exercising this right. Union knowledge of workplace culture and job requirements, their ability to negotiate and advocate, and their similar experience gained from developing policies and structures for workers with substance abuse issues and their significant political power make Unions an invaluable partner for these workers and the community mental health system that provides them with vocational services. These opportunities will continue to be missed, however, without investment of resources to marshal the untapped potential.

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