

Glued to the Tube: Labor's Unlikely Victory for Computer Safety in Suffolk County

by Vernon Mogensen

Eleven years ago, Suffolk County enacted the nation's first law protecting the safety and health conditions of office workers using desktop computers, known as video display terminals (VDTs). This represented an important legislative breakthrough for organized labor, which had been lobbying for such laws around the nation since the early 1980s. Suffolk County's VDT law, which had to overcome the vetoes of two county executives and intense business opposition, sent shock waves around the nation as VDT bills were introduced in many state and local governments. It seemed to give organized labor the political momentum that it needed to catapult the issue onto the national policymaking stage and overcome the Reagan administration's opposition to safety and health regulations. However, business interests appealed to the courts which overturned it on jurisdictional grounds. Although short-lived, organized labor's victory in Suffolk County still has important policy repercussions for America's office workers who remain unprotected from the safety and health hazards of working with VDTs.

The Safety and Health Problems of VDT Work

The office work process has been radically reengineered as VDTs quickly replaced typewriters, calculators and other office machines. Desktop computers have helped to make today's information economy possible, and it is inconceivable to think of today's information age economy without them. White collar industries, such as finance, insurance, real estate, banking and the service sector, which dominate Long Island's economy, are heavily dependent on VDTs to automate the information work process and provide a wide variety of services.

But the rising and unregulated use of VDTs has been accompanied by increased safety and health problems in the office. Vision-related ailments, which are the most commonly cited group of problems, affect ten million workers. The National Institute of Occupational Safety and Health found that VDT workers experience extremely high rates of stress. The routinization of tasks, work speed-ups, job insecurity, the lack of control and creativity, and computer monitoring contribute to stress-related health problems. Medical studies have documented that occupational stress contributes to psychiatric and heart-related illnesses in VDT workers. VDT workers are often expected to perform the same repetitive task for long hours, with little time for breaks. As a result, many suffer from musculoskeletal illnesses, such as repetitive strain illness (RSIs), including tendinitis which affects four million VDT workers, and carpal tunnel syndrome which afflicts two million computer users. Carpal tunnel syndrome is so debilitating that it results in more lost workdays (a median of 30 days per case) than any other occupational illness. RSIs, for example, affect millions of workers and cost the economy an estimated \$100 billion a year in workers compensation claims and lost work time. RSIs have become such a pervasive problem among VDT workers that the Occupational Safety and Health Administration (OSHA) called it the "occupational illness of the decade."¹

According to the Bureau of Labor Statistics (BLS), the reported incidence of RSIs have skyrocketed from only 18 percent of all occupational illnesses reported in 1981 to 66 percent today. But even this dramatic growth underestimates the scope of the problem. Many cases of RSIs go unreported as workers try to "work through the pain" in order to keep their jobs, others are not reported by employers, and BLS data does not include self-employed workers or federal, state, and local government employees. The BLS put the RSI rate at 332,000 in 1994, but the American Public Health Association estimates that more than 775,000 workers suffered from RSIs in 1995. While RSIs afflict many types of workers doing repetitive tasks from postal workers using zip code sorters to automobile assembly line workers, OSHA acknowledges that much of the increase since 1981 is due to the proliferation of VDTs in the workplace.

The Legislative Battle Comes to Suffolk County

The labor movement and women's groups have lobbied the federal and state governments for regulations to protect VDT workers since the early 1980s. A few states, like New Mexico, established regulations to protect public sector workers, but well-funded corporate opponents were able to defeat every proposal to include private sector workers. So it came as quite a surprise when Long Island labor, supported by local women's groups and the New York Committee for Occupational Safety and Health, persuaded the Suffolk County legislature to enact the first regulations protecting VDT workers in the private, as well as, public sector. The victory was all the more surprising given the fact that labor was outnumbered and outspent by the Long Island business community, and had to convince the Suffolk County legislature to overcome two vetoes of the VDT bill, one of which was signed by a county executive elected with labor's support.

In 1987, County Legislator John J. Foley (D-Patchogue) introduced a VDT bill in the Suffolk County legislature. Foley's bill included provisions for: initial and annual employer-paid vision examinations and lenses that might be required as a result; user-adjustable work stations, chairs, copyholder, computer terminals, and detachable keyboards; proper lighting and glare screens; noise filters for printers; flexible work breaks and three hour limits on continuous VDT work; and employee education and training. It would apply only to employees who did VDT work for more than twenty-six hours a week in businesses with five or more machines. For Foley, the VDT bill was an outgrowth of his longstanding interest in labor issues. His bill was supported by unions and affiliated groups including, the CWA (representing 4,000 VDT workers in the county), and the Civil Service Employees Association (representing 26,000 government workers in the county).

Opposing the measure were many of the county's corporate VDT users, including AT&T, New York Telephone (which employed 2,000 VDT operators in the county), Grumman Corporation (Long Island's largest private employer), Newsday, Inc. (a major VDT user), the Long Island Association (the region's chamber of commerce and largest business group with 3,600 members), the New York State Bankers Association, the Business Council of New York State, the Long Island Forum for Technology (LIFT), and the Association for a Better Long Island (ABLI), a group representing forty real estate developers.

Opposition to Foley's bill also came from the public sector. Concerned about the flight of corporate neighbors, such as Grumman Electronics Systems, Islip Town Supervisor Frank R. Jones testified against the bill. Threatening to veto Foley's bill, Acting County Executive William A. LoGrande (R) complained that the bill would impose regulatory burdens on small firms. In a pragmatic move to secure passage, Foley responded to LoGrande's objection by limiting his bill's jurisdiction to companies that used more than twenty VDTs. Given that the worst safety and health problems among VDT operators were in smaller firms, Foley's concession weakened the bill's effectiveness considerably.

Foley's concession helped secure the support his bill needed to pass. On June 23, 1987, the VDT bill passed the Suffolk County legislature by a vote of thirteen to two with three abstentions. But LoGrande, who initially complained of its adverse impact on small business, vetoed it on the grounds that it was unconstitutional because only large employers were covered. The override attempt fell one vote short when two legislators who had supported Foley's bill were persuaded by opponents to vote against it.

Organized labor responded to LoGrande's veto by throwing their support behind Democratic Assemblyman Patrick G. Halpin in the 1987 race for county executive. A co-sponsor of the VDT bill in the state assembly, Halpin promised to sign the VDT bill into law if elected. Labor's campaign efforts were rewarded when Halpin defeated LoGrande, making him Suffolk County's first Democratic County Executive, and the Democrats won control of the county legislature.

When Foley reintroduced his bill in March 1988, it contained two new features aimed at addressing the business community's concerns. First, employers would be required to pay only eighty percent of the cost of vision exams and lenses. Second, to meet opponents criticism that regulations would freeze the technology in place when it was still evolving, Foley added a provision to create a five member board that would suggest state-of-the-art updates in the law's ergonomic standards every two years. Despite these concessions the business community continued to oppose Foley's bill. They used both carrots and sticks to persuade county legislators to oppose the Foley bill: threats to move jobs out of the county if the bill passed and campaign contributions if they opposed it. In a last ditch effort to stave off mandatory VDT regulations, the LIA proposed a voluntary plan. But, on May 10th, 1988, the county legislature, passed Foley's bill by the same margin as it had the year before. With their tremendous investment in and dependence on VDTs, the newspaper industry opposed VDT legislation. Decrying "the heavy hand of governmental regulation," the *New York Times* criticized Suffolk County's VDT bill as being "bizarre" and "picky," and charged that its passage "would set a reckless precedent for other jurisdictions."²

Business opponents put intense pressure on Halpin to veto the measure, and he waited for the full thirty day period allowed under county law before vetoing the VDT bill on June 10th. Ultimately, the business community's threats of economic and job loss were decisive. "More than one business leader has told me bluntly they would move from Suffolk County ... or not relocate here" if the VDT bill became law, he said. In return for his veto, Halpin said that Suffolk County's leading businessmen had given him their "personal commitment" that they would maintain adequate VDT standards. James Larocca, the LIA's president, called the veto "an extraordinary act of courage by a guy who has matured very quickly in the job." Subsequently, business supporters bought tickets to Halpin's \$300 a plate reelection fundraiser³

Despite intense pressure from the bill's opponents, labor's legislative coalition held firm and overrode Halpin's veto by a thirteen to five vote on June 14th. The business community's reaction was immediate and unfavorable. Northwest Airlines announced it was canceling plans to move 180 jobs into the County and the Metropolitan Life Insurance Company said it would not hire an additional 200 employees. Real estate developers complained that clients, such as the Chubb Insurance Company, canceled deals when they learned of the proposed VDT law. The news stirred interest as far away as Wyoming, where Cheyenne proclaimed its willingness to provide a home for Suffolk's businesses. New York Telephone announced a hiring freeze in Suffolk County, and said that it would close a directory assistance office in Babylon at the end of 1989. The Babylon office employed 125 people with an annual payroll of three million dollars. Thomas J. Calabrese, general manager for the company's Long Island operations, said: "We regret having to take these steps. But as we testified at various hearings this bill imposes unnecessary costs on our company, which ultimately will be borne by our customers."⁴

The flexibility of computer and communications technology (which makes it possible to transmit work across political boundaries) makes corporate flight a more potent threat than ever before. As New York Telephone spokesman Bruce W. Reisman said after Suffolk County passed its VDT law: "It is easy for us to put VDT jobs in an adjacent location... artificial geographic boundaries mean little."⁵

Despite the threats, few, if any firms actually moved out of Suffolk County when the VDT law was enacted. The decisions by New York Telephone and Metropolitan Life to curtail new employment in the county were actually made before the VDT bill's passage. Claiming that the VDT law would deter business investment was an effective lobbying tactic for pressuring legislators, but it alone was not enough for companies to leave. Hewlett-Packard went ahead with its plans to build a new facility in the county, as did Computer Associates, Inc. The County Legislature's legal counsel, Paul Sabatino, reported that many firms asked his office for advice on how to comply with the law, and that a survey by the county found that the vast majority of firms were complying with its requirements.⁶ This is not surprising given that business decisions to leave are usually due more to a multitude of factors such as the rising cost of supplies, labor, real estate, and traffic congestion, than the estimated costs of complying with a single regulation.

Organized labor's victory did not bring an end to the battle over VDTs in Suffolk County. Instead, the fight continued in the executive and judicial arenas. Despite their legislative victory, proponents of VDT regulations were now confronted with the dilemma of enforcement. In light of Halpin's promise to "do my best to implement this law so that it has the minimal impact on our business community," how vigorously would he enforce it?⁷ Halpin gave the VDT regulations a low priority; he assigned only one person, who also handled housing and sanitation problems, to oversee the implementation of the VDT law.

Nevertheless, opponents preferred no regulations to weakly enforced ones. Moreover, Suffolk's law was a dangerous precedent that the rest of the nation might follow. On June 23rd, four local businesses challenged the legality of the law in court. They charged that the County overstepped its constitutional bounds by mandating that employers pay for eighty percent of VDT workers eye exams and lenses, a function reserved to federal and state governments. "We want to give the Suffolk County Legislature a message that they shouldn't tread in areas where they have no jurisdiction, especially when their acts create unnecessary negative impacts of [sic] the Long Island economy, said Gary Neil Sazer, the LIA's counsel."⁸ On October 5th, the day before the VDT law was to go into effect, State Supreme Court Judge John Copertino issued a preliminary injunction stopping Suffolk County from implementing its eye care provision. The judge stated that the VDT law may interfere with state and federal rules regarding workers compensation, interfere with interstate commerce, and impose "financial hardship" on employers by making them pay eighty percent of employee eye care costs.⁹ Judge Copertino officially overturned the VDT law's eye care provision on December 27, 1989. His decision turned on the technical question of state and local jurisdictions, not on the substance of the law's concerns. In a decision that was upheld on appeal, Judge Copertino said that "though the legislation is well-intentioned and ultimately may be proved an important first step in bringing the worker health concerns addressed in the law to the attention of the public, the Suffolk County Legislature lacked the authority" to pass it. He added that "[i]n an era of almost daily revelations about workplace health and safety, it would be better to allow the state to continue its traditional oversight and control."¹⁰

As Halpin's vetoes demonstrated, public dependence on corporate-generated jobs and tax revenue tends to create a community of interests between elements of the business sector and government. In an era of tightening budgets, the Islip Town Supervisor didn't need to be lobbied by Grumman executives to understand that he, too, should oppose the VDT bill. Rather, his concern that Grumman might leave the region was sufficient to insure his opposition to the VDT bill. The loss of Grumman's considerable contribution (i.e., \$616,000 in school, town, and county taxes; \$403,000 in sales and use taxes; \$66 million paid annually to 1800 employees; and \$10 million worth of contracts it gives to other local businesses) would have a devastating impact on the area's economy.¹¹ Halpin's position on the VDT issue changed under the pressure of similar arguments made by business lobbyists.

Suffolk County's Shock Wave

The passage of a VDT law in Suffolk County created a legislative ripple felt as far away as California. Bills were introduced in thirteen states, and in localities such as New York City and San Francisco. Although New York City's bill did not apply to the private sector, both the business community and Mayor Edward Koch (D) eyed it with suspicion. Paul Magarill, the New York Chamber of Commerce and Industry's legislative counsel, called the VDT bill "extremely dangerous. There's no question that they'd try to extend it to the private sector."¹² In reply to industry complaints that a VDT law would stifle business, Diane Stein, the VDT Coalition's spokesperson, told the City Council that the bill "does nothing more than adopt the recommendations of companies like IBM and Bell Laboratories and codify them."¹³ Koch pocket vetoed New York City's bill just before leaving office, claiming that the ten to thirty million dollars compliance cost would be bad for business. However, the City Council responded that the cost would be only three million dollars and that could be made up by savings from improved worker productivity and health. That the cost of compliance was not an insurmountable obstacle for the city to meet was shown in June 1990, when the Dinkins administration reached a collective bargaining agreement with DC 37 with virtually the same provisions.¹⁴

The passage of Suffolk County's VDT law also inspired labor strategists, who had been lobbying unsuccessfully at the state level, to shift their energies to the local level.

The law generated tremendous interest nationwide with over 400 cities requesting copies of the legislation. San Francisco passed a VDT law, but it was also struck down on the grounds that it interfered with the state's power to set occupational safety and health regulations. Given that all the major cities in California were considering bills modeled on Suffolk County's law, the Court's ruling was an important victory for the corporate opponents.

Ultimately, advocates for VDT safety and health legislation did not prevail at the state and local levels of government. In 1989, Maine required private sector employers with five or more VDTs to provide education and training for their workers, but its law was "whittled down" to the point where it cost business an "insignificant amount of money to implement," said a spokesman for the Maine Chamber of Commerce and Industry. Eight states: California, Colorado, Massachusetts, New Mexico, New Jersey, New York, Washington, and Wisconsin adopted voluntary training and/or purchasing guidelines for state employees, but none developed regulations governing the private sector where the vast majority of VDT users work.¹⁵

Conclusion

Suffolk County's VDT Law represented an important breakthrough for organized labor for two reasons. It was the first legislative victory for the labor movement which had been trying to get such laws passed at the federal, state and local levels since 1981. In addition, unlike many bills which proposed to regulate only public sector workers, it was notable for its regulation of private sector workers. While Suffolk County's VDT Law was short-lived, it inspired workers in other regions to lobby for their own VDT laws, and stands as an example of the significant victories that can be achieved at the local level.

Suffolk County's VDT Law illustrates the difficulties inherent in trying to achieve policy with nationwide implications at the local level. Although organized labor was able to overcome tremendous opposition, business interests prevailed in the courts which maintained that only state and federal governments had jurisdiction over occupational safety and health policymaking. The competition between the states and localities for the high-tech investment dollar also gave the corporate community a tremendous advantage in shaping the safety and health debate. These factors increased government officials' fears that imposing VDT regulations on business will result in a loss of economic investment, jobs and tax revenue. The failure of state and local governments to protect the occupational safety and health of VDT workers illustrates the need for national standards enforced by a strong OSHA. The battle that was once fought in Suffolk County continues today in the Republican-controlled Congress as OSHA's proposed ergonomics standard to help prevent repetitive strain injuries is opposed by a national coalition of 300 corporations and trade associations.

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NOTES

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