LABOR OCCUPATIONAL HEALTH PROGRAM

• MONITOR •

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WORKERS TESTIFY ABOUT LEAD EXPOSURES

More than twenty workers came to San Francisco on May 3, 1977 to tell the U.S. Department of Labor (OSHA) about the serious health hazards associated with lead exposure on their jobs.

They came from the Bay Area and other western states, from smelters, printing companies, and battery and auto assembly plants. Representing the Steelworkers, the United Auto Workers (UAW) locals #1364 and #1797, the International Association of Machinists (IAM) local #68, and a United Electrical (UE) local, the workers told of their own and others' experiences with job lead exposures. Many had become ill or disabled as a result.

Don Pritchard is a body shop worker at General Motors' assembly plant in Fremont, California. Whenever his blood lead levels get "too high," he is moved to the "weld line"—a much less desirable job.

Elaine House works at the Prestolite Battery Plant in Visalia, California. She has been treated four times with intravenous drugs (chelation therapy) to reduce her high blood lead levels.

The Department of Labor estimates that more than one and a half million workers are exposed to lead on their jobs. This toxic metal can seriously damage the blood, kidneys, stomach, and nervous and reproductive systems. Most industrial lead poisoning results from breathing in lead dust or fumes. Lead may also be ingested (eaten) with contaminated food or cigarettes.

The symptoms of lead poisoning are: headaches; tiredness; nervousness; loss of appetite; aching muscles; and constipation. More serious effects may be: anemia; kidney damage; nervous system damage; severe weakness; and sexual and reproductive problems

The San Francisco hearings are the third and final phase of OSHA's evaluation of its proposed lead standard. Earlier hearings were held in Washington D.C. and St. Louis. At issue are:

- *whether OSHA's new recommended limit of 100 ug of lead/M³ of air, down from 200 ug/M³, is safe enough;*
- *whether lead exposures should be measured in terms of workers' blood lead levels or in terms of air lead levels;*
- *how often medical examinations and air lead measurements should be conducted;*
- *whether workers should be informed of all the potential effects of lead, as well as of their blood lead levels and the air levels; and*
- *whether using drugs (chelation therapy) is an acceptable means to reduce blood lead, and if so, under what conditions.*

Union representatives at the hearings have argued that OSHA should protect the seniority, pay rate, and fringe benefits of workers transferred to other jobs because of high blood levels.

Lead worker Elaine House describes the problems of lead exposure

Representatives of women's groups and unions have also argued that OSHA not set a standard which discriminates against women workers. Although there is evidence that lead can affect both male and female reproduction (the ability to have healthy, normal children), many companies have chosen to "protect" only female workers. Such a policy denies women the equal right to a livelihood and it exposes men to risk.

Eva Sullivan, a steelworker at the Bunker Hill Smelter in Kellogg, Idaho, was one of 29 women transferred to other jobs because they could not prove they were unable to bear children. "Women should not be forced to take lower-paying jobs like waitressing because they can't work in the smelter," she said, "the plant should be made safe for all people who work there, regardless of their sex."

Al Lythe, an auto worker, was glad to have participated in the lead hearings. He said it was the first time he had ever heard about the risk of sexual problems in men exposed to lead.

Meanwhile, the AFL-CIO's Industrial Union Department, the Steelworkers, OCAW, UAW, and other unions have called for a stricter standard than the OSHA proposal. There is evidence, they feel, that workers could still suffer effects from lead exposure, even at the reduced level.

An Interview With Dr. David Parkinson

PART 2

One of Cal/OSHA's major problems has been the division of occupational health and safety responsibilities between two separate agencies—the Division of Industrial Safety (DIS) located in the Department of Industrial Relations, and the Occupational Health Branch (OHB) of the Department of Health.

The relationship between DIS and OHB is defined by an Interagency Agreement, originally signed in 1973. According to the original agreement:

- *DIS has the sole authority to enforce job health and safety standards;*
- *OHB is to (1) maintain a disease prevention program, (2) develop and evaluate occupational health standards for recommendation to the State Standards Board, (3) conduct investigations, "upon request from DIS, and on a priority basis as established by DIS," for evaluating and controlling problems due to toxic chemicals, hazardous biological materials, or physical agents, (4) train DIS safety engineers to recognize health hazards, etc.*

The suggestion to merge OHB into DIS was made shortly before the Carcinogens Bill (SB 1678) was to be signed, in the fall of 1976. In December, 1976, Parkinson was fired, apparently for opposing the merger. In January, 1977, when the Bill went into effect, the merger had been abandoned, and a new Interagency Agreement signed.

Effect of Carcinogens Bill (SB 1678)

The Carcinogens Bill altered the original Interagency Agreement in terms of staffing, workload (requiring 25 percent of OHB's workplace inspections to be self-initiated), and bringing in new money from the Federal government. The OHB was to have a much greater degree of independence from DIS, with funds specifically earmarked for OHB activities.

Parkinson felt that imminent passage of the Carcinogens Bill launched efforts to merge the two agencies. He opposed the idea on the basis that such a merger would: (1) disrupt OHB by physically moving it to Sacramento, (2) not necessarily accomplish more than was possible under the current agreement, and (3) seriously reduce OHB's effectiveness by removing it from the Department of Health.

He felt, rather, that the basic Interagency Agreement should be strengthened as a first resort, and more emphasis placed on coordination between DIS and OHB.

Monitor: What about the proposed merger? How did you feel about it?

Parkinson: I was opposed to it. I felt that if there's a problem perhaps the Interagency Agreement should first be clarified and fully enforced.

I feel that by merging the OHB into the DIS, the OHB would suffer a severe loss in effectiveness for a number of reasons. First of all, the technical and professional skills of health personnel are entirely different from the skills of the safety personnel in DIS.

Second, the interdisciplinary team approach and resources which I feel are crucial to a *preventive program* are possible within the Health Department. This is because the Health Department is more likely to be isolated from the outside pressures of special interest groups. And, from my experience I would say that safety personnel have little patience with or understanding of unique complexities of occupational disease prevention.

Third, I feel a reorganization is extremely disrupting. There is no evidence that such disruption would, in this case, provide a more effective program. In fact, the Department of Health is just beginning to recover from major reorganization in 1973. I feel that merging the OHB into the DIS would cause the loss of key resources because of job instability, loss of seniority, and geographical relocation.

M: An article published in the *Sacramento Bee* in late December said you felt the reorganization was mainly political. What did you mean?

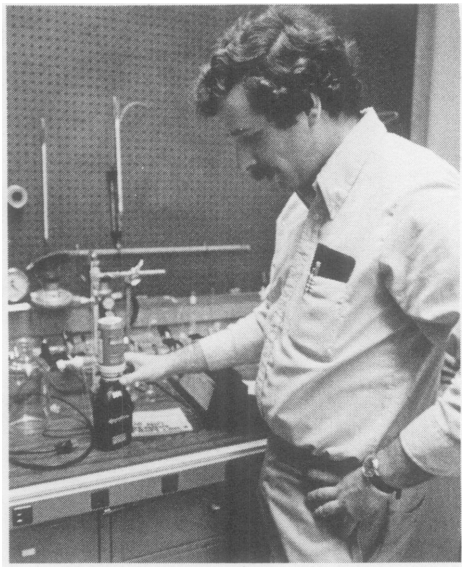
P: Well, I haven't got any direct quotes, but I understand the merger was being discussed as a way to demonstrate that the Brown Administration was not going to be so hard on business. Recent OHB activities had been viewed as very aggressive.

The second thing is, and this is only my interpretation, I think the head of DIS liked the idea of having the whole of Cal/OSHA under him. He wanted to do some things, I think, of which I disapproved, such as implement "voluntary compliance" (the idea that business will make workplaces safe and healthy on their own because: (1) doing so is cheaper in the long run, and (2) if businesses don't make workplaces safe, they will face the possibility of inspection, and citation and penalty for violation.)

This kind of thinking demonstrates a lack of experience if anyone sincerely believes big business will *voluntarily* comply with anything. Documentation has shown that: (1) big business does not consider long-term costs such as worker's compensation, and (2) OSHA inspections, because of understaffing, are too infrequent to be a real threat.

M: So, where does David Parkinson go from here?

P: Well, I'd like to go to Washington, really, and have a look at what goes on in federal OSHA, although certainly my experiences with them have been pretty impossible.



State Health Dept. employee calibrates a noise level meter

Newswire

Exploding Wood Dust Costs Employer Only $710

By ruling of Administrative Law Judge Douglas M. Phillips of the California Occupational Safety and Health Appeals Board (COSHAB), a serious violation for having too much explosive dust in the workplace air will cost Golden State Building Company of Redlands a total of $710 in civil penalties. This is one of the first decisions involving a particle board plant inspected since the fatal Anderson, California explosion that killed six workers in March 1976.

Criminal Charges Recommended Against S.F. Transit System

Concluding a two-month investigation into the deaths of two maintenance workers on San Francisco's cable car system, the California Division of Industrial Safety recommended that criminal charges be filed against the management of the San Francisco Municipal Railway (Muni), which operates the system.

The workers were crushed between two 10-foot sheaves on December 9, 1976 while working in an underground vault below Nob Hill. According to the Division, the deaths occurred because Muni personnel knowingly and negligently violated state safety orders by failing to block and secure the sheaves while repairs were being made and by using inadequate clamps on the power cables that turn the sheaves. The Division has already issued citations charging civil violations.

—Cal/OSHA Reporter

Court Awards Back Pay to Worker Fired for Health and Safety Complaint

Under OSHA, provision has been made to protect any persons or groups who may be fired or otherwise discriminated against by an employer for exercising their rights under the law. In addition, those workers covered by the National Labor Relations Act can also appeal before the National Labor Relations Board (NLRB).

THE CASE

In 1974 a number of Trumball Asphalt Co. (Hazelwood, Montana) employees were fired after filing a job safety complaint with OSHA. Several filed a charge with the NLRB. They were reinstated to their jobs with back pay.

An additional employee, Jerold Lee Miller, was a foreman and not covered by the National Labor Relations Act. He filed a discrimination complaint with OSHA instead. Miller was awarded the back pay though not reinstated, apparently because he had failed to act "in good faith in his dealings with his employer" following his discharge.

CHANCES OF SUCCESS

In Miller's case, the original OSHA complaint was filed in October, 1974; the case was finally decided in November, 1976. Thus, while the law does provide protection to workers fired or otherwise discriminated against for exercising their legal rights in the area of job health and safety, the remedies can take a long time. And although the courts generally back up the worker in *well-documented* cases, only about half of discrimination complaint cases are decided in the worker's favor.

WHAT SHOULD WORKERS DO?

To increase the chances of success, it is always better if unions rather than individuals file OSHA discrimination complaints. If this is not possible, or if the complaint has to be filed for a nonunion or unorganized workplace, the complaint should be filed by someone with sufficient job tenure or standing in the work community. The OSHAct does allow anyone filing a discrimination complaint to remain annonymous. However, this privilege must be requested, and in many cases the name comes out anyway.

Finally, the more thoroughly the case is documented the better the worker's chances of winning the case. And, since the employer will probably be well-represented by experienced legal and other advisers, it is best that workers be accompanied by union health and safety committee members, or others experienced with the process.

How to File a Cal/OSHA Discrimination Complaint

The California OSHA plan also protects workers from discrimination. In California, if you feel you've been fired or otherwise discriminated against for exercising your rights under Cal/OSHA, such as requesting a workplace inspection, you can file a discrimination complaint with Cal/OSHA. You must notify your employer that you are going to do so within 10 days of the incident, and file your complaint with the California State Labor Commissioner's Office within 30 days of the incident.

The Labor Commissioner's Office then has 30 more days to set a hearing, or otherwise investigate the case and arrive at a decision. The Labor Commissioner's Office *must* take the case to court.

Attack on OSHA's Right to Fine Beaten Back

The Occupational Safety and Health Act (OSHAct) clearly establishes the right of the Occupational Safety and Health Administration (OSHA) to fine employers for "nonserious" and "serious" violations of health and safety standards. Yet in most cases employers appeal the resulting fines, regardless of how trivial. And many attempt to test the legality (or constitutionality) of the Act itself.

THE CASE

OSHA's legality and right to fine for violations of the law were recently upheld by a court decision handed down by the U.S. Court of Appeals for the Second Circuit.

The Mohawk Excavating Company in Connecticut was cited for two "nonserious" violations and fined $75 for each as a civil penalty. When Mohawk appealed the citation, the Administrative Court judge vacated (abandoned) one fine and let the other stand. The issue went to the Supreme Court with Mohawk arguing that the OSHAct is unconstitutional, that the company was entitled to a prior hearing under the fifth amendment and a jury trial under the constitution, and that administrative processes cannot assess civil penalties.

It is ironic that all of this arose over whether there was an adequate and safe exit from a construction trench (the "nonserious" violation), not by itself an enormous issue.

Attacks on OSHA's right to fine and to freely inspect (such as in the Barlow case in Idaho, now being appealed before the Supreme Court) are two examples of industry's constant charges that OSHA is too strong. And, the resulting court battles, often over almost insignificant issues, even further delay worker protection. Such cases do, however, indicate that OSHA is having some impact.

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Editorial

Carter Administration Keeps Economic Criteria

Most observers thought that President Carter would abandon Ford's Executive Order requiring that all new federal regulations be accompanied by studies of their potential economic effects on the "nation" (industry). Instead, the Carter administration has decided to keep this requirement: its program is even more elaborate than Ford's.

This is just one more example of the series of obstacles which keep OSHA from assuring "every man and woman a safe and healthful working environment." Adding the economic impact study requirement to the already lengthy standards-setting process draws it out just that much longer.

Also in question is the legality of this requirement for OSHA standards-setting. In March 1976 the Oil, Chemical and Atomic Workers International Union (OCAW) filed a suit against the government, charging that the OSHAct does *not* permit consideration of economic impact in developing new standards. That case is still pending.

It is tragic that major health and safety regulations, including the proposed lead and noise standards, may be weakened because of their cost to industry. Economic factors should not dominate health and safety decisions. A person's health cannot and should not be measured in formal cost-benefit terms. At a time when we have the highest rate of both inflation and unemployment, no one has thought to demand that federal regulations consider how many jobs will be created or how many lives saved.

MONITOR readers are urged to protest by letter to their Congressmen, Senators, and President Carter. To protect American workers, we must prevent further delays in the setting of necessary job health standards.

—Paul Chown

What's Happening At LOHP

Conferences in the Works

The LOHP staff have planned a number of training sessions for April and May: for the United Auto Workers Amalgamated Local #76 in San Leandro for April 30; for San Francisco Construction Trade Union business agents on May 24-25; and for the United Auto Workers Local #1364, which represents Bay Area General Motors auto assembly plants, on May 23. LOHP will also participate in the AFL-CIO Building Trades conference, co-sponsored by the Center for Labor Research and Education, in Berkeley the week of May 16.

Apprenticeship Project

Things are moving along on LOHP's project to develop apprenticeship materials for all construction trades, under a contract from the U.S. Department of Labor. The first drafts of the materials and slide shows will probably be available in mid-summer, and the program is making arrangements now to have the materials reviewed in early fall by coordinators of the California Apprenticeship Council and their instructors.

Flight Attendants from TWU local #552 examine health issues

TWU local #552 Health Committee chairperson Toby Egeth with Workers' Compensation Committee chairperson Joann Donovan

Flight Attendants' Job Health Seminar

On March 29 and 30 LOHP conducted a seminar on health and safety for health committee members of the Transport Workers Union Local #552 (American Airlines). Among the topics discussed were:

1. The effects of working under low humidity (air moisture) and high altitude conditions;
2. Nutrition do's and don'ts;
3. The effects of specific exposures such as carbon monoxide, smoking, noise, etc.;
4. The effects of crossing time zones (circadian rhythm) and working irregular schedules; and
5. Concerns for the union health committee—identifying and documenting possible job health hazards, worker's compensation, maximizing legal protections, etc.

Although flight attendants' working conditions are the responsibility of the Federal Aviation Administration, OSHA was discussed as an example of the kinds of protections afforded workers.

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