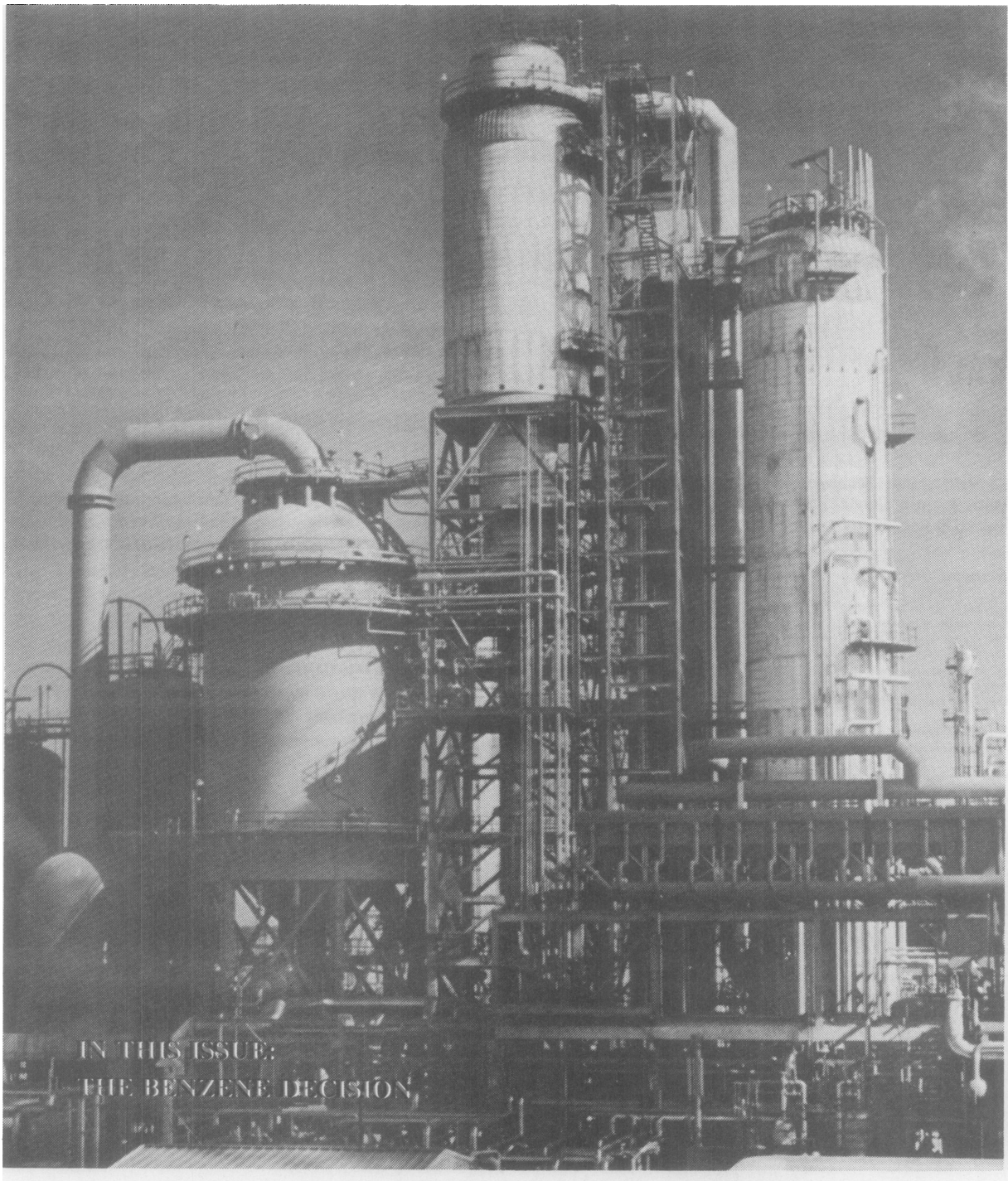
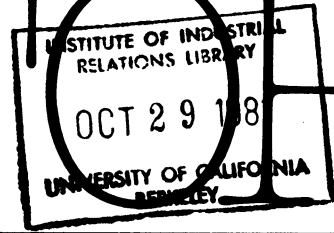
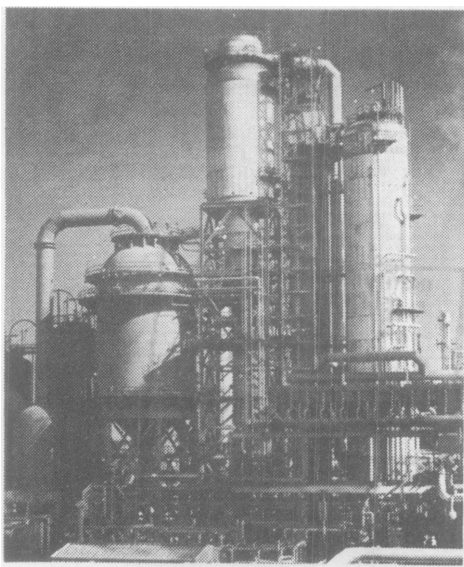


Labor Occupational Health Program

MONITOR



IN THIS ISSUE:
THE BENZENE DECISION



Labor Occupational Health Program MONITOR

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On the Cover:

A catalytic cracking unit at an Illinois refinery. Benzene and other additives are produced and blended into high-octane gasoline at this stage of production. In this issue, LOHP Intern Jamie Robinson analyzes the U.S. Supreme Court's recent landmark benzene decision, which will increase worker risks at such facilities. (See page 4.) (Photo: Richard Engler, PHILAPOSH, Oil Refinery Health and Safety Hazards.)

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MOVING?

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Inside:

Pay for Hearing Time

Stanford Work Refusal Case Sets Precedent p.3

U.S. Supreme Court

Benzene Decision — A Blow to Health and Safety p.4

'Danger! Hazards on the Job!'

LOHP Women's Conference Discusses Automation, Stress p.6

Adverse Health Effects Found

Urea-Formaldehyde Foam Insulation p.8

by Sidney Weinstein. A fact sheet on formaldehyde, focusing on foam insulation materials which have recently been investigated by the Consumer Product Safety Commission.

Shoptalk p.10

OSHA-Cal/OSHA Update p.11

Newswire p.12

Cornell Industrial Relations Conference

Bargaining Advised to Improve OSHA Protection p.14

Clearinghouse p.15

Stanford Work Refusal Case Sets Precedent

by Leo Seidlitz

(Leo Seidlitz is co-chairperson of AFS-CME Local 1650's health and safety committee, a health and safety instructor in the Labor Studies Program at San Francisco City College, and a consultant to various Northern California unions on health and safety matters.)

In what might otherwise have been a routine case of discrimination for refusal to do unsafe work, California State Deputy Labor Commissioner Ray E. Bredy on April 18, 1980 ordered Stanford University to pay four claimants for time they spent at hearings to fight the discrimination against them.

The precedent-setting decision established that use of the Cal/OSHA discrimination law is *itself* a "protected activity" and that pay cannot be withheld from employees making use of its provisions.

UNSAFE WORK REFUSED

Robert Britton, Michael Coleman, Binley Robinson, and Greg Wright, operators at Stanford University's Computer Center, had protested unsafe and unhealthful working conditions there. Management was hurrying to abandon an old facility and occupy a new one, even before construction was completed. Uncovered holes in the flooring, numerous electrical cables strewn over the floor, water seeping into electrical wiring, inoperative fire protection systems, and fumes and dust from ongoing construction work were among the hazards present at the facility. (Regarding the latter, construction workers were supplied protective equipment but the computer operators were not.)

Tom Prussing, shop steward for Service Employees International Union Local 680, joined in the complaints and represented the workers before management, who disregarded them.

When the switchover to the new facility was ordered, Britton, working alone on his shift, refused to work under the unsafe conditions. On a later day, the other three workers joined Britton in refusing to work. As a result of these refusals, the joint labor-manage-

ment safety committee recommended significant improvements, which were made.

The four reported to work the next day, were docked pay for their refusal to work, and then filed claims with the State Labor Commissioner's office charging Stanford with a violation of Section 6311 of the California Labor Code. (See box, below.)

At the request of SEIU Local 680, I represented the claimants at the hearings held by the Labor Commissioner's office. Commissioner Bredy found that Stanford had illegally docked the four workers for their legitimate refusal to do unsafe work. He ordered them paid for that time, from seven to 16 hours each.

PAY FOR LOST TIME AT HEARINGS?

Before the hearings in the case ended, a new issue emerged that led to a decision of greater ultimate significance and set an important precedent. Stanford announced that it would further dock the four workers for the time they spent at the hearings. The hearings lasted three days, so that even with a victory in the original issue, all four would still have suffered financial loss.

In the closing statement for the claimants, I presented arguments to prove that this further docking of pay was discriminatory under Section 6310 of the California Labor Code (*see box*), and asked the Commissioner to so rule.

Commissioner Bredy did so, and ordered Stanford to pay the complainants for the three days of hearings. He summed up the case for hearing pay as follows: "Complainants in exercising their right in refusal to work and further having suffered discrimination exercising their right to complain, cannot be penalized further, or *in essence they would be denied their first right.*" (Emphasis added.)

The arguments which we made for hearing pay have broad applicability, and the most important will be described here:

- The right to make claims of discrimination is expressly guaranteed by Section 6310. This right

is crucial to successful enforcement of the Cal/OSHA Act.

- Refusal to work unsafely is not only protective of a particular worker's welfare, but also becomes part of the enforcement mechanism of the Act.
- The right, under Cal/OSHA, not to be discriminated against, is one link in a chain of rights. The basic link in the chain is the right to initiate inspections of the workplace. This implies the right to "walkaround" with the inspector. This implies the right to be paid for walkaround, and the right not to be discriminated against for exercising any of the other rights. *Any broken link weakens the entire chain of rights, and the entire Act is endangered.*
- Failure to be paid for time spent at a discrimination (6310/6311) proceeding will have a *chilling effect* on an employee's willingness to initiate such a proceeding, because it is a significant economic disincentive.
- Refusal of hearing pay, because it is destructive of a worker's right to participate in a hearing, serves to impede the free flow of information between workers and the State which is critical to the enforcement of the Act.
- If management-designated employees are paid but claimants are not, such *disparate* treatment constitutes *independent and additional* ground for a finding of discrimination.
- An employer is not permitted to discriminate against a worker making a Cal/OSHA complaint even if no citation is issued. By analogy, the right to hearing pay is not dependent upon winning the initial claim of discrimination.

continued on p. 16

Benzene Decision—A Blow to Health and Safety

by Jamie Robinson
LOHP Intern

On July 2, 1980, the U.S. Supreme Court blocked the implementation of the Occupational Safety and Health Administration's strengthened controls on benzene, a highly toxic chemical used throughout American industry. OSHA had attempted to adopt a benzene standard of 1 part per million parts of air (1 ppm.), originally proposed in 1977.

The Court's decision not only allows industry to continue exposing workers to benzene at levels (10 ppm.) which scientific studies have shown may be dangerous, but may well prevent the government from issuing tough laws in the future to control cancer-causing chemicals on the job. The decision was 5 to 4. Justice John Paul Stevens wrote the majority opinion.

The benzene decision was immediately hailed as a major victory by the American Petroleum Institute, representing the major oil corporations, and by the U.S. Chamber of Commerce. United Auto Workers President Douglas Fraser, however, termed it, "an extraordinary blow to workers" and Oil, Chemical, and Atomic Workers Vice President Rouselle called it "an unfortunate ruling in favor of money over human life."

If the recent ruling does set a precedent for future court rulings and ultimately for OSHA standards, it may succeed in shifting the burden of proof from the employer to the workers. Until now, the government has held that employers are legally responsible for providing their employees with safe and healthy workplaces, and hence must prove to OSHA that the levels of chemicals to which their workers are exposed produce no serious danger. Under the benzene decision, however, the government would have to prove to the employers that the existing levels of chemical exposures were significantly dangerous. In the case of cancer-causing chemicals, this could be a difficult procedure, since scientific tests are often not conclusive, and effects in humans may not appear for many years.

The recent ruling did not tackle the more difficult issue of whether OSHA must explicitly weigh the value of those

lives expected to be saved under a new health and safety standard relative to the expected cost of implementing that standard. A lower court had originally blocked the benzene standard for lacking such a cost-benefit analysis.

The Supreme Court did not rule on the cost-benefit analysis issue in the benzene case for technical reasons, but has promised to deal with it directly in an upcoming consideration of OSHA's standard concerning cancer-causing emissions from coke ovens used in the manufacture of steel.

WORKPLACE DANGER

Benzene is a common substance in American industry, used in the production of motor fuels, solvents, detergents, pesticides, and other organic chemicals. OSHA's proposed standard would have protected 600,000 workers at more than 150,000 worksites in 20 different industries, most importantly the petroleum, petrochemical, and steel industries.

Benzene is known to cause disorders of the central nervous system, blood deficiencies, and possibly chromosomal damage. Even more ominously, it has been linked to leukemia, a malignant cancer of the white blood cells. Under OSHA's proposed standard, exposures would have been limited to the lowest level that is technically feasible, defined

by OSHA to be one part of benzene per million parts of air (1 ppm.).

The benzene standard was in accord with OSHA's general policy on proven carcinogens, which requires exposures to be reduced to the lowest feasible level, rather than be set at some higher threshold, since such safe levels cannot be identified for substances that cause cancer. This general policy is directly endangered by the Supreme Court's recent decision.

The Supreme Court would require that exposure regulations not be set below the threshold at which OSHA could positively prove that workers were at risk of significant harm.

'SAFE' VS. 'RISK-FREE'

The five-Justice majority is clear about the overall priority that it wants to accord to workplace health and safety: "The (OSHA) Act implies that, before promulgating any standard, the Secretary (of Labor) must make a finding that the workplaces in question are not safe. But 'safe' is not equivalent to 'risk-free.' There are many activities that we engage in every day—such as driving a car or even breathing city air—that entail some risk of accident or material health impairment; nevertheless, few people would consider these activities 'unsafe.' Similarly, a workplace can hardly be considered 'unsafe' unless it threatens the workers with a



Refinery maintenance workers, such as these men at a Gulf refinery, may face benzene exposure. (Photo: Richard Engler, PHILAPOSH, Oil Refinery Health and Safety Hazards.)

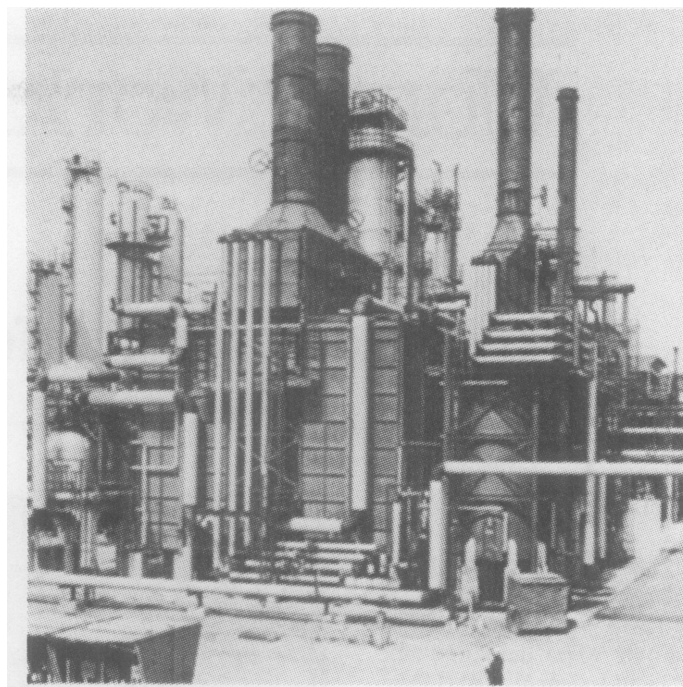
significant risk of harm.”

In appealing to the recently popular doctrine of relative risk, the Court majority is subtly shifting the debate over safety regulations from one of individual rights to a healthy workplace, where the worker and OSHA would have a strong case, to one in which one type of worker must be compared against another or against a nonworking consumer. The comparison of occupational hazards with the risks of driving and breathing ignores the fact that benzene workers are also exposed to these other health problems. The more significant question is whether benzene workers should be exposed to the additional hazards of chemical carcinogens in the performance of jobs from which presumably society as a whole benefits.

This legal debate is closely paralleled by a growing body of economic literature concerned with the possible existence of what it terms “compensating wage differentials.” Unionists have traditionally sought hazard pay for workers exposed to danger on the job, but have seen such bonuses as only part of a larger job safety effort which included OSHA regulations and the Workers’ Compensation system.

The conservatively-inclined economists currently searching for compensating wage differentials freely grant that certain workers are exposed to a disproportionate amount of risk to health and safety on the job. They contend, however, that this is a concern for public policy only if the workers are not adequately informed of and compensated for their extra risks. Only in these special circumstances would the existence of job hazards be an issue significantly different from traffic accidents or polluted city air.

The hypothesis held by these economists is that such differentials are pervasive throughout American industry, and not limited to negotiated hazard pay. They are using sophisticated statistical method in their attempt to find differentials in union as well as non-union shops. Despite much diligent effort, these neoclassical labor economists have not been able to locate such differentials on any meaningful level. To the extent that they feel that they can, however, they will argue that the concept of relative risk and compensating wages renders OSHA regulations unnecessary, since workers are adequately paid in advance to assume the risks to their health.



A catalytic reformer used in manufacturing high-octane gasoline. The odor of benzene is usually noticeable around such facilities. (Photo: Richard Engler, PHILAPOSH, Oil Refinery Health and Safety Hazards.)

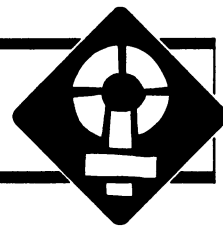
VEHEMENT CRITIQUE

The dissenting opinion by the four Justices who supported the benzene standard was vehement in its critique of the majority’s decision. It came out strongly in support of the procedure followed in the promulgation of the benzene standard, of OSHA’s right to maintain a general policy for carcinogens that recognizes no threshold of safety, and against any necessity for OSHA to compare costs of implementation with expected benefits from a health and safety standard. Justice Thurgood Marshall wrote the minority opinion.

The four dissenting Justices state that “the plurality (of the Court) ignores the plain meaning of the Occupational Safety and Health Act of 1970 in order to bring the authority of the Secretary of Labor in line with the plurality’s own views of proper regulatory policy. . . (The benzene) decision represents a usurpation of decision-making authority that has been exercised by and properly belongs with Congress and its authorized representatives. The plurality’s construction has no support in the statute’s language, structure, or legislative history. The threshold finding that the plurality requires is the plurality’s own invention. It bears no relationship to the acts or intentions of Congress, and it can be understood only as reflecting the personal views of the

plurality as to the proper allocation of resources for safety in the American workplace.”

The minority maintains that, since the Court is not empowered to make or set aside findings of fact, it should find OSHA’s procedure in setting the benzene standard unobjectionable. “In this case the Secretary of Labor found, on the basis of substantial evidence, that (1) exposure to benzene creates a risk of cancer, chromosomal damage, and a variety of non-malignant but potentially fatal blood disorders, even at the level of 1 ppm; (2) no safe level of exposure has been shown; (3) benefits in the form of saved lives would be derived from the permanent standard; (4) the number of lives that would be saved could turn out to be either substantial or relatively small; (5) under the present state of scientific knowledge, it is impossible to calculate even in a rough way the number of lives that would be saved, at least without making assumptions that would appear absurd to much of the medical community; and (6) the standard would not materially harm the financial condition of the covered industries. The Court does not set aside any of these findings. Thus, it could not be plainer that the Secretary’s decision was fully in accord with his statutory mandate ‘most adequately (to) assure. . . that no employee will suffer material impairment of health or functional capacity. . . .’”



Danger! Hazards on the Job!

LOHP Women's Conference Discusses Automation, Stress

by Janet Bertinuson

"Danger! Hazards on the Job—A Conference for Working Women," LOHP's July 12-13 conference in Berkeley, attracted over 90 participants, who devoted a weekend to learning and sharing information on occupational health and safety. Co-sponsors of the conference, with LOHP, were: Merritt College; Coalition of Labor Union Women, East Bay and San Francisco chapters; Communications Workers of America, District 9; Department Store Employees, Local 1100; Office and Professional Employees, Locals 3 and 29; and the San Francisco-Oakland Newspaper Guild.

Participants heard opening talks by Mary Bergan, vice-president of CLUW for California, and Molly Coye, Medical Officer for Region 9, National Institute for Occupational Safety and Health. Dr. Coye focused on the posi-



(Photo: Kate Caldwell.)

tion of women in the labor market, and how their status as members of the "reserve army" of workers affects health status. She also stressed that unemployment must be considered as an occupationally-related disease which affects an increasing percentage of the

population.

The effects of automation on health were also explored. Barbara Pottgen, Office and Professional Employees Local 3, described the fragmentation of tasks in her workplace since the advent of video display terminals and other pieces of automated equipment, and resulting health effects. Ron Teninty, a business agent for Teamsters Local 315, gave background information on scientific management principles and time-and-motion studies, as well as their effects on warehouse workers who have every task defined by the maximum amount of time it can take.

Another panel addressed special concerns of women workers. LaRene Paul, Area Director, Communications Workers of America, described conditions in the telephone company which create job pressures, and related them to other industries. The issue of sexual harassment and its effects on women workers (stress, discrimination, etc.) was raised by Karen Haney of Women Organized Against Sexual Harassment. Morris Davis, Director of LOHP, discussed the health status of black women workers, and also focused on the need for a great deal more research in this area.



Edith Withington of OPEIU Local 29 (left), and a postal union member (right) make points at the "Speak Out." (Photo: Kate Caldwell.)

SPEAK OUT, SONGS, FILM

A special section of the agenda, "Speak Out," provided time for participants to describe their concerns and experiences with occupational safety and health issues. This was followed by "Office Blues," a selection of songs (including "The VDT Song") performed by the AFSCME Local 1695 Union Band: Norah Foster, Janet Kodish, Nancy Polin, and Debbie Reuben.

After a showing of the LOHP film, *Working for Your Life*, a panel discussion focused on reproductive hazards and discriminatory hiring and placement practices. Panel members Janet Bertinuson (LOHP), Marjorie Cox (California Fair Employment and

Housing Commission), and Jeanne Werner (federal OSHA) discussed legislative and other avenues for handling discriminatory practices. Workshops broken down by occupations, in which participants discussed recognition of hazards and strategies to combat these hazards, ended the first day's session.

The conference was opened Sunday morning by Sylvia Krekel, Occupational Health Specialist for the Oil Chemical and Atomic Workers. Ms. Krekel described OCAW's efforts in occupational safety and health, and pointed out that women workers have a great deal of collective power that can be used to change working conditions effectively. Panelists Barbara Pottgen (OPEIU #3) and Martha Hawthorne (Hotel, Restaurant, and Bartenders #2) then described

specific actions taken respectively by a video display terminal coalition and by a local union to improve working conditions through research, use of the press, requests from government agencies for studies, and contract language.

Action was the focus of the day's workshops, during which participants discussed: health and safety as an organizing tool; effective use of health and safety laws; developing health and safety committees; and use of NLRB, EEOC, and grievances. The conference, closed by Marilyn Previn, Teamsters #856, was clearly a worthwhile experience. Participants expressed interest in becoming involved in other collective efforts, including training sessions and coalitions.

Around LOHP. . .

'Getting Organized' Postponed

LOHP Union Organizers' Conference Sept. 30

"Getting Organized: Making It Work," LOHP's one-day conference for union organizers, has been postponed from its original July date to September 30. It will be held in the Tan Oak Room, ASUC Student Union, University of California, Berkeley.

Some registrations are still open, although registration is limited. Registration fee is \$10., which is refundable within 10 working days prior to the conference. Send a check, payable to "The

Regents of U.C.," to "Getting Organized," LOHP, 2521 Channing Way, Berkeley, CA 94720.

The Conference is designed to assist unions and their organizers (staff, stewards, etc.) to pinpoint and integrate relevant health and safety issues into their regular union activities. Some of the key topics will be: obtaining information on health and safety hazards affecting workers being organized; maximizing the impact of OSHA ac-

tivities; protecting workers from discharge or discrimination if they become active on health and safety issues; representing workers on health and safety cases before labor law enforcement agencies; and assessing workers' rights to health and safety information.

For more information, call LOHP at (415) 642-5507 or the UCLA Center for Labor Research and Education at (213) 825-9602.

New LOHP Collective Bargaining Handbook

Workplace Health and Safety: A Guide to Collective Bargaining is a 68-page paperback handbook just released by LOHP. Written by LOHP Labor Coordinator Paul Chown, the handbook is designed to help union representatives and negotiating committee members draft contract provisions dealing with health and safety.

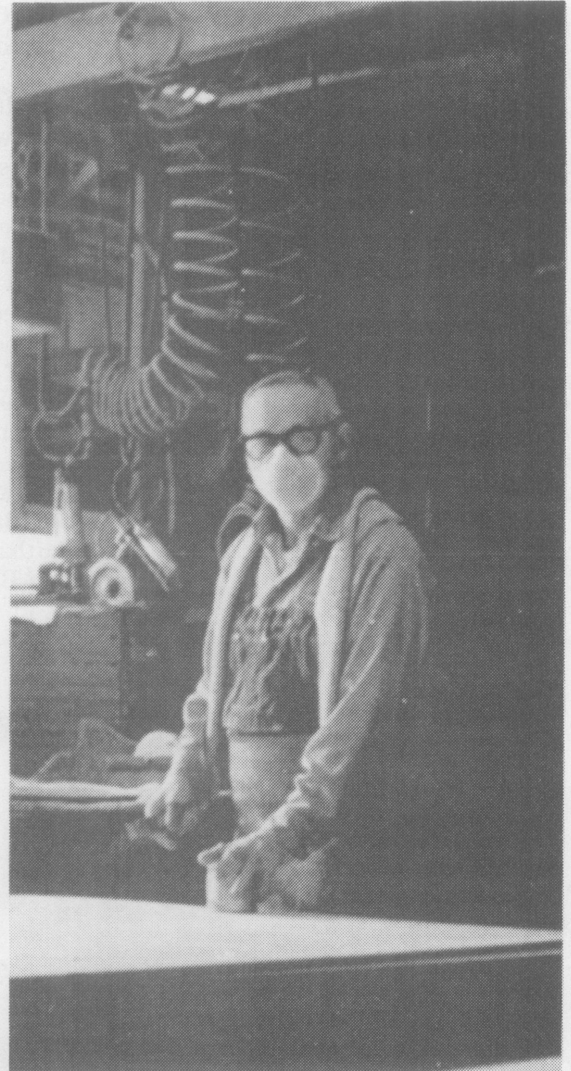
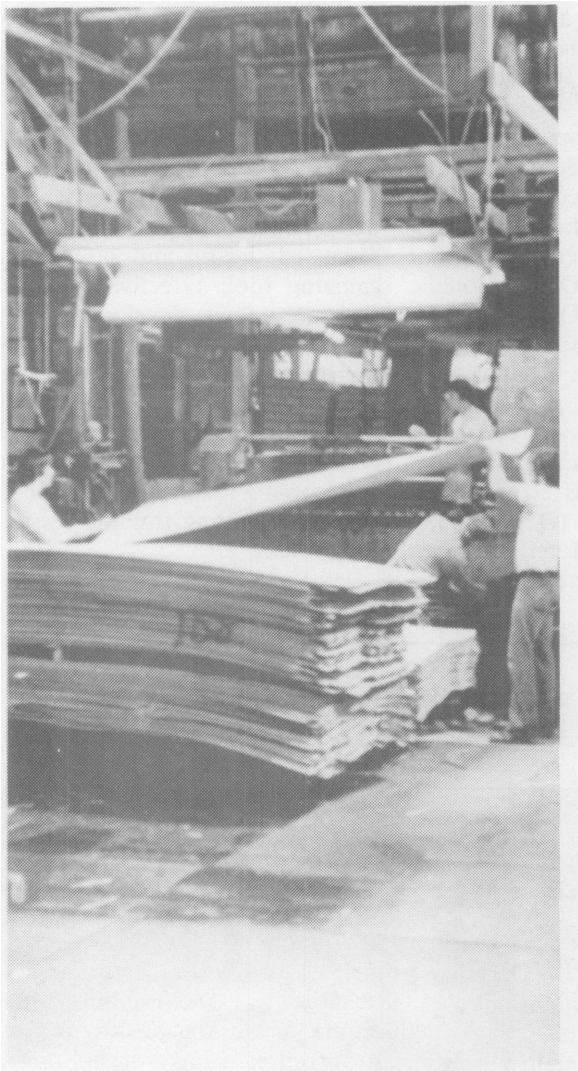
A checklist of health and safety issues for bargaining is included, and the handbook presents many sample clauses to demonstrate the language actually negotiated in union contracts. An extensive discussion of the ramifications of various approaches to contract language rounds out the book.

Model contract language for about three dozen health and safety issues is suggested, ranging from the general duty of the employer to provide a safe workplace to lighting, ventilation, noise, protective clothing, crew size, hazardous materials, first aid, workplace monitoring, hazard pay, union access to information, and the right to refuse unsafe work.

In a brief review of the history of collective bargaining over health and safety, Chown notes that "historically most employers resisted negotiating health and safety language with union representatives," because they considered health and safety a "management pre-

rogative." But a 1966 decision of the National Labor Relations Board that health and safety is a mandatory subject of collective bargaining, together with passage of the Occupational Safety and Health Act in 1970, eliminated the "management prerogative" concept.

Copies of the handbook are available for \$3.50 plus 7% postage and handling. Order from: Labor Occupational Health Program, Institute of Industrial Relations, 2521 Channing Way, University of California, Berkeley, CA 94720. Make checks payable to: The Regents of U.C. Orders for more than 25 copies receive a 10% discount.



Plywood layup (left) and patching (right) operations often involve the use of glues and resins containing formaldehyde. (Photos: James Gabriel Vizzard, Job Safety and Health.)

Consumer Product Safety Commission

Urea-Formaldehyde Foam Insulation Hazards Studied

by Sidney Weinstein

Urea-formaldehyde (UF) foam insulation is installed into existing wall cavities by drilling holes and pumping in the foamed material through pressurized hoses. As of October 17, 1979, the federal Consumer Product Safety Commission (CPSC) had received 484 incident reports about adverse health effects possibly associated with the release of formaldehyde gas from UF foam insulation. These reports were from occupants of the retrofitted homes. Of the 100 in-depth injury investigations conducted by CPSC, 40 were cases where exposure necessitated

leaving the home temporarily or permanently.

EFFECTS OF EXPOSURE

The reports have detailed difficulties ranging from physical side effects to persistent unpleasant odors which lingered in construction materials even after the insulation had been removed. (The 484 cases cited only include those involving health effects.)

Symptoms of illness reported included: eye, nose, and throat irritation and other upper respiratory tract problems; coughing, asthma-like symptoms, shortness of breath, and other lower res-

piratory problems; severe skin irritation and eczema-like rashes; swelling of the face and neck; headaches and dizziness; nausea and vomiting; and severe nose bleeds.

Formaldehyde is also a *sensitizer*. Once sensitized, exposed individuals will react to increasingly smaller concentrations of formaldehyde and ultimately need to avoid exposure entirely, thus necessitating leaving a treated home or avoiding a job or consumer product exposure. However, formaldehyde has a wide variety of uses in industry (for example, as a chemical intermediary), in construction products such as particle board, and in many drugs and cosme-

tics (for example, shampoo preservatives and nail hardeners).

Formaldehyde has been found to be a *strong sensitizer* in concentrations greater than 1%. Some nail hardeners, for example, contain as much as 5% formaldehyde. And many cosmetics contain more complex chemicals which are designed to release "part per billion" levels of formaldehyde.

Formaldehyde is also a component of automobile exhaust. With such a wide variety of potential exposures, avoiding any exposure at all may be very difficult.

The long-term effects of formaldehyde haven't been adequately studied. One animal test that is still going on has found four cases of nasal tumors in rats, three of which appeared related to formaldehyde. So formaldehyde might pose a cancer risk for humans too.

REMEDIES FOR CONSUMER EXPOSURES

CPSC believes there are substitutes for most, but not all, uses of UF foam insulation. No totally practical solution has yet been suggested. Industry representatives have suggested the following protective measures for exposed consumers: open windows or turn on air conditioners; neutralize the formaldehyde gas with ammonia or other chemicals; paint interior walls with oil-base paint to prevent the migration of formaldehyde gas into living areas; or install chemically-treated filters to absorb the formaldehyde gas. However, CPSC hasn't yet seen any evidence that these measures work.

CPSC suggests that the consumer interested in installing foam insulation: *not* do it himself/herself; select a reliable and experienced contractor; make sure the installer has been factory trained, and ask to see a written verification of the training; and obtain a written statement of specific corrective action the contractor will take if problems arise, including who will be responsible for removal of UF foam insulation should that become necessary.

The State of Massachusetts has bypassed the problem completely by banning UF foam insulation as a hazardous substance, and requiring the removal of the insulation foam commerce in that state. Other states such as Colorado and Connecticut are requiring special manu-

facturers' warning labels. California held special legislative hearings in November, 1979 on the problem.

WHAT ABOUT OCCUPATIONAL EXPOSURES

So far, the complaints discussed here have been from consumers. But the workers installing or removing the foam insulation, or working nearby for some reason, might also be at risk (particularly in hot, humid climates). As a first precaution, never install this material unless you have been properly trained to do so and are provided with appropriate protections. Second, be aware that the insulation may give off formaldehyde gas if: quality of ingredients is poor; ingredients are too old; viscosities of ingredients are wrong; proportions of ingredients are wrong (i.e. too much formaldehyde in the resin, too much catalyst in the foaming agent, too much or too little resin, etc.); temperature at which foaming occurs is too cold; or the ingredients are mixed improperly. To be

safe, make sure that chemicals are correct and equipment is in good repair.

There is an OSHA standard for exposure to formaldehyde gas of 3 parts per million (ppm). The National Institute for Occupational Safety and Health (NIOSH) has recommended a 1 ppm exposure level, but OSHA has no current plans to review the NIOSH criteria document or to revise the current standard.

If you are installing UF foam insulation or otherwise working with formaldehyde or a formaldehyde-containing material and experience any of the symptoms listed above, find out what your exposure levels are. Get your employer to monitor the air with special air-sampling equipment, or call in the OSHA, or your state OSHA, consultation service. Since heat and humidity increase the chances that formaldehyde will be released, pay particularly close attention to how you feel while installing UF insulation during the summer. Also be aware that the effects of formaldehyde exposure may be delayed from a few days to more than six months after the gas is released.

State Finds DBCP in Wines

On July 10, 1980, the State of California blocked the sale of wines from Delicato Vineyards in Manteca because officials said they contained the cancer-causing pesticide DBCP.

A spokesman from the state Department of Health Services said five million gallons of wine in vats and bottles may not be moved from the winery. A winery attorney called the situation an "economic disaster." The winery produced about 16 million gallons in 1979, he said.

Highest levels of DBCP were found by the state in Delicato Green Hungarian and Grenache rose wine. A winery spokesman said that "a few cases" have already been recalled from wholesalers, but that "most of those wines have been consumed long ago."

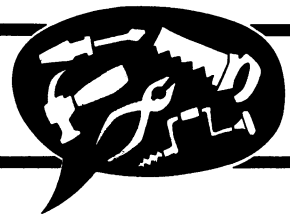
According to Beverlee Myers, director of the State Department of Health Services, Delicato was the only winery tested so far to show excessive levels of DBCP. "DBCP does not

represent an industry-wide health concern in California because one relatively small winery's products are over the action level," Myers said.

DBCP, a pesticide used to kill nematodes, was banned by California in 1977 after it was found to cause sterility in male workers, and was later banned by the federal government after it was shown to cause birth defects and cancer in laboratory animals.

The state said tests of Delicato wines showed DBCP ranging from 2.3 parts per billion in French Colombard to 7.2 in Grenache rose. Any level more than one part per billion in water is considered a health risk in California. According to state officials, DBCP was present in water wells used by the winery in processing the wine. Deeper wells have now been drilled.

The winery announced that it had hired its own consultants, James Montgomery Co. of Pasadena, to make more tests.



Steel Negotiations Win New Health and Safety Rights

The United Steelworkers of America has announced that, by making safety and health major areas of concentration at the outset of the 1980 negotiations with U.S. steel companies, it has won significant new contract rights.

With regard to carbon monoxide, all of the steel companies have agreed to promptly complete broad and detailed surveys of all steel producing and finishing facilities to determine where significant amounts of the gas are likely to escape, the conditions which might cause such release of gas, and the steps needed to minimize or control this hazard.

A timetable will then be established to eliminate or control the hazard source. The negotiated program also requires installation of automatic monitors and alarms, assignment of specific responsibility for gas testing and maintenance, an emergency rescue program, training in the hazards of carbon monoxide, and provision of a copy of each company's program both to the USWA International Union Safety and Health Department and to the local union Safety and Health Committee.

In another area, safety and health training for employees was also addressed by the negotiators. The settlement calls for an extensive "basic training" course for newly-hired employees. For other workers, safety and health training will be geared toward "the hazards of the job or jobs on which they are required to work." Local and International health and safety officials will be able to review the plant-level "basic training" programs for new hires.

In another important gain, both the locals and the International won expanded rights to obtain information and/or notice from the companies relating to safety and health matters. The union must be notified of accidents, given sampling and testing results, sup-

plied information on toxic materials present in the workplace, and given company fatality investigation reports. The companies must also supply the union with documents submitted to OSHA.

A final significant advance, which had been a vocal priority of many local leaders and rank-and-file members, was agreement by the companies to maintain the confidentiality of employee medical records. Such records

will be released only to a physician upon written authorization by an employee, or in response to a subpoena or request by an authorized government agency. They may also be used in arbitration or litigation involving the company. Company physicians must advise employees when they detect medical conditions requiring further attention.

— Condensed from *Steel Labor*

Unsafe Post Offices

House Subcommittee Investigation

A U.S. House of Representatives postal subcommittee has begun an investigation into widespread complaints about job hazards in the U.S. Postal Service, where 645,000 employees sustained 36,510 job-related injuries during 1979.

The investigation was triggered by the death of Michael McDermott, 25, at a bulk mail sorting center in Jersey City, N.J., in December, 1979. McDermott was crushed to death after becoming caught in conveyor belt machinery. The automatic cutoff switch that might have saved his life had been disconnected six years before so that mail handling could be speeded up. McDermott was working alone on the belt because of a new lunch scheduling system.

Inspectors from federal OSHA have since found eleven other "serious" safety violations on that conveyor belt alone.

James LaPenta, president of the mail handlers' union at the Jersey City facility, said that accidents stem from policies designed to save time and money. The attitude is "move the mail and the hell with everything else," LaPenta said.

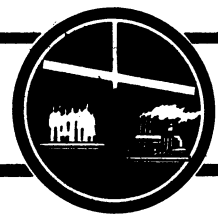
Many of the serious injuries in the Postal Service occur at the automated

bulk mail facilities, according to postal union officials. "You walk into those buildings, it's like walking into a factory," said one official. Workers have charged that the repetitive work and frequent forced overtime make them accident-prone, and that the high-speed machinery, often run 22 hours a day, is poorly maintained. A New Haven, Connecticut, mail handler, Thomas Jamilkowski, filed more than 200 safety grievances last year at his facility.

Although federal OSHA standards cover post offices, inspectors can enter the premises only when invited, and have no power to enforce standards or levy fines.

At the Jersey City facility last August, former plant supervisor Clyde Dinkins tried to close down 50 loading bays because of safety defects, including the one where McDermott died. Dinkins claims he was demoted to clerk because of the attempt, and because he wrote to President Carter and postal officials detailing unsafe conditions.

—Compiled from *Newsweek* and other sources



DC Court

OSHA Walkaround Pay Regulation Overruled

Employers are not required to pay their employees for time spent accompanying OSHA personnel in inspections of the workplace, according to a July 10 decision of the U.S. Court of Appeals for the District of Columbia.

The decision, in *U.S. Chamber of Commerce v. OSHA*, overruled Assistant Secretary of Labor Eula Bingham's 1977 "interpretive rule and general statement of policy" which declared that refusal to pay employees for walk-around time violates Section 11(c) of the federal OSH Act in that it discriminates against such employees. Although the right to walkaround pay is not expressly guaranteed by the Act, Bingham held that such a right is essential to the functioning of the Act.

A U.S. Chamber of Commerce suit challenging the new rule was heard by a federal district court, which granted a Government motion for summary judgment against the Chamber. The suit alleged that OSHA had violated the federal Administrative Procedure Act in not giving prior notice of the regulation and allowing an opportunity for comment, but the court found that the new rule was "interpretive" and therefore exempt from the Administrative Procedures Act. The Chamber then appealed.

In a majority decision signed by two of the three judges, the Court of Appeals found that the new rule was "legislative" rather than "interpretive" and therefore subject to the notice-and-comment provisions of the Administrative Procedures Act. The majority also rejected an OSHA contention that the federal Fair Labor Standards Act creates a right to walkaround pay in its definition of "hours worked."

Technically, the District of Columbia decision only applies within the jurisdiction of that Appellate Court; there has not yet been a ruling on the issue by any other Appellate Court in the U.S. The decision's impact on California, if any, is unclear; Cal/OSHA officials were not

available for comment at **Monitor** press time.

According to LOHP Director Morris Davis, the decision "points up the need for unions to take more responsibility in negotiating this type of provision, put-

ting walkaround pay in the contract where courts cannot interfere with it."

Compiled from BNA Current Reports and other sources.

Cal/OSHA Clarifies Noise, Chemical Enforcement

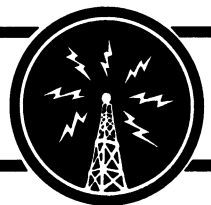
At LOHP's West Coast Noise Conference earlier this year, LOHP staff became concerned about the fact, mentioned by many attendees, that almost all Cal/OSHA noise citations are general violations (with no penalties) as opposed to "serious" violations. Federal OSHA appears to cite violations as serious, and assess fines, more frequently. (Labor Coordinator Paul Chown referred to this problem in *Monitor*, May-June, 1980, p.4).

Former LOHP staff member Richard Ginnold discovered that Cal/OSHA's procedures require a noise violation not to be cited as "serious" unless workers are exposed to more than 105 dBA over an eight-hour period. He also found that, in citing chemical exposures, the procedures seem to require that the exposure not be cited as "serious" unless the concentration is more than three times the standard (i.e., three times the PEL — permissible exposure limit).

Ginnold wrote on behalf of LOHP to Dr. Richard Wade, Deputy Chief of the California Division of Occupational Safety and Health. He pointed out that "since a no-fines

policy and general citations in my opinion, handicap enforcement and signal to the public that the hazard is low priority, I am concerned about the above policy which I feel has no scientific or medical basis."

On June 9, Alvin Greenberg of DOSH responded for Dr. Wade. Greenberg pointed out that the unavailability of DOSH physicians to make medical determinations of the seriousness of a hazard had historically led to the "oversimplified" severity criteria to which Ginnold referred. However, he said, a new Industrial Hygiene Technical Manual has recently been issued by DOSH, and is currently being reviewed by federal OSHA to ensure that it is "at least as effective" as their standards. "Overexposure to noise above the sampling analytical error will be a serious violation, and for toxic chemicals the concentration for a serious violation is specified; for many chemicals, exposures are serious above the PEL plus the sampling analytical error," Greenberg said. He added that the new manual should be operational late this summer.



California Supreme Court

Ruling Allows Asbestos Workers to Sue Employers

The California Supreme Court ruled on July 3, 1980 that workers who suffer from asbestos-related disease may sue their employers despite the provisions of the workers' compensation laws.

Reba Rudkin, a former employee at the Johns-Manville facility in Pittsburg, California, had filed suit against the company on grounds he developed cancer during his 29 years of working there. He has since died of cancer.

In its majority opinion, the state Supreme Court noted a section of the Labor Code which says that workers' compensation is the exclusive remedy against an employer for injury or death of an employee. However, the majority said, "a cause of action may exist for aggravation of the disease because of the employers' fraudulent concealment of the condition and its cause."

"We conclude the policy of exclusivity of workers' compensation...would not be seriously undermined by holding defendant liable for aggravation of this plaintiff's injuries, since we cannot believe that many employers will aggravate the effects of an industrial injury by not only deliberately concealing its existence but also its connection with the employment," the decision continued.

A dissenting opinion by two Supreme Court judges said that "the net effect of the majority opinion is to discourage employers from engaging in medical programs designed to minimize the risks and effects of occupational disease. Permitting both compensation benefits and recovery from the employer for employment injury creates partial disintegration...of our system of workers' compensation. The majority's providing special award for a few of those suffering occupational illness jeopardizes the amount of benefits available to the many victims of industrial illness and injury."

Steven Kazan, an Oakland attorney who represented Rudkin, called the decision "the best thing that has happened in asbestos legislation" and said it "opened the door" for hundreds of other suits. His firm has about 200 such cases, and in about half of them the plaintiff has already died of cancer, he said.

Meanwhile, in the U.S. Congress, Senator Gary Hart (D-Colorado) has introduced S.2847, titled "Asbestos Health Hazards Compensation Act of 1980," which sets voluntary minimum standards for state workers' compensation payments for asbestos-related disease or death. The bill allows an employer who pays compensation awards to bring other responsible parties, such as the asbestos industry and the Federal Government, into state pro-

ceedings to determine the amount they should contribute to compensation. According to Hart, the bill has the support of the general president of the International Association of Heat and Frost Insulators and Asbestos Workers and portions of the asbestos industry.

Also, in the California legislature, the state AFL-CIO has introduced legislation to establish an Asbestos Workers' Fund, to be reimbursed by employers through their insurance carriers. AB 946, carried by Assemblyman Art Agnos (D-San Francisco), would allow prompt payment of asbestos workers' claims, even before liability for injuries is determined in often-lengthy compensation proceedings. The bill has passed the Assembly and is now pending in the state Senate.

—Occupational Safety and Health Letter

Cal/OSHA Reduces Penalties When Employers Consult

Emmett Jones, Chief of the Cal/OSHA Consultation Service, announced on June 19 that an employer who has used the Consultation Service prior to an inspection by the Division of Occupational Safety and Health (DOSH) may now avoid being assessed civil penalties for "general" violations of standards cited in the inspection. In addition, Jones said, greatly reduced penalties will be assessed when such employers are cited for serious violations.

The Consultation Service provides free on-site consultation, information, and advice regarding health and safety matters by professional safety engineers and industrial hygienists to any employer who requests these services. The

Consultation Service is not involved in enforcement activities.

According to Jones, if at the time the citation is issued, the employer is making a 'good faith' effort to eliminate the alleged violation quickly by working with the Consultation Service prior to the inspection, all civil penalties associated with a "general" violation will be waived, and those associated with a serious violation (other than for a carcinogen) will be cut in half.

Jones said that the change "should be an incentive to employers to take advantage of the expertise our Consultants can offer to them *before* their businesses are ever inspected by DOSH."

Melanoma Risk at Livermore Lab

Evidence is mounting that workers at the Lawrence Livermore nuclear energy laboratory near San Francisco experience skin cancer incidence rates far higher than those found in the surrounding communities.

Lawrence Livermore is a facility run by the University of California which is in the forefront of research on nuclear fusion energy. It is funded by the federal Department of Energy.

Two reports, one by the State Department of Health Services released in April, and one by ten national cancer experts to the California Legislature May 29, agree that between 1972 and 1977, incidence of malignant melanoma at Lawrence Livermore was about five times as high as the incidence rates reported for the surrounding area. During that period, 19 cases of malignant melanoma were reported among workers of the Laboratory.

The Department of Health Services study concluded that "the high rate of melanoma is related to LLL employment." However, in their report, the ten national cancer experts said no conclusions can be drawn regarding possible links with the LLL environment. The experts said that further study is necessary to rule out possible genetic factors and other variables. They said there has been insufficient investigation to confirm a link between the reported melanoma cases and exposure to radiation, chemicals, or other substances at LLL.

The ten experts, appointed by the U.S. Department of Energy, visited the Laboratory for several days. Dr. Arthur Upton, chair of the DOE panel, said it was "much too early" to explain the employees' high rate of melanoma. Another member of the panel, Dr. Frederick Urbach from the Skin and Cancer Hospital at Temple University, said that literature indicates that melanoma rates are increasing all over the world, and that the increase appears to be related to sunlight exposure, particularly to the ultraviolet radiation in sunlight.

However, Dr. Carl Johnson, health director for Jefferson County, Colorado, has found high rates of

cancer near the Rocky Flats nuclear weapons plant in Colorado. Addressing the DOE panel, Johnson called for a comprehensive study to determine if the overall cancer rate in the Livermore Valley is higher because of radiation from LLL.

The ten experts recommended further study at LLL to identify the causal factors. They also suggested increasing public education about melanoma and establishment of a uniform, statewide cancer registry to assure systematic, early detection of changes in cancer rates.

Assemblyman S. Floyd Mori said he will seek state legislation to fi-

nance the state registry and improve public education. The legislature has already approved \$110,000 for continued study of melanoma incidence at Livermore, and that amount is expected to be matched by federal OSHA funds.

The University of California also operates the Los Alamos Scientific Laboratory in New Mexico, another DOE-funded nuclear facility. In late June, a Berkeley newspaper reported that there had been 30 cases of melanoma at Los Alamos since 1950.

—Compiled from Occupational Safety and Health Reporter and other sources.

Ten years ago, our nation said workers have a right to safety and health on the job.



Have we changed our minds?

No worker should have to risk injury or illness just to make a living. That's a basic human right — a right promised to American workers by Congress in 1970.

Until that time, our nation relied primarily on employers to provide "... healthy working conditions voluntarily." That approach did not work, so Congress created the Occupational Safety and Health Administration (OSHA). Recognizing that workers who insist on safe conditions need the support of governmental inspection agencies, Congress gave OSHA the power to set safety and health standards and impose penalties on employers who don't obey.

Since the agency was established, business lobbyists have been able to tie OSHA's hands. Government reports show that:

- 14,000 workers are killed by accidents each year; 100,000 die from occupational diseases
- On-the-job injuries — more than five million per year — cost the economy \$21 billion annually
- One out of three cancer deaths in the United States may be caused by exposure to workplace substances
- One out of four American

workers face toxic chemicals, deafening noise, and other known hazards on the job.

Business attacks OSHA
Despite increases won by the labor movement, OSHA's budget has been held to less than three cents per worker. Spending for prevention of hazards is less than 1 percent of the costs of injuries alone.

Industry has pressured all three branches of government to cripple OSHA. White House officials in every administration have weakened major regulations. Federal courts have been used to keep OSHA from enforcing rules to protect workers from toxic substances and serious safety hazards. Last year Congress took away key health and safety protection for workers in small businesses.

Some progress has been made. OSHA administrators appointed in 1977 have cut away at red tape, streamlining and simplifying OSHA regulations. OSHA has become more responsive, and more effective.

Worker safety faces new threat
Now, business has stepped up its attack. A group of senators and their business supporters are sponsoring a bill (Senate Bill 2153) which they misleadingly call "The OSHA

Improvement Act of 1980." These senators include conservatives such as Richard Schweiker (R-Pa.) and Orrin Hatch (R-Utah) and liberals Harrison Williams (D-N.J.), Alan Cranston (D-Calif.), and Frank Church (D-Idaho).

Under this proposed law, 90 percent of America's workplaces would be exempted from routine OSHA safety inspections. Companies could qualify for an inspection ban by reporting a relatively small number of accidents per year. In these companies, OSHA inspectors would not be allowed to respond to worker safety complaints if the employer says no inspection is necessary.

Under the new law, instead of working for prevention, OSHA inspectors would be limited primarily to writing reports on deaths and injuries after a fire. Under this system, OSHA's ability to prevent both injury and those caused by workplace substances would be greatly reduced.

What should be done?
We oppose S.2153 or any attempt to put similar restrictions on OSHA when the bill containing the agency's annual budget is considered by Congress.

We think it's time to improve OSHA, not destroy it. With a larger budget and stronger support from Congress, many of the necessary improvements can be made by OSHA itself without changes in the law.

- OSHA needs more inspectors, stronger standards, and expanded training programs to teach workers how to get hazards corrected.
- OSHA must guarantee that workers will no longer suffer loss of income or loss of their job when they insist on safe and healthy conditions. Individual workers given new job assignments because their health is threatened by exposure to hazardous substances should retain their regular rate of pay and all benefits.
- Fines should continue to be increased further — It should not be cheaper to pay a penalty than to correct the hazards. (The average fine for a violation of OSHA standards was less than \$90 between 1977 and 1979.)

Changes such as these will make OSHA a more effective tool to save lives. We believe in our nation's promise to provide safety and health on the job. We think it's time that promise was kept.

Local and international unions throughout the U.S., as well as more than 1000 concerned individuals, signed this advertisement in the New York Times on June 15, 1980 opposing S.2153, the Schweiker amendment which would vastly curtail federal OSHA. (See May-June Monitor.) Although the progress of the Schweiker amendment has slowed, it is still alive in the U.S. Congress.

Bargaining Advised to Improve OSHA Protection

LOHP Labor Coordinator Paul Chown was among the speakers at a national conference on collective bargaining and occupational safety and health, sponsored by the New York State School of Industrial and Labor Relations, Cornell University, June 26 and 27. LOHP Director Morris Davis also attended.

Chown spoke on the evolution of health and safety as a bargainable issue for union contracts, from its traditional role as a subject which employers considered a "management prerogative," through the landmark NLRB decision of 1966 which held it to be a mandatory subject of bargaining, to its present emergence as an increasingly important part of contract talks. The "single most important" health and safety clause in a contract is a "general duty clause" by which the employer agrees to provide a safe and healthful workplace, Chown said.

Chown is the author of a new LOHP handbook, **Workplace Health and Safety: A Guide to Collective Bargaining**, which is reviewed elsewhere in this issue of **Monitor**.

INNOVATIONS IN CONTRACTS

Chown also described several areas in which recent innovations have been made in contractual health and safety provisions:

- Right to refuse hazardous work, either by an individual worker or by the union as a whole, without penalty or reprisal;
- Instant arbitration of health and safety disputes with experts, rather than with traditional arbitrators;
- Ergonomics issues, to reduce accidents and illnesses by redesigning jobs to better suit workers;

- Employer payment of full-time wages to union health and safety committee members or stewards;
- Rate retention and workers' compensation to protect an injured or ill employee's earnings, medical insurance, and/or pension;
- Provisions for alleviating stress, and extra vacation time for particularly hazardous or unhealthy jobs.

Christine Oliver, a physician with the Oil, Chemical and Atomic Workers International Union, described the need for medical surveillance language in contracts. Since union epidemiological studies require union access to medical surveillance data, Oliver said, the contract should specify what and how medical information will be collected. Other contract language can cover union access to the generic names of chemicals, results of industrial hygiene sampling, and other information that the company may have, she said.

Oliver added that other medical contract provisions could include: the mutual choosing of a physician by worker and management; who interprets data; pre-employment medical screening; and economic protection of workers covered by medical surveillance so that surveillance data is not used to discriminate.

KEYNOTE SPEECH

Keynote speaker at the two-day conference was J.C. Turner, president of the International Union of Operating Engineers. Turner told the conference that the bargaining process "should be used to the hilt" to provide worker protection in such areas as labeling of toxic substances and maintaining of medical records. He said that unions must bargain for protection already provided by OSHA standards because OSHA "cannot possibly inspect and police the five million work locations under its jurisdiction."

Turner also added a cautionary note, pointing out that unions must be "armed with knowledge" because of an increasing volume of health and safety lawsuits against unions. Increased worker sophistication "has caused a rising level of expectation as well as deep dissatisfaction when those expectations are not met," and lawsuits against unions are often the result, he said. Unions offer an "attractive target," Turner said, because "outmoded workers' compensation statutes immunize employers from damage claims . . . but provide unions no similar protection."

He cited a case now before the Idaho Supreme Court, *Dunbar v. United Steelworkers*, in which survivors of miners who died in a 1972 disaster claimed that the union was liable for damages because of a contract clause requiring the union to inspect the mine. The challenge, Turner said, is to fashion contract language which "fits the true needs of the workers without placing their unions in jeopardy."

Turner also criticized the present workers' compensation system, emphasizing the need to "strip away the immunity that allows employers to ignore their proper debt to those they employ." The total U.S. cost of workers' compensation was \$8 billion in 1977, he said, and the total number of days lost due to work stoppages was only one-thirteenth the number of days lost due to accidents. "I'm convinced that we can best meet the challenge by negotiating health and safety provisions that reinforce the laws and regulations we have struggled for," Turner concluded.

—Compiled from BNA Current Report and other sources.

A policy paper, entitled "Workplace Safety and Health: Recent Developments in Union Liability," authored by LOHP staff members Morris Davis and Lawrence Drapkin, was distributed at the Cornell conference. Copies can be obtained from LOHP for \$1.25, pre-paid. Make checks payable to: The Regents of U.C.

Clearinghouse



NEW BOOKS

Health Hazards in the Arts and Crafts is a new, 256-page paperback book containing the Proceedings of the Conference on Health Hazards in the Arts and Crafts, held in October, 1978 by the Society for Occupational and Environmental Health. It is edited by Michael McCann, Ph.D., of the Center for Occupational Hazards, Inc., and Gail Barazani, University of Illinois School of Public Health.

The SOEH conference was the first national scientific meeting on the subject, bringing together scientists and professionals who are doing research and developing policy. Many artists and craftspeople work alone or in small groups in homes or studios which are not adequate for the types of materials being used. Many are unfamiliar with the dangers of certain materials, or with the proper protective measures necessary.

Among topics covered in the book are: cadmium poisoning among jewelry workers; industrial hygiene in a stained glass workshop; methylene chloride in small furniture stripping shops; rock dust exposures to a sculptor; safety of children's art materials; hazards of photographic products; labeling arts and crafts materials; and control and labeling of coloring agents.

Copies are available for \$16., including postage and handling, from: Society for Occupational and Environmental Health, 1341 G St., N.W. #308, Washington, D.C. 20005.

Health Hazard Evaluation Summaries: April 1980 is a new publication developed by the National Institute for Occupational Safety and Health (NIOSH) to disseminate information generated as part of its Health Hazard Evaluation and Technical Assistance Program. Reviewing these summaries of recent reports, the reader gains a sense of the types of hazards and workplaces that NIOSH has recently investigated and the approaches used, as well as recommended control procedures.

A table of contents lists the report number, workplace investigated, and stock numbers of individual Health Hazard Evaluation reports which may be ordered separately. There is also a key word index arranged according to the type of hazard.

25 Health Hazard Evaluations are summarized in the present volume, which NIOSH says is the pilot effort in a regular series. Single copies are available at no cost from: National Institute for Occupational Safety and Health, Publications Dissemination, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

Carcinogen Information Program Bulletin #13: Asbestos is a useful new fact sheet by the Center for the Biology of Natural Systems at Washington University in St. Louis. The bulletin is an effort to alert the public to the dangers of asbestos, and therefore the bulletin avoids highly technical medical language.

Single copies are available at no charge from: Carcinogen Information Program, Center for the Biology of Natural Systems, Washington University, Campus Box 1126, St. Louis, Missouri 63130. Send a long, self-addressed stamped envelope.

Merritt College Health and Safety Class

An introductory health and safety training course geared toward unionists will be offered by Merritt College beginning Sept. 11, 1980. Classes, led by LOHP staff member Paul Chown, will be held each Thursday from 7 to 10 pm. at the Institute of Industrial Relations, 2521 Channing Way, Berkeley. The 18-week course is available on either a credit or non-credit basis. Various LOHP staff members will be assisting with particular topics.

For further information, call Paul Chown at (415) 642-5507.

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WITNESS PAY

continued from p. 3

Stanford University has refused to comply with the orders of the Labor Commissioner in this case and is therefore being sued by the Commissioner to enforce the orders. The matter is expected to come to trial later this year.

Two, not-so incidental, matters. First, Stanford claimed that it followed both the Union contract and its own internal policies in docking the workers for attending the hearings. This was ruled to be irrelevant — workers do not give up any of their statutory rights if those are stronger than the contract. Second, the Union informs me that the Computer Center is now one of the

safest places to work at Stanford; complaints are now promptly dealt with.

(The author would be happy to discuss questions raised by this article. He can be reached at (415) 527-7488.) See also Newswire article on the recent Appeals Court ruling affecting walk-around pay, p. 12 in this issue.

Health and Safety Discrimination in the California Labor Code

Discrimination for health and safety activities in California is prohibited by Sections 6310, 6311, and 6312 of the state Labor Code. These provisions are enforced by the Division of Labor Standards Enforcement within the Department of Industrial Relations, and affected workers should file a claim form with that office. We reprint, "and explain," the three sections below, but these brief and simplified descriptions should not be relied upon by interested workers as their sole information.

6310. (a) No person shall discharge or in any manner discriminate against any employee because such employee has either (1) made any oral or written complaint, to the division, other governmental agencies having statutory responsibility for or assisting the division with reference to employee safety or health, his employer, or his representative, or (2) instituted or caused to be instituted any proceeding under or relating to his rights or has testified or is about to testify in any such proceeding or because of the exercise by such employee on behalf of himself or others of any rights afforded him.

(b) Any employee who is discharged, threatened with discharge, demoted, suspended, or in any other manner discriminated against in the terms and conditions of such employment by his employer because such employee has made a bona fide oral or written complaint to

the division, other governmental agencies having statutory responsibility for or assisting the division with reference to employee safety or health, his employer, or his representative, of unsafe working conditions or work practices, in his employment or place of employment shall be entitled to reinstatement and reimbursement for lost wages and work benefits caused by such acts of the employer. Any employer who willfully refuses to rehire, promote, or otherwise restore an employee or former employee who has been determined to be eligible for such rehiring or promotion by a grievance procedure, arbitration, or hearing authorized by law, is guilty of a misdemeanor.

6311. No employee shall be laid off or discharged for refusing to perform work in the performance of which this code, any occupational safety or health standard or any safety order of the division or standards board will be violated, where such violation would create a real and apparent hazard to the employee or his fellow employees. Any employee who is laid off or discharged in violation of this section or is otherwise not paid because he refused to perform work in the performance of which this code, any occupational safety or health standard or any safety order of the division or standards board will be violated and where such violation would create a real and apparent hazard to the employee or his fellow employees shall have a right of action for wages for the time such employee is without work as a result of such layoff or discharge; provided, that such employee notifies his employer of his intention to make such a claim within 10 days after being laid off or discharged and files a claim

with the Labor Commissioner within 30 days after being laid off, or discharged or otherwise not paid in violation of this section.

6312. An employee who believes that he has been discharged or otherwise discriminated against by any person in violation of Section 6310 or 6311 may, within 30 days of the occurrence of the violation, file a complaint with the Labor Commissioner alleging the discrimination. Upon receipt of the complaint, the Division of Labor Law enforcement shall cause such investigation to be made as it deems appropriate. If upon investigation it determines that the provisions of Section 6310 or 6311 have been violated, it shall bring an action in any appropriate court against the person who committed the violation. In any such action the courts shall have jurisdiction, for cause shown, to restrain violations of Section 6310 or 6311 and order all appropriate relief including rehiring or reinstatement of the employee to his former position with back pay.

Within 30 days of the receipt of a complaint pursuant to this section, the Division of Labor Law Enforcement shall review the facts of the employee's complaint, set a hearing date or notify the employee and the employer of its decision, and, where necessary, begin the appropriate court action to enforce such decision.

—Leo Seidlitz

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