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## DRUG TESTING

by John Paul Williams

A man with long hair and a beard approached the entrance to a bar. The bar's bouncer, who has chatting with a police officer friend, decided to have some fun. "The cover charge is \$5," he said, "and you have to take a drug test," he added, gesturing to the police officer next to him. A grin spread slowly over the aging hippie's face as he answered, "Drug test? Groovy, man. What kind of drugs do you want me to test?"

This article explores some of the reasons why drug tests are no joke for hundreds of thousands of American workers.

**How Employers Test for Drug Use** -- Employers are demanding urine samples from drivers under the Teamster master freight contract, from *Rolling Stone* magazine writers, from Stockton's St. Joseph's Hospital nurses, from Weyerhaeuser mill employees, Three Mile Island's utility workers, PSA pilots, and from job applicants at AT&T, IBM, Lockheed, UNOCAL, GE, Eastman Kodak, and many others, including workers at one-half of the Fortune 500 companies.

Randy Price, a Pacific Refining employee, described a typical workplace drug test procedure. "They made everyone come in and partly disrobe and expose themselves so a witness could verify the (urine) specimen." Because employees may suffer discipline for testing positive, the employer must establish a chain of custody for the sample by witnessing, sealing and labeling it for shipment from the workplace to the lab. Then, a laboratory or doctor analyzes the sample for illegal drugs, such as cocaine, speed or marijuana, but not always watching for the most dangerous -- alcohol.

Eighty percent of drug detection programs test employees randomly, or because of specific reasons, such as a long sick leave. Ninety percent of the programs target job applicants, who are not yet union members and cannot file a grievance if they object to the test or fail it. However, they can sue. The Justice Department recently signed a consent decree awarding \$55,000 to eleven job applicants whom the Philadelphia Postal Service rejected because they failed drug assays.

Rules vary about when, how, and why employees are ordered to yield samples. Under some contracts, supervisors can request urine from slow workers. An Operating Engineers program mandates that responsibility to physicians. The railroads check employees after accidents. Penalties for testing positive also vary. Georgia Power fired workers who refused or failed tests. The University of California plans to consider an employee's inability to produce a 60 milliliter sample the same as a positive result, and wants the option of referring workers to counselling. While PG&E will not discipline an employee for trace amounts of drug use, the Sacramento Municipal Utility District will.

**Accuracy** -- Many prescription or over-the-counter drugs, teas, or even poppy seed ingestion can produce a false positive lab report. The labs cannot detect heroin, cocaine, or speed more than 48 hours, or less than several hours after usage, because it takes time for drug traces to show up in urine and the body purges these drugs quickly. Marijuana, however, leaves traces for months after regular use. Ninety percent of positive drug assays find marijuana.

Yet many drug detection programs do not schedule a second, more current assay after an initial positive result, relying instead on a single \$10-30 test. The *American Medical Association (AMA) Journal* says those tests have an error rate as high as 100% for cocaine and speed detection. The Center for Disease Control's 10-year study of drug analysis facilities found the labs detected false positives in up to 66% of clean samples. New Jersey

may pass a law prohibiting disciplining of employees because of a single test. The Pacific Maritime Association requires second tests, which are more sophisticated and can cost up to \$200, before punishing workers for positive readings. The AMA estimates that accurate urine analysis of the nation's workforce would cost \$8-10 billion annually.

**Legal Issues** -- Thirteen federal and state judges have recently ruled against random drug testing and four have judged it constitutional. For instance, a federal judge rejected it for New Jersey police and firefighters. However, his decision will not apply to private employers, or to pre-employment testing. Meanwhile, jockeys must submit, as the Supreme Court refused to hear their case. Plaintiffs are raising issues of illegal search, right to privacy, the inaccuracy of the results, and questions about the chain of sample custody. Suffolk County in New York and San Francisco have outlawed drug testing, and Maine is considering the same action.

**Union Response** -- Companies that impose tests on unionized employees can face grievances. An arbitrator exempted professional football players from imposition of urine analysis, deciding that it was a matter for bargaining. A federal judge refused a court case against Boise Cascade, deferring to contract provisions against unilateral actions which meant the tests can be challenged at arbitration. An Operating Engineers substance abuse program allows workers to refuse tests without facing discipline. Some Auto Workers contracts allow employees to refuse testing and to file grievances if they are disciplined. Non-union employees have no similar contract protection. Florida Power & Light started a testing program for its non-union employees only, thus avoiding a union challenge.

Strong labor contracts can limit misuse of testing. Otherwise employers may target their members for harassment. As Oregon employee rights attorney Martin McKeown said, "If you don't like George, and you want to get rid of him, you could say I think George's speech is slurred today. Let's test him and get rid of him."

Contract language must address: what is probable cause for employee testing, how to document probable cause, minimum sample size, who requests and witnesses tests, guarantees of the chain of custody, who analyzes the sample, what kind of assays are run, whether they are repeated, the penalty for failure of tests or refusal to test, what findings mandate discipline, provisions for counselling and rehabilitation, allowing workers to see their own doctor, and who has control of personnel files with the results.

Unions need not automatically accept drug testing. Opposition to it ranges from the *National Review* to *Playboy*, and from the ACLU to the AMA, who called it "chemical McCarthyism."

-- John Paul Williams

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