



**U.S. Senate
Committee on Health, Education, Labor and Pensions**

April 27, 2010 Hearing

**Putting Safety First: Strengthening Enforcement and Creating a
Culture of Compliance at Mines and Other Dangerous Workplaces**

**Response to Questions for the Record
From
Dr. Michael Brandt, AIHA President-elect
May 19, 2010**

Questions for the Record from Senator Enzi

- *Question: Just last week the National Labor Relations Board decided a case in which a Missouri labor union had fined one of its members \$2,500 for reporting a safety violation by another employee union member to the Employer at the hydroelectric facility where they worked. (International Union of Operating Engineers, Local 513, AFL-CIO and Ozark Constructors, LLC, A Fred Weber-ASI Joint Venture, Case 14-CB-10424, 4/19/10) The employee was complying with the Employer's safety rules by reporting the violation, and protecting himself and all of his coworkers. What kind of message does it send to penalize workers for taking steps to make their workplaces safer?*

Response: While there is no simple answer to your question, I will summarize my opinion and then provide a more detailed explanation of it.

This specific case (355 NLRB No.25) involves an employee reporting an “unsafe condition” in the workplace to the site safety officer. Every organization has conditions of employment that each employee agrees to obey when they are hired. These workplace rules are typically designed to codify organizational norms and set behavioral expectations for employees. Also, the application of workplace policies is oftentimes subject to interpretation of the specific circumstances surrounding any violation of policy.

My reading of the Decision indicates that while there is a subtext of discord within the union local, the union chose to penalize the worker for reporting the unsafe condition in

the workplace. The employee had an obligation to act to report an observed safety hazard to protect himself and his coworkers. The union officials chose to place fidelity to union rules over safety, which is akin to an often used argument that “management places production schedules over safety” when an injury occurs. Both approaches fail to consider the risks to workers resulting from uncorrected, unsafe or unhealthy conditions in the workplace. Doing so could result in a serious injury and a work stoppage. The union’s decision to penalize this worker for reporting an observed safety hazard sends the message that will very likely result in silencing other union members who may observe a safety hazard and result in an increased risk in the workplace.

As I stated in my testimony to the HELP Committee, each employee has a reasonable expectation to return home healthy and safe. I also stated that a precondition for a safe workplace is shared responsibility and accountability between labor and management. I will briefly elaborate. A central principle of occupational health and safety is to identify potential hazards and intervene early to eliminate the hazard and reduce the risk. This requires that various defenses be implemented to:

- ❖ Create an understanding and awareness of the hazards associated with a given work activity through anticipation and recognition of potential hazards associated with a work activity;
- ❖ Give clear guidance on how to work safely through work instructions;
- ❖ Eliminate the hazard at the design stage or by implementing controls to mitigate the hazard such as engineering solutions, personal protective equipment, or administrative measures (warning signs, work procedures);
- ❖ Evaluate the effectiveness of the control measures in eliminating or reducing the risk associated with the hazard as low as reasonably achievable.

- *Question: Should a labor union be able to prevent employees from reporting hazardous conduct or prevent an employer from disciplining an employee who fails to follow safety rules?*

Response: Given the topic of the recent HELP Committee hearing on unsafe workplaces, it does not make any sense for a union to prevent workers from reporting hazardous conduct or unsafe conditions. Each employee has a reasonable expectation that they will return home safe at the end of their work day. Programs such as VPP and other management systems promote both management *and* employee participation and involvement in a workplace safety and health program. Workplace rules that prevent reporting, and thereby prevent correcting, unsafe conditions are not likely to be found in organizations with good safety records. Such workplace rules violate the basic public health and safety principle that intervening early in an unsafe or unhealthy workplace will reduce the severity of the outcome or eliminate the observed risk to workers. Finally, organizations with a just and positive safety culture *encourage* workers to “find and fix” workplace hazards as a routine behavior.

- Question: *I was glad to hear of your support Voluntary Protection Programs (VPP). What do you think is responsible for the considerable growth in new VPP members over the last decade?*

Response: VPP has been successful because contemporary high performing and financially successful organizations recognize that investing in health and safety is good for both the business and for the employees. I describe four examples of how health and safety has been successfully integrated into business; see my response to Senator Harkin's question below. These examples, while not necessarily from VPP sites, reflect the basic components of VPP: management and employee involvement and collaboration toward common goals, work process analysis using common quality management analytic techniques, hazard elimination and mitigation with positive business financial and productivity impacts, and workplace risk reduction.

Health and safety leaders from professional societies such as the AIHA have been promoting a systems approach to health and safety management over the past decade. While there are a number of different management systems being promoted globally each shares these common features:

- ❖ management leadership and involvement to lead by example;
- ❖ employee participation in work planning, hazard identification and control, and the safe execution of work;
- ❖ workplace and work activity analysis to identify health and safety hazards;
- ❖ control measure implementation to mitigate or eliminate identified hazards; and measuring the effectiveness of the control measures to reduce or eliminate the identified hazards.

These steps are complimentary and supportive of other workplace continuous improvement and productivity improvement initiatives that have been implemented in commercial business, government, and industry in response to the globalization of markets and the subsequent economic competition.

- Question: *How does VPP build the culture of safety in workplaces?*

Response: In my experience as a labor trades worker, practicing industrial hygienist, operations manager, and executive, I have found that operational excellence is derived from a culture of trust and cooperation. Management provides the leadership and the resources to support safety and employees plan and perform their work by being knowledgeable about the potential hazards and take action to eliminate or mitigate those hazards. Employers with good safety records encourage their employees to “stop work” in the event that an unsafe condition is observed and take action to correct the condition and eliminate the hazard. Such organizations routinely perform their work safely, securely, and with high quality because they have established a cultural expectation of operational excellence. A common thread in such organizations is a culture of continuous improvement in which work processes are routinely improved and optimized. By comparison, VPP provides a framework for building cooperative relationships between labor and management to improve the health and safety performance of an organization. VPP and quality management tools and techniques

are complimentary and assist organizations achieve two common goals of any business enterprise. The first goal is to perform high quality work, which means that the workplace will be free of health and safety hazards or identified hazards are controlled. The second goal is to execute work to produce high quality products and services that are valued by customers.

- Question: *Do you support the Administration's request to appropriate no funds and no staff to VPP in FY2011?*

Response: While I understand OSHA's priority of increasing enforcement, I do not support moving the \$3M of funding of a program that is designed to create a positive safety culture in which labor and management collaborate to identify and eliminate health and safety hazards.