



Testimony

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**Before the Subcommittee on Employment and Workplace Safety;
Committee on Health, Education, Labor and Pensions;
United States Senate**

**Hearing – “Introducing Meaningful Incentives for Safe Workplaces and
Meaningful Roles for Victims and Families”**

April 28, 2009

Madam Chair and members of the Subcommittee:

Thank you for the opportunity to appear before you this morning to discuss the Union’s response to workplace fatalities and severe injuries. This issue is extremely important to me and to the United Steelworkers’ officers, staff, our thousands of health and safety activists, and the Union’s membership generally. My name is Jim Frederick. I am a member of the United Steelworkers, and the assistant director of the Union’s Health, Safety and Environment Department in Pittsburgh, Pennsylvania. I have spent my 19 year career identifying and addressing workplace health and safety hazards and responding to worker deaths, injuries and illnesses. Over the course of my career, I have personally investigated dozens of fatalities and have overseen the investigation of hundreds of fatal and catastrophic injuries.

The USW represents workers in a diverse set of industries and occupations. They manufacture steel, slurry and smelt aluminum, mine for iron ore and create cement. They make glass and mattresses, produce paper and paper products, craft energy-saving wind turbines that help save our Earth, and toil as nurses and nurses' aides helping to save lives. We represent the rubber workers who make your tires; metal workers who make the materials that go into buildings, homes, automobiles, planes and roads. Our members serve you at banks, assist you in retail stores, drive school busses and work at universities. You will find our members working in oil refineries, utility companies, and chemical plants. We represent workers in the public sector in town libraries and water treatment plants. Our members log forests. In total, the USW represents 1.2 million active and retired members in the United States, Canada and the Caribbean.

Safety Incentives

The title of this hearing is "Introducing Meaningful Incentives for Safe Workplaces and Meaningful Roles for Victims and Families." I will spend my time discussing the role of victims and families in accident and fatality investigations; however, I want to mention the concern raised by the connotation of incentives in workplace safety and health from the perspective of workers and unions.

The USW recognizes that the incentive reference in today's hearing as it relates to the legislation before the Subcommittee deals with increased penalties and other provisions to improve workplace safety and streamline the role of OSHA in protecting workers and workplaces. However, we want to make a distinction between "incentives" used in the title of this important hearing, and the problematic way in which a growing number of employers link "incentives" to "safety" in their version of "safety incentive programs," because these are, in fact, incentives to underreport workplace injuries and illnesses.

Workers and Unions in every sector of the economy are struggling with employer-implemented programs, policies and practices that discourage the reporting of workplace injuries and illness. Employers' "safety incentive programs" provide prizes or rewards to individuals or workplace groups based on the absence of reported injuries and illnesses. Last year, Congressman George Miller, Chair of U.S. House of Representatives' Committee on Education and Labor, convened a hearing and released a report titled "Hidden Tragedy: Underreporting of Workplace Injuries and Illnesses" which documented that up to 70% of job injuries and illnesses go unrecorded. The report presented four employer "incentives" to underreport workplace injuries and illnesses: low injury/illness rates decrease the chance of having an OSHA inspection; they decrease workers' compensation claims; they can earn businesses and supervisors bonuses; and, they look good to customers and the public.

Our goal in occupational health and safety is to create safe workplaces and prevent workplace injuries, illnesses and death. Unsafe workplace conditions that put our members' health and lives at risk are identified in many ways, including injury reports and subsequent incident investigations. When injuries are not reported, unsafe conditions go unchecked. As a result, the unsafe condition or hazard remains in the workplace, threatening the health, limbs or lives of others. I have personally investigated a steelworker workplace fatality where a co-worker of the victim explained that if he would have only reported the minor injury that he received from the same process, perhaps the hazard would have been addressed and his co-worker and friend would still be alive. This workplace had a safety "incentive" program that rewarded the group of workers in the area each month if none of them reported an injury. These kinds of employer-implemented safety "incentives" are the opposite of the incentives being promoted today; the two should never be confused.

USW Fatality Experience and Victim Assistance to OSHA Inspection Process

On Friday, April 18, 2008, a USW member named Roger said goodbye to his wife and went to work like he had done almost every day for the past 41 years. His plant had seen its ups and downs, bankruptcy, buyout and new ownership. He had been laid off, lost his job when the plant went out of business, lost much of his retirement and rehired in recent years. His co-workers described him as an extremely capable, conscientious, and competent maintenance person.

He and his crew had performed maintenance on a piece of equipment that he had helped to install and maintain over the years. He knew this piece of equipment well. He walked past the machine many times to get to the shop. The plant maintenance staff had been reduced at the plant and the job classifications combined.

Through a miscommunication, Brother Roger returned to check on the equipment while it was operating in manual mode because the machine didn't sound like it was running correctly. While he was checking the equipment it was placed into automatic mode. When the machine started running, Brother Roger's head was crushed in the equipment due to a missing machine safeguard.

The employer, OSHA and the USW all investigated the fatality. OSHA eventually issued four citations and proposed a penalty of \$13,375. OSHA then met in conference with the employer, dropped one of the citations and reduced the penalty to about \$6,375. Through the course of our investigation and the OSHA investigation process, the USW contacted Roger's family, but the family did not receive information from OSHA except for a perfunctory letter from Washington, asking the family to accept OSHA's sincerest sympathy in the tragic death of Roger. The family cared about the OSHA investigation, but was not afforded an opportunity to participate in the process. This scenario is, unfortunately, typical of OSHA's practice today. But it doesn't have to be the norm. OSHA's Compliance Directive for fatality investigations (CPL 02-00-137)

states, “Whenever practical, contact family members of employees involved in fatal or catastrophic occupational accidents or illnesses at an early point in the investigation and give the family an opportunity to discuss the circumstances of the accident or illness.” The Protecting America’s Workers Act will codify this guideline, making it a mandatory part of the investigation.

The USW usually receives notification of USW members killed at work within hours of the accident. The USW responds to every member fatality and many serious injuries each year. We respond as quickly as possible; 24-hours a day and every day of the year. We also respond to non-member fatalities (contractors, managers, etc.) in USW-represented facilities, when our members are exposed to the same or similar hazards.

The USW response is two fold. First, a member of the Health, Safety and Environment department responds to assist the Local Union, regulator and others investigating the accident. Most of the time, this involves immediate travel to the site to participate in the investigation. Our role is to identify root causal factors; serve as an advocate for the victim, co-workers, and Local Union; and, to assist the Local Union in advocating for the changes needed to prevent such a tragedy from happening again. Second, a member of the USW Emergency Response Team (ERT) is dispatched to act as a liaison between the victim and/or their family, the Local Union, and the employer. The ERT staff also provides the family with access to support and services from the USW Local Union, International Union and other sources. Finally, ERT staff facilitates counseling and assistance for witnesses and co-workers to assist them in dealing with their own emotional trauma. Both elements of the response – accident investigation and family/co-worker support and assistance - are equally important to the process and aid us in correcting the hazards at the workplace that caused the incident and sharing the information about the incident, hazards and causal factors to the broader USW

membership, other workers, employers and others so that we can prevent future tragedies and catastrophes.

When the USW team arrives at the Local Union hall we evaluate the facts available. The team recognizes that there are three sets of victims; the injured or deceased member(s), the co-workers or witnesses, and the family members of those involved. We recognize that each has much to offer to the investigation process. In some instances, valuable information about a faulty piece of equipment or bad process has been shared between an accident victim and their co-workers or family. Although there are inherent challenges with obtaining information from any person, the information from co-workers and sometimes family members is often crucial to the Union's investigation. The USW investigation and response process provides us with a framework to obtain information from these valuable sources.

It is impossible to express the extent and the depth of the loss that a family experiences when a loved one is killed at work. The emotions involved are immense. In some cases, involvement by the family in the OSHA process provides an outlet for the family members to address some measure of these emotions and understand how and why their loved one was killed, and to heal. The first question almost always asked by the family is, "What happened to my loved one?" They have very little access to information and sometimes hear directly or indirectly from the employer that their loved one was at fault.

When our members die at work, they are almost always single incidents involving one member. Major catastrophes involving many workers occur occasionally, such as the explosion at BP Texas City, Texas in 2005 killing 15 and injuring more than 170. These large events are documented on the evening news, but the single fatalities tend to be unnoticed beyond the local media. Few people beyond the workplace recognize the extent of worker fatalities. For the industries covered by the Occupational Safety

and Health Act, OSHA provides a consistent thread in the investigation of fatalities and the Protecting America's Workers Act will add support to victims and their families.

The USW Health, Safety and Environment Department spends most of our time working with our Local Unions to establish and maintain workplace effective health and safety programs, active safety committees, and to prevent injuries and illnesses. We provide a variety of assistance including training to our members and for joint labor-management groups. However, the USW experiences a member killed at work at a frequency of one every nine days in workplaces that we represent. Most of these fatalities are in workplaces covered by OSHA and usually the fatality involves a recognizable workplace hazard. The Union's experience of fatalities over the past several years is summarized in the following table:

Year	USW Member Workplace Fatalities
2004	47
2005	44
2006	38
2007	44
2008	43
2009 ¹	8

However, this does not tell the whole story. We believe that we receive notice of almost every member of the USW Union killed at work, but we rarely receive information on member deaths from occupational disease. Occupational disease deaths often occur after retirement; many are not recognized as work related. Although some programs exist to address occupational disease, such as the US Department of Energy's Former Worker Program, the vast majority of occupational disease is not properly

¹ 2009 USW member fatality number through April 20, 2009

counted. We recognize that for every member killed at work in a traumatic injury, that eight to ten members will die from occupational disease. In other words, a USW member or retiree dies from work related hazards daily.

The Protecting America's Workers Act will provide an important link for injured workers and families of workers killed on the job to meet with OSHA regarding the inspection or investigation conducted and to ensure that the Agency and family understands everything they can about the circumstances of the accident. Before OSHA determines that no citation needs to be issued, the victim, their family and the Union must have the opportunity to provide OSHA with relevant details to ensure that the Agency is working with all the facts.

The proposed Protecting America's Workers Act will also provide victims, their families and Unions with access to the citations issued in a timely manner. Currently, many serious injury and fatality inspections take place and neither the Local Union nor the International Union receives copies of citations in a timely fashion, and sometimes the Union does not receive them at all. Even in those cases where the Area OSHA office and/or the OSHA state plan regulator provide copies of the citations to the Union or the family, they are often received after-the-fact, and not in time for effective participation in the process. The victim, their family and the Union should receive copies of the citations at the same time as the employer. Given the technology available today, the Union can facilitate communication between OSHA and the family, in organized workplaces.

The Next Steps

Madam Chair, you and your Subcommittee have a unique and important opportunity. By taking the lead in advocating for expanded rights of injured workers and their families in the OSHA process, you can ensure that the voices of workers and family members who have much to contribute will be included in the deliberations of an

OSHA inspection, thus ensuring the Agency's better implementation of the intentions of the Occupational Safety and Health Act of 1970.

Thank you again for the opportunity to testify this morning.