

TESTIMONY

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before the

Committee on Education and Labor
Subcommittee on Workforce Protections Hearing

“Is OSHA Failing to Adequately Enforce Construction Safety Rules?”

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Mr. Chairman and distinguished members of this Committee, I want to thank you for providing me with the opportunity to appear before you today to address the very important issue of worker safety and health in the construction industry.

My name is Mark Ayers, and I am the president of the Building and Construction Trades Department of the AFL-CIO. I am a 36 year member of the IBEW, the International Brotherhood of Electrical Workers, and have served in various leadership positions prior to being elected as president of the Building Trades Department last year.

My organization, which I will refer to as “the Department”, is composed of 13 international/national unions representing 2.5 million construction workers in the United States and Canada. The Department and its affiliated unions have a long history of improving working conditions for construction workers – both union and non-union alike. In fact, many of our organizations were founded over 100 years ago for that very purpose.

INTRODUCTION

I am here today to address the safety and health of all construction workers in this country: union and non-union alike. All of these workers enjoy the right, under federal and state law, to a safe and healthful workplace. Yet, many continue to die, incur injuries, and/or become ill due to exposure to dangerous substances on the job. You have convened this hearing because of the critical point at which we find ourselves in today. We appreciate your concern. After 20 years of steady improvement in construction safety and health, we suddenly find ourselves in the midst of a safety and health crisis.

While the safety and health of construction workers has long been a priority of the Department, it's the alarming number of construction worker deaths that have occurred in Las Vegas – 12 workers have died in just 16 months- that brings us here today. These deaths, along with the dramatic collapse of two tower cranes in New York City and other recent crane incidents in cities across the nation that have killed and injured construction workers, bystanders and even first responders, have drawn the media's attention to the dangerous nature of construction work.

Of course, this is not a new subject for those of us in the building trades. While we mourn the loss of every one of these workers, we know that by the end of this day, another four construction workers may lose their lives. And tomorrow, another two. And the next day, maybe six.

We know this because an average of four workers are killed every day on U.S. construction sites. Yes, in our nation we lose, on average, four construction workers a day, some 1,200 to 1,500 workers each year. That's 10 times the number of fire fighters who are killed each year, 10 times the number of law enforcement officers killed in the line of duty each year, and 20 times the number of miners who are killed each year. And, for every worker killed, several hundred workers are seriously injured. If the carnage that takes place in the construction industry happened in any other industry there would be a national outcry. Yet, the only way we seem to be able to get attention to this huge problem is when a crisis hits, like the one we are faced with now. Think about it. It is an absolute outrage.

Construction worker deaths usually do not get front-page coverage. For the most part, they are usually single incidents – like an electrocution in New Jersey, a fall in Texas, a trench collapse in South Carolina, or a bulldozer rolling over on its operator in California. But let me tell you, they don't go unnoticed by other workers in the construction community. We know what it's like to lose a friend, and to see his or her family suffer.

In 2006, 1,239 construction workers were killed on the job, or died as a result of their injuries. Construction workers make up only 8 percent of the U.S. workforce, but account for more than 22 percent of all work-related deaths.

In 2006, according to BLS reports, 412,900 construction workers experienced injury or illness, of which 153,200 cases were serious enough to require days away from work. However, recent studies show the BLS survey may miss half to two-thirds of all injuries due to underreporting. Moreover, the misclassification of workers as independent contractors means many more injuries are unaccounted for, since self-employed workers aren't covered by OSHA or the BLS survey.

Less than 2.5 percent of the cases are from a work-related illness, but please don't let this low percentage fool you. Unfortunately, hundreds or even thousands of construction workers are being exposed at this very moment to an array of substances, such as asbestos, hexavalent chromium and silica, to name a few, that will cause disease years from now.

The sad fact is that we as an industry and as a nation really have no idea how many construction workers die each day from disease resulting from job site exposures. Moreover, family members, including children, have often been exposed to these harmful substances as well.

Those of us intimately involved in construction safety and health know that these deaths, injuries and illnesses are, by and large, all preventable. The outrageous number of fatalities in Las Vegas combined with crane incidents in New York and elsewhere has brought attention to the issue. Now that we have the attention of the media, the public, and, most importantly, the United States Congress, it's time that we talk about the construction industry as a whole and what needs to be done about it.

DESCRIBING THE PROBLEMS

Workers falling to their deaths in the construction industry are not unique to the Vegas strip. Falls are the leading cause of death in our industry. They make up about one-third of all construction deaths. Fatal falls from rooftops are the most common, followed by falls from scaffolding and ladders. Fatal falls from girders, attributed to some of the deaths in Las Vegas, make up only 8 percent of fall fatalities.

Workers who walk the iron have the highest rate of death among all other occupations in construction. Fortunately, due to a focused effort by all industry partners, death rates during steel erection have steadily declined over the years. That is a positive example of what can be done to improve safety and health conditions when there is a firm commitment to it.

It was the Department's commitment to improving safety and health conditions in the construction industry that almost 20 years ago led it to create our own non-for-profit institute-CPWR: The Center for Construction Research and Training. CPWR is nationally, and even internationally, recognized as a leading organization in the field on construction safety and health research and training. Through its partnerships with NIOSH, NIEHS, and DOE, CPWR has developed an impressive network of over 30 collaborating organizations, including universities, as part of its national construction safety and health research and training center. Since 1990, the CPWR has been a major participant in the NIOSH construction initiative.

CPWR currently has over 25 construction safety and health research projects underway, mostly involving development of specific interventions for hazards, such as falls and electrocutions. CPWR has developed and delivers an array of construction safety and health training courses to thousands of construction workers every year. CPWR also publishes the Construction Chart Book, now in its 4th edition, a copy of which will be submitted with my written statement. The Chart Book compiles everything there is to know about the U.S. construction industry and its workers based on the national data available to us. It goes into great depth about what we know about construction industry fatalities, injuries, illnesses, and hazards.

As president of the Department, I also serve as president of CPWR. I'm extremely proud of the accomplishments of CPWR over the years. It's one of the most successful public-private partnerships in the construction industry, or any industry for that matter when it comes to occupational safety and health. The National Academy of Sciences reviewed the NIOSH construction program last year. While the Academy's final report has not yet been released, I'm confident that it will point to CPWR's national construction center as a key element of the NIOSH construction research program.

Through the work of CPWR and others we have *characterized the problem* and advanced the *state of knowledge* about construction safety and health significantly over the last two decades. In areas where we have had special emphasis efforts, such as preventing falls and electrocutions, we have seen significant progress over the past 20 years. Unfortunately, that progress is now beginning to be reversed.

Why is the progress being reversed? Research entities can produce useful information, and unions can push for, and even bargain for safety and health provisions as part of the collective bargaining, but both as a legal and practical matter, employers are ultimately responsible for the safety and health of employees, and Occupational Safety & Health Administration (OSHA) is responsible for enforcing construction safety and health laws. In our opinion, both are failing us at this time.

RECOMMENDATIONS

In our opinion, five major actions are urgently needed at this time:

1. We need an OSHA temporary emergency standard requiring that all workers in the industry are trained and certified in accordance with the basic 10-hour OSHA safety and health training program.
2. We need OSHA to promulgate a crane safety standard.
3. OSHA needs to increase enforcement activities.

4. We need a dedicated Construction Occupational Safety and Health Administration, just like we have a dedicated Mine Safety and Health Administration.
5. We need to increase NIOSH's funding for construction safety and health research consistent with the recommendations of the soon-to-be-released National Academies Review.

Two weeks ago over 6,000 construction workers walked off the Las Vegas City Center project after the sixth construction fatality. In negotiations between the general contractor and local construction unions, it was agreed that CPWR would put in place a system to train all site workers at City Center, and the adjacent Cosmopolitan project, in the OSHA 10-hour training program. Our estimate is that approximately two-thirds of the workers on both sites, or roughly 5,000 workers, have not had the basic OSHA 10-hour hazard awareness training. Why? The basic training is voluntary and until now, the contractors did not require it on the site.

This is not unique to these two projects in Vegas, and it brings me to my first point about what needs to be done as a general rule in the construction industry. OSHA needs to promulgate a construction training standard, making it mandatory for every construction worker to have, at a minimum, the basic 10-hour safety and health hazardous awareness training. We've seen several states enact legislation requiring this training, and it's time a rule is enacted at the national level. Surely, requiring that workers engaged in this very hazardous industry have basic safety and health training is not asking for too much.

We also need to take serious steps to change the safety and health culture on construction sites, so everyone participating in the construction process—from the owner to the general contractor and subcontractors to the workers—understands the premium placed on working safely. As a first step in achieving this objective, we call on OSHA to require every construction project to have a written safety program and plan that clearly spells out the safety and health requirements of the site, the respective roles of the OWNER, contractors, subcontractors and employees, and the systems for identifying and minimizing hazards.

Also on the issue of standards, in 2004, a group of labor, industry, and government safety and health professionals reached a consensus on a standard for crane and derrick safety in the construction industry. After four years, OSHA has indicated its plans to publish the standard for public comment in August 2008. OSHA must live up to this commitment, promulgate a final rule, and enforce the new standard.

OSHA enforcement is particularly problematic in construction, due to the transient nature of our industry. About 80% of U.S. construction industry employers have 10 employees or fewer, and over 2 million workers in the U.S. construction industry are classified, or should I say misclassified, as self-employed or independent contractors. OSHA needs to be more innovative in its targeted enforcement activities; compliance operations need to be focused on those issues and violations that are known killers in the construction industry; OSHA needs to redirect the resources allocated to compliance assistance and alliances to enforcement; and OSHA penalties for serious and willful violations need to be enhanced so that there are serious consequences for serious violations of the law, particularly in cases of worker fatalities.

Although there is value in forming partnerships to encourage workplace safety, in my estimation the extensive resources OSHA has devoted to alliances simply means the agency is spending its money on contractors that are already performing at a relatively high level, rather than reaching those medium to small employers that are willingly or unwillingly putting their workers in harms way.

According to 2006 data there were a total of 876,229 construction establishments in the U.S. In 2007 OSHA data indicates there were 49,666 construction inspections (combining Federal OSHA and State Plans), meaning that it would take OSHA an average of 17.6 years to inspect each construction establishment once. I don't know of many construction projects that last 17.6 years, and I venture to guess that there are thousands of employers in our industry that will never see an OSHA compliance officer.

One has to ask what good are construction industry standards if they are not enforced. Funding is certainly a critical issue, and the Department has long been a proponent of OSHA's budget. However, I am of the mind that, no matter how much funding is appropriated, our current system may simply not work for this industry. I'm sure there are members of this Committee more familiar with the legislative history than I am, but I think we should explore the need for a dedicated Construction Occupational Safety and Health Administration, just like we have a dedicated Mine Safety and Health Administration. In the short term, we need a stronger Construction Directorate Office within OSHA, one that is willing to work with all industry stakeholders, and not just with a selected few.

From before the OSHAct, it has been recognized that the construction industry is different from other industries in many critical aspects. It is very large, and it is very transient and mobile. The worksites are temporary, with many different employers and trades working on them simultaneously. The recognition of the need for special OSHA approaches for this industry also goes back a long way. The Secretary of Labor's Advisory Committee on Construction Safety and Health existed before the OSHAct and was continued after OSHA to make sure that OSHA's rules were responsive to the needs of the industry. In 1994, OSHA established a dedicated Directorate of Construction to make its operations more attuned to the needs of the industry. Both of these have been valuable resources, but they are not enough.

The Building Trades Department and CPWR are committed to improving safety and health conditions for all construction workers. We will continue to develop joint safety and health initiatives with our employers, associations, and owners. We have enjoyed a longstanding partnership with NIOSH, and we have made tremendous strides. Congress needs to increase NIOSH funding for construction safety and health research consistent with the recommendations of the soon-to-be-released National Academies Review.

Twenty years ago there was no research being performed on construction safety and health. Congress corrected that and began to dedicate funding for construction safety and health research at the National Institute for Occupational Safety and Health. By 1995 the budget had increased to \$12.1 million, which has remained unchanged in 13 years thereafter. As a consequence, the amount of funding available after adjusting of inflation has significantly eroded the funding. It is today equal to \$1 per construction industry worker. That does not say much for the priority that Congress places on construction safety and health.

While it's not our responsibility under the law, it's our obligation as trade unionists and industry leaders to make sure construction workers' rights to a safe and healthy workplace are honored. We can do better. We have to do better.

Again, I greatly appreciate the opportunity to appear before you today.

Thank you, and thank you for your interest in construction safety and health.