

Testimony of

A.C. SPAN

Before

The House Committee on Education and Labor

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Regarding

“Hidden Tragedy: Underreporting of Workplace Injuries and Illnesses”

Thank you Chairman Miller, Representative McKeon, and Members of the Committee for holding this hearing and for the opportunity to testify. My name is A.C. Span and it is indeed an honor to be here in Washington for my first time and to testify today at this important hearing. Less than a year ago, I moved to Arizona and after hearing about what a great place it was to work, applied and accepted a job at Bashas’ Distribution Center in Chandler, Arizona. It was clear to me almost instantly that there are serious safety and health problems at that Center and I am here today to tell you about my experience working for Bashas’.

Prior to moving to Arizona, I lived in Chicago, Illinois and worked as a house builder. I was a proud member of Teamster Local 222. Then last summer, I moved with my wife to Phoenix, Arizona. Given the good things I had heard about the Arizona based grocery store chain - Bashas’, and how hard it was to get a job with them, I was pleased when I was offered a job as a baler in the Distribution Center. I couldn’t wait to be “part of the Bashas’ family.” I had only been on the job for six months before I was terminated for advocating for improved workplace safety and for forming a union, which I will talk about later. I now work for the Association of Community Organizations for Reform Now (ACORN), which is a grassroots organization of low- and moderate-income people.

I started work as a baler on August 8th of last year. I joined approximately 800 workers at the warehouse distribution center. The Distribution Center distributes food and merchandise to more than 166 grocery stores primarily located throughout Arizona. Although I had been well trained to be a house builder, I did not receive any formal training to prepare me for the work I would do at the Center. I believe I was partially hired because of my experience building houses. Yet, as a baler, I was responsible for loading and unloading trucks going to and coming from the stores, sorting pallets, cleaning the ice cream totes and flattening and shredding cardboard boxes. This was much different work with much different skills than building houses. This work involved operating heavy equipment, lifting, pulling and pushing crates and cleaning totes with chemicals and disinfectants.

Before I go into some specific details of injuries at the Center and what is and isn't reported, it is important to give you some background about the company. There are seven key factors -

First, new employees do not have any medical insurance until their sixth month anniversary.

Second, new employees get very limited training when they start work. I noticed early on that the lack of training and required speeds to do the work created a very unsafe work environment. I, along with my coworkers in the balers department, work on and with heavy equipment without any real training. Most are given only about 10 minutes of driving practice on the forklifts and pallet jacks through cones in a clear and uncluttered area, not at all like real the real work area at the Center, which has trash and pallets all over. The forklifts and pallet jacks can weigh 5-10 tons each. When I worked there, much of this equipment was in bad condition with brakes that didn't work properly. There were dock plates that were bent or damaged and many of the storage racks were loose and swayed. Plus, the ladders around the balers were often broken and unsafe. The combination of all these problems, most of which still exist, created an environment where workers could and would get injured. Without proper training, maintenance,

repair and protective equipment and clothing, accidents and injuries are just waiting to happen.

In addition, typically the warehouse floors are covered with nails, broken straps, broken wood and broken bottles, which cause the floors to be slippery and dangerous. There are protruding nails from broken pallets and dust everywhere. Most workers wear sneakers which do not protect us from injuries. We also do not have any eye protection, ear plugs, gloves, etc. to prevent injuries from any of these common hazards.

In another part of the Center, "Order Selectors," drive forklifts to collect orders for stores. They are given strict time limits to finish an order and are expected to finish one complete order within the time limit. They are penalized with points if they do not finish the order in time. The selectors fly down the aisles jumping on and off the lifts getting the orders together. I saw a man lose his toe when a machine ran over his foot. People get run over all the time because of the haste in filling orders. Workers frequently get hurts because of the speed and the badly maintained forklifts. However, Bashas' routinely blames the workers for causing their injuries.

Third, Bashas' has a point system that penalizes workers for absences and tardiness by giving them points. While workers are not supposed to get points for time lost for industrial injury, there are many examples of workers who take time off for work related injuries and then get points. Workers who get 16 points in a year are terminated. Typically you are given two points per missed day. Workers who don't maintain 100% of the expected standard for selecting orders get points. So, it is easy for the points to add up. In my case, receiving points for taking time off for a work related injury could have been a potential violation of the Family and Medical Leave Act.

Fourth, if an employee's injury is severe enough that he or she cannot return to the regular job, the worker is put on "light duty." Although that sounds reasonable, the company actually drops your pay to minimum wage when you are on light duty. So, if you normally make \$19-20 an hour, your pay is cut by more than a one third to minimum

wage. Few workers can afford that kind of pay cut, especially when they are also faced with medical bills. This kind of cut is punishment for getting injured on the job.

Fifth, Bashas' has a policy that workers who get injured or report an injury have to be drug tested.

Sixth, workers are directed to go to the company doctor and not their own personal doctor. The Bashas' doctors may send you back to work, even if you are not physically ready to go back to work and regardless of your medical condition. The Bashas' doctor also determines if you need to go on light duty and when you can come off of it.

Finally, the company holds monthly raffles. If your department has not had any injuries reported for the month, the entire department is eligible for the raffle. If one person reports an injury, the entire department is ineligible. The prizes include coupons for dinner, Ipods, gameboys, etc. Everyone loves winning and there is great peer pressure to keep injuries quiet so you can participate in the raffle.

All these things create an atmosphere where workers do not want to report injuries. I have actually seen workers limping around rather than report an injury. Reporting illnesses or injuries can cause you to be unpopular with your co-workers, get disciplinary points, have your salary reduced and ultimately lose your job. Why take the chance? Most workers don't want to and end up staying silent about injuries.

My injury occurred about three months into the job. One of my jobs was to unload trucks filled with empty palettes and product returned from stores. The trucks are usually quickly loaded with contents shifting during the drive to the Center. This truck had been sitting on the lot for awhile. When I lifted the back door of the trailer, a large pile of dust came out and went into my eye since I did not have safety glasses. My supervisor, who was standing next to me, advised me to go and wash off my face and eye. I then returned to work. When I woke up the following day, my eye was glued together and the size of a baseball. Since I was already scheduled to have two days off, I went straight to my

doctor. I preferred to go to my doctor since I have diabetes and high blood pressure and want to make sure that those conditions are taken into consideration for any treatment. After being examined, my doctor told me I had a contagious eye infection and took me off work for an additional two days. He gave me medication for my eye and a letter saying I should allow my eye to heal and not operate heavy equipment. Because I had no medical insurance through Bashas', my visit was an out-of-pocket expense for me.

Three days later I returned to work still putting medication in my eye. I had called the company about five hours before I was supposed to return to let them know that I had been injured. I was told to bring in documentation but when I arrived with the letter, the plant manager commented that my "eye was still messed up." He started to make noise about how I had not reported my injury but my supervisor who had been there when I got injured told him he was a witness. This annoyed the manager. I think he had wanted to make it clear that this had not been a work injury but with the support of the supervisor, that was not possible.

The manager then told me he would need to take points off for my missed days. I said that this was a work related injury and that I had a doctor's note so I shouldn't get points. I was told that it was the company's rule to deduct points and that I would get two points for the days off. I told him again I didn't think any points should be taken off and he said that "two points ain't going to hurt you." Workers should not be penalized for taking time off to recover from a work injury. I returned to work to clean out ice cream totes, stack pallets with a forklift and run to the freezer – with my eye still swollen. My injury was never covered under worker's compensation.

Besides my own injury, working at Bashas' gave me a first hand look at workers in the Distribution Center and I have seen workers with broken fingers and toes. One of my co-workers had a toe cut off and passed out on the floor. We watched managers debate whether they should actually call 911. I have seen countless workers injured by getting hit by equipment. I have seen workers with broken limbs and with toes cut off. I have watched them struggle between reporting the injury and just working with it. I saw one

worker actually tape his coworker's broken finger so he could return to work. I have seen the great efforts of my co-workers to hide injuries rather than report them. I have seen workers come to work with the flu rather than face taking time off and getting points.

This is horrible no matter where it occurs but I'd like to remind you that this is happening in a food facility. We are moving and lifting food that is heading to grocery stores and then being purchased by consumers. Not reporting these injuries and illnesses and working despite them, is bad for the worker and bad for the consumer.

Shortly after I started working at Bashas', I saw the serious problems at the Center. Along with a couple dozen of my coworkers in the baling department, we started talking about the problems and decided the best way to improve workplace safety would be to form a union. We did not let the company's anti-union attitude – an attitude that resulted in 85 allegations of workers' rights violations – deter us and we began to act like a union to address our safety concerns. We drafted a petition that highlighted the unsafe conditions and how fearful workers were to report injuries. We approached management three times requesting specific hazards be corrected as well as for a joint safety committee to be formed. We proposed that the committee be made up of management representatives and hourly workers to address on a regular and formal basis safety and health concerns that arose in the warehouse.

We tried three times to meet as a group with a Bashas' management team but the door was always closed in our face. Bashas' would only agree to meet one-on-one and not as a group. With no luck with the company, we eventually contacted the Arizona Division of the Occupational Safety and Health Administration and filed a complaint. Seventeen workers signed onto the complaint. An additional 70 workers signed the original petition. Like the company, OSHA never contacted any of the workers who filed the complaint. They did examine the warehouse, found some violations and cited the company. They mainly focused on the ventilation system in the battery room.

I think it is important to tell you my impressions about when OSHA came for inspections. What was really interesting is that the company always seemed to know when OSHA was coming in for inspections. Things were quickly repaired, fixed, cleaned – hours before the OSHA representatives arrived. Once we were all told not to get on any forklift while they were there inspecting. We were told not to do anything until they left. So we spent the day sweeping and cleaning. No production was done that day. It made me wonder what OSHA was thinking when they didn't see anyone actually working during the inspection but the company was never questioned.

We also tried to designate workers who could represent us for the OSHA inspections. We picked workers who worked in the Distribution Center, making sure we had workers who could tell the OSHA inspectors our side of the story and what was really happening at the Center. We put their names on the complaint form but OSHA ignored the request to speak to these workers. Instead, when OSHA made the inspections, they only talked to workers on a list provided by the company. In the end, while OSHA solved a few things, they did not fix everything and the company was never fined.

Within two weeks of OSHA issuing the citations, the company announced that they planned to make major changes in the baling department by outsourcing the jobs. In the end, 29 of us lost our jobs as balers. Some were transferred to other jobs but most of us lost our jobs at Bashas' – simply for standing up for our rights. On the day I was fired, I was simply told that the company did not need me anymore and that there were no other jobs available to me at Bashas'.

We were called troublemakers and told we had bad attitudes. They were cleaning house of those workers who were outspoken. The message was clear – don't report, don't talk, just keep your mouth shut or else. Our goal all along was to make the workplace safer – both in terms of safety and health – but also to make the workers feel safe reporting problems and injuries. We were just trying to exercise our constitutional rights. All workers should have safe working conditions.

I was raised by my parents to speak my mind. If I am wrong, I'll admit it. But, it is my God given right as well as my constitutional right to protect myself and stand up when I see a problem. It is also my right to work in a safe environment. That was not the case at Bashas' and I stood up for myself and my co-workers. Even though I am not there anymore, I know there are still problems. Yes, the company fixed the ventilation system in the battery room, but there has been no increased training; the point system still exists, workers are still paid minimum wage on light duty, and workers are still rushed to get orders completed. These are things that need to change – not only to make the work safer but to provide workers with a safe environment to come forward and report injuries. Bashas' may think this Center is “state of the art,” but I know what happens to the workers inside.

I believe major changes need to be made by Bashas' to correct the serious safety and health problems that hurt workers everyday. My former employer needs to do more to protect workers and allow them to report injuries without repercussions. I think it is time for the government to examine the problem with under-reporting and I am glad you are holding this hearing today.

Thank you again for the opportunity to testify and tell you my story. Bashas' says it is dedicated to serving Arizona families but I know first hand that this commitment does not include their workers or the workers' families. It is time that the company and the government do what they can to truly serve and protect all Arizona families. I urge you to use the power of your offices to help the workers by protecting our safety and health at work. Again, thank you for your time and I would be pleased to answer any questions that you may have.