

Legislators Take the Offensive Against Cal-OSHA Dismantling

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SACRAMENTO — The chairman of a state legislative committee investigating employers' appeals of worker safety violations said Tuesday that more than two-thirds of recently appealed cases were dropped or settled "for ridiculously small amounts."

Legislators have been highly critical of Gov. George Deukmejian's controversial dismantling of the state Division of Occupational Safety and Health (Cal-OSHA), and Tuesday's hearing before the Assembly Labor and Employment Committee added evidence that worker safety has been compromised by the cut-backs.

The cuts were effective July 1, when all but public sector enforcement — a minor part of Cal-OSHA's responsibilities — was turned over to the U.S. Department of Labor. That agency enforces federal safety standards, generally regarded as less stringent than California's.

In October the Third District Court of Appeal criticized the governor's action and ordered the program reinstated. Deukmejian has appealed that ruling to the California Supreme Court.

Assemblyman Richard Floyd, D-Lawndale, chairman of the committee and a strident critic of the governor's action, said 200 cases identified as dropped or settled for unreasonably low amounts go back to 1982 and "involve worker

deaths, mutilations, multiple injuries and repeated, serious safety violations."

Floyd said the state Department of Industrial Relations, which oversees what remains of Cal-OSHA, has said the reduction in Cal-OSHA legal support personnel probably would not damage cases still on appeal.

While state department heads grimly defended their action under intense questioning by angry legislators, local prosecutors and committee staff presented a bleak picture of bureaucratic confusion, misplaced files and serious judgemental errors.

Jeffrey Ruch, legal counsel to the committee, said 322 cases stretching back to 1982 were on appeal when the program was disbanded this year, although Deukmejian reinstated some funding to handle an ostensibly orderly disposition of pending appeals.

In a case-by-case review, Ruch said, "the overwhelming, vast majority were withdrawn. No cases were settled without compromise." In some cases, Ruch testified, settlement stipulations were written by attorneys for employers and signed by state officials.

Cal-OSHA Director Robert Stranberg and other officials said they evaluated each appeals case — including the 322 on appeal before July 1 and approximately 30 more since then — on an individual basis before deciding to reduce or eliminate fines or penalties. "We took a look at them, and determined what we thought was an appropriate recommendation," he said.

But Ruch cited several areas of concern:

- Trenching cases. "A particularly hazardous condition," Ruch said, involving collapse of an improperly supported trench, often killing or maiming workers inside. He said the state withdrew charges in a 1982 La Jolla case in which an employer appealed a \$6,300 OSHA-ordered fine. "We found no explanation," Ruch said. Overall, he said more than 10 trenching cases involving \$10,000 in fines were dropped.

- Exposure to arsenic and lead. In several cases, Ruch said, "all citations were withdrawn in the interest of amicable resolution and judicial economy."

- High-voltage wires. He cited cases in which charges were withdrawn on appeal "due to cessation of jurisdiction," and referred to federal OSHA. "Federal OSHA could not prosecute," Ruch said, "because it had no jurisdiction."

- Carcinogen exposure. He cited cases in which citations were reduced or fines substantially cut.

- Explosives. In one case reviewed, Ruch said, an employee was knocked unconscious due to inadequate protective gear in a work situation involving repeated violations by the employer, and the fine was reduced from \$3,100 to \$1,000.

Ruch also cited cases involving violation of asbestos-exposure laws and tunneling and scaffolding violations in which fines were substantially reduced or cita-

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tions withdrawn.

In one tunneling incident reviewed by the committee staff, consultant Britton McFetridge said an employee was terminated after his clothing caught fire due to inadequate machinery protection. "He was discharged because he ran out of the tunnel, which had an inadequate air supply and no fire extinguishers," McFetridge said. The employer, he added, was a repeat violator.

In one case where a worker died of chemical exposure, Stranberg said a judgment to withdraw the OSHA case was made on the basis of an incomplete file. "It is absolutely wrong, an error on our part," Stranberg told an unsympathetic committee. "When I was later advised of the magnitude of the case I

tried to stop the dismissal action but was advised that I could not."

In that case, Dr. Jon Rosenburg, chief of the Hazard Evaluation System in the state Department of Health Services, testified before the committee that the worker who died had been exposed to a highly toxic chemical in paint used to resist water damage. He was later hospitalized, Rosenburg said, and died 13 days after the exposure.

Another worker who was also exposed suffered liver damage.

Local prosecutors told of successful criminal prosecutions of OSHA-related cases in which OSHA administrators later dismissed the civil OSHA fines. In one case which was successfully prosecuted in San Joaquin County, Floyd noted, a

\$62,400 OSHA fine was "reduced to nothing."

Jan Chatten-Brown, a deputy district attorney in Los Angeles County who heads a three-attorney worker safety unit in that office, said the transition from Cal-OSHA to federal jurisdiction "is as ill-conceived as the original decision."

Chatten-Brown was strongly critical of the current appeals process in which cases are being dismissed or penalties sharply reduced. "We don't decline to prosecute burglars because they've returned the goods to the victim," she said.

Chatten-Brown said she is "very confident" that the Supreme Court will affirm the appellate court decision reinstating the program.
