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RESEARCH REPORT

Deconstructing OSHA: The Case of the Construction Industry

by Vernon Mogensen

On March 15th, 2008, workers at a construction site on East 51st Street in Manhattan were attempting to add steel sections to extend a tower crane's reach. The attempt to "jump" the crane failed and it crashed 22 stories to the ground, killing six workers and a woman in a nearby apartment building, injuring 24. On May 30th, another tower crane collapsed on East 91st Street during an attempt to secure the tower to a building with a collar; two workers were killed, and two others were injured including a bystander. In both cases, New York City's Buildings Department immediately issued stop-work orders and Mayor Michael Bloomberg held press conferences to inform the public about the hazards involved and discuss what could be done to improve crane safety.

New York City's rapid response gave the impression that crane collapses are strictly a matter of local jurisdiction. But where was the U.S. Occupational Safety and Health Administration (OSHA), whose mission is to "assure safe and healthful working conditions for working men and women"?¹ The problem of construction and crane safety is national in scope, but OSHA has been so eviscerated, and many of its functions so privatized, that it is framed as a local issue in political discourse. Indeed, the *New York Times* reporters who covered the story said the alternatives were either to enlarge

variable weather conditions, where passing vehicles or construction equipment pose a mobile threat, at heights where the risk of falls is great, on scaffolds that can collapse, by falling objects from above, in trenches that can cave in, or in confined spaces that can trap workers.

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Falls are the most common cause of death among construction workers and the second leading cause of death for all workers after highway incidents. There were 827 fatal falls in 2006, up from 770 in 2005.⁶ More than half of all fatal falls were from causes common to construction work; 22 percent involved falls from a roof, 16 percent from ladders, 11 percent from scaffolds, and 4 percent from building girders or structural steel. Many of the remaining categories also involve construction work; 9 percent from nonmoving vehicle, 8 percent from falls on the same level, 6 percent from floor, dock, or ground level, 3 percent down stairs or steps, and 20 percent were unreported, a problem that often occurs in construction work.⁷ Construction laborers have one of the highest numbers of lost workdays, a leading indicator of work hazards.⁸

The construction sector had the largest number of fatal work injuries in 2006 with 1,239 (21 percent of all fatalities), far ahead of transportation and warehousing with 860 workplace fatalities. The magnitude of the hazards of construction work is illustrated by the fact that its fatality rate of 10.9 per 100,000 employed is more than two and one-half times the fatality rate of 4.0 percent for all workers.⁹ The number of construction industry deaths went up to 1,239 in 2006 from 1,192 in 2005. According to self-reported statistics, 412, 900 workers were injured in 2006 for a rate of 5.9 workers injured per 100 in 2006, 34 percent higher than the average of 4.4 injuries for all workers.¹⁰

Small to mid-sized companies have the highest reported injury rates with companies of 11 to 49 employees having a rate of 6.7 per 100 workers, virtually the same as companies with 50 to 249 workers (6.6). The largest firms (with 1000 or more workers) are the safest with a rate of only 3.8 percent. The smallest firms (1 to 10 workers) are a close second at 4.0, but since the veracity of this data is in doubt since they don't have to report it to BLS.¹¹

Construction laborers are most likely to die on the job with 27 percent of the total in 2006, followed by ca40(pbt)-2()-10(5,)-1 -13.8 Td {c}4-1 -13.8(m)2, 91(t)-2(nu8 Td {c}44)-2((d)-750(w)2(i)-2(-2(t)-2(()-m)-20)-120(f)

Drowning OSHA in the bathtub

The influential conservative lobbyist Grover Norquist was once quoted as saying that his goal was to cut government by half in 25 years to get it down to the size where it could be “drowned in a bathtub.” His dream has already been fulfilled when it comes to OSHA. Although the federal government has grown considerably since the 1970s, OSHA has shrunk.

Three key indicators of OSHA’s strength or weakness are the number of staff/inspectors, investigations and penalties. On the first, OSHA clearly doesn’t have enough inspectors to cover all workplaces under its jurisdiction. In 1975 OSHA had 2,405 staff to cover 67.8 million workers at 3.9 million workplaces; but in 2006, there were only 2,165 OSHA staff for 133.8 million workers in 8.7 million businesses. Under the Bush administration, OSHA has put a big emphasis on voluntary compliance by business, which gives employers an incentive to avoid inspections by reporting fewer or no worker injuries. Consequently, the number of workers

Regulatory Affairs.²⁹

But two curious things happened around the Fourth of July weekend, a time when most of the government shuts down and the media is not paying close attention to the policymaking process. On July 3rd, the White House fired John Howard, the respected leader of the National Institute for Occupational Safety and Health's (NIOSH) (more on this later). Then, on Monday, July 7, after refusing to regulate for almost eight years, the Bush administration rushed to regulate when it slipped a previously unknown proposed standard onto OMB's calendar. The White House was in such a hurry to complete its Fourth of July surprise that they skipped the requirement that it first be listed twice on OSHA's semi-annual regulatory agenda. Was it a last minute change of heart to tighten safety standards? No, it was a rule to weaken the risk assessment formula that would help employers by making it more difficult for OSHA and the Mine Safety and Health Administration (MSHA) to establish and regulate safe thresholds of workers' exposure to toxins and 40(N)-1()-230(a)4(nd 369)-2(t)-th

After the March 15th collapse, Bloomberg fired his Buildings Commissioner, Patricia J. Lancaster, despite her efforts to make reforms. Besides New York, there have been major crane collapses in Las Vegas, Miami, Kansas City, and Houston this year. Why hasn't President Bush fired his OSHA administrator? For an answer we need to take a look at OSHA's crane standard. Dating back to OSHA's inception in 1971, it has never been updated despite the wealth of knowledge learned from decades of accidents and improvements in crane technology. For example, OSHA doesn't even require that crane operators be licensed, and only 15 states and 6 cities have adopted that basic requirement.⁴¹ Yet, the White House is stalling the crane and derrick standard despite the fact that business and labor groups worked together in 2004 to produce it.

The stall-the-standard strategy simply involves pushing the goal posts back every time the deadline approaches. For exr

administering NIOSH.”⁴⁶ In contrast, Foulke has carried out White House priorities to protect business interests at OSHA despite serious questions raised about his failure to protect construction workers’ safety. Unlike Howard, it would be difficult, if not impossible to imagine this president firing Foulke.

Conclusion

It is imperative for our nation's health that the next president put ideology aside and support OSHA’s mission to protect worker safety and health. OSHA has never achieved its full potential in any administration, but it has reached its nadir under President Bush, who is in sync with business interests that oppose OSHA’s mission. Workers' safety has suffered as a result.

If Congress wants OSHA to carry out its mission, it must increase OSHA’s budget and legal authority. The OSHA legislation should be amended to strengthen OSHA’s power to inspect and shut down dangerous workplaces without having to go to court. The White House should stop stalling the crane and derrick standard. Workers must also be empowered to inspect and report dangerous working conditions without fear of reprisal.

⁸ *Death on the Job: The Toll of Neglect*, 17th Edition, Washington, D.C.: AFL-CIO, 2008, 4.

⁹ U.S. Bureau of Labor Statistics, 2008. "Number and rate of fatal occupational injuries, by industry sector, 2006," Washington, D.C., 13.

¹⁰ *Ibid.*, Economic News Release, "Table 1. Incidence rates of nonfatal occupational injuries and illnesses by selected industries and case types, 2006" 1. "Table 2. Numbers of nonfatal occupational injuries and illnesses by selected industries and case types, 2006" 1.

¹¹ *Ibid.*, "Table 3. Incidence rates of nonfatal occupational injuries and illnesses by major industry sector and employment size, 2006," 1.

¹² *Ibid.*, "Distribution of fatalities by selected occ()-3.01205(I)-4.34931(b)-6.0241(i)0.891628(d)-6.0241sses 126(i)0.89126(o)-6.c

editor, *Worker Safety Under Siege: Labor, Capital and the Politics of Workplace Safety in a Deregulated World*, (M.E. Sharpe, 2006), 61-71.

³¹ U.S. Department of Labor, "Requirements for DOL Agencies' Assessment of Occupational Health Risks (RIN: 1290-AA23), July 7, 2008. See also, Carol D. Leonnig, U.S. Rushes to Change Workplace Toxin Rules, *The Washington Post*, July 23, 2008, A1.