Wade L. Robison's Commentary on "Occupational Health"

Commentary On
Occupational Health

I

The case says that "OSHA guidelines do not apply to chemicals that have not been tested" and that "a relatively small percentage of chemicals in the workplace have actually been tested." OSHA guidelines presumably apply to chemicals, and only to chemicals, that have been tested somewhere or other. Otherwise a company could refuse to comply with any OSHA guidelines on the ground that it, the company, had not tested any of the chemicals. So the way to read the case is that a large percentage of the chemicals used at ABC have not ever been tested for their toxicity anywhere and that therefore they are not subject to OSHA regulations.

What this way of putting the matter brings out is that OSHA is presuming that a chemical is innocent until proven guilty. No chemical is presumed to cause health problems until it has been tested and, one supposes, shown to cause them.

One must presume that OSHA has reasons for this presumption, for clearly they could make other presumptions, even the opposite one, namely, that no chemical is presumed safe until it has been shown not to cause harm. One likely reason is that many new compounds are very helpful, that large numbers are being introduced on a continual basis, and that testing each and every one of them for their toxicity would be a very expensive undertaking and to some measure useless when it is reasonable to assume that many will never be positioned so as to cause problems. For instance, PBB was introduced into the food chain in Michigan when it was accidentally mixed in with farm feed, and no one had a clue what the source of the problem was when the animals began to sicken and die. No one had ever tested PBB for its toxic effects, and with good reason: it would never occur to anyone that a compound primarily used to insulate heat sources would ever get into the food

chain. No doubt many chemicals are like that and are never used in any manufacturing process where they are likely to cause problems.

Don Hayward's problem thus turns out to be relatively complex. Hayward cannot appeal to OSHA to prevent the workers from being harmed by hot metals, if they are, because the metals have not been tested by OSHA. So Hayward, if he pursues the matter, will be in the position of asking that ABC Manufacturing satisfy stricter guidelines than those required by OSHA.

But Hayward is supervising workers who are becoming ill, and he has an obligation, as their supervisor, to see if he can find the source of the problem. He is presumably in charge of making sure that whatever it is that the workers are producing is in fact produced, produced in the quantity needed, and when it is needed. So if the workers he supervises are becoming ill, he needs to be concerned about their health just because their ill health may prevent his section of ABC from doing what it is supposed to do. But he also ought to be concerned about some of the long-term implications of the problem for the company. If the workers are becoming ill because of the toxicity of the hot metals they work with, then, whether OSHA guidelines apply or not, the company may have to pay the costs of long-term health care. That the use of metals which cause workers harm is not regulated by OSHA will not necessarily protect the company from a legal suit and perhaps vast monetary awards from sympathetic juries. So the immediate solution of ignoring the problem, which is the implication of Cal Brundage's remark that the company is in full compliance with OSHA guidelines, may have expensive long-term consequences.

He thus has two concerns as an employee of ABC, both of which obligate him to pursue the matter. There is a third source of obligation. That is that some people are being harmed, that he is in a position to help, and that no one else who might help seems to care. The workers are being harmed. It may be that the cause is not the hot metals they are working with, but that seems the obvious first suspect. In any event, Hayward is the workers' supervisor, the one most immediately aware of the problem and, since Brundage, his supervisor, has made it clear that he is not going to pursue the matter, the one best positioned to help. He has an obligation to try to help them that comes from the obligation any of us have, as persons, to come to the aid of others in need of help when we can. This is an obligation that becomes more and more pointed the more harmed the persons are needing help, the less likely it is that they will receive help from others, the better positioned one is to give help, and so on.

The question is what should he do. He has already approached his supervisor about the air quality. He might approach him again, explaining that although having higher air quality might have the company satisfying stricter guidelines than OSHA requires, their capacity to produce the product in his section is likely to be increased. That is, he might use a practical, not a moral argument, to get his supervisor to do something. He might also point out his concerns about the long-term legal consequences, and he might give his moral concerns an airing. He need not feel at this point, that is, that he has exhausted all possible avenues of discussion with the person most likely to be most helpful, his immediate supervisor.

II

Searching the literature for something that might be helpful is another way to proceed. It is better to have some information about whether any of the hot metals may actually be causing a problem if he is to proceed. Of course, if he finds evidence that any have been tested and found to be cause health problems, he has a response to Brundage's remark that the workplace is in compliance with OSHA. It may be, but Don can then go to OSHA, point out that one of the metals not regulated has been tested and found toxic, and ask that it be regulated. Under such circumstances, ABC would be well-advised to go ahead and regulate the use of the metal in a way that would eliminate its toxic effects--either by not using it at all or by using it in a way, or under such conditions, that it could not cause harm.

The puzzle is why he has not gotten the article he has ordered. It seems odd that a supervisory engineer must get approval of his supervisor in order to have an article sent for. Why should anyone else control what one wants to read in the company library? But that is a given.

It is also given that the actual request has twice failed to go through. Anyone who has ever worked in a bureaucracy can sympathize and wonder if, indeed, the requests did not get "lost in the shuffle." So Don cannot assume without more ado that Don is preventing him from getting his article. He should get another request form, take it to Don to get his signature right then and there, to take it back down to the librarian. He can explain to Cal that, for some reason, the request did not make it through, and since he wants to read the article, and has wanted it now for some months, he would like to hand carry the request. If Cal refuses, then he and Don can talk about that and Don will no doubt be faced with a new problem. But at least he

will know what the problem is and can pursue it until it is resolved so he can do what he must do to try to help and protect his workers.