The door at OSHA opens up to industry

The Occupational Safety & Health Administration was surprisingly unscathed in the Administration's budget-cutting approach to regulatory control. But 36-year-old Thorne G. Auchter, Assistant Labor Secretary for OSHA, will try to accomplish administratively Reagan's promised reform. He will emphasize a mix of programs beyond standard-setting—state-run OSHA programs, enforcement, voluntary compliance, consultation, and training—to achieve worker protection. "OSHA can be a terrific tool if it's managed properly, if it goes in the right direction," says Auchter. It is increasingly clear that the direction will be significantly different in both style and substance from that of his predecessor, Eula Bingham.

The "new" OSHA began to emerge even before Auchter moved in on Mar. 17. The Reagan Administration froze last-minute rules issued by Carter's OSHA. And on Mar. 24, Labor Secretary Raymond J. Donovan formally proposed cancellation of the three rules involved: a requirement that employers pay "walk-around pay" to workers who accompany OSHA inspectors; a revised rule on lead exposure; and moves to stop Indiana's state OSHA operation. A month earlier, Donovan had granted the chemical industry's request that Bingham's proposed rule on labeling hazardous materials be withdrawn, following pleas that the rule was impractical and would cost more than OSHA's $800 million estimate.

The frantic unions. Donovan's Mar. 24 order also grants industry requests for review of noise and carcinogen rules; similar requests for lead and electrical standards are pending. Final decisions are a long way off, but these initial moves, along with signs that OSHA is trying to work out a review of the controversial $656 million cotton-dust standard in the face of an imminent Supreme Court decision on it, have labor unions frantic. Says George H. R. Taylor, head of the AFL-CIO's Occupational Safety & Health Dept., "You want to know about whither OSHA? Just take out the first 'h' in whither."

Gwendolyn Stewart

OSHA's Auchter: Seeking ways to lower costs and "stem the tide of overregulation and inflation."

Auchter says that he is open to suggestions from unions, but Bingham was in closer step with them. She nearly doubled the number of major health standards, calling for costly engineering controls as the primary approach to worker protection.

Bingham also issued controversial rules giving employees and the government access to company-kept medical and exposure records. And she encouraged in-plant activism among workers on both safety and health issues. Vindicated by the Supreme Court's benzene decision last July, which ordered OSHA to rethink its health standards policies, industry took several tales of regulatory and enforcement overkill to the new Administration.

Auchter promises that OSHA will not stop issuing health and safety standards—asbestos exposure in construction is one possible area—but Auchter's standards may not resemble previous OSHA rules. Both Auchter and Donovan fully endorse Reagan's Feb. 17 executive order requiring agencies to justify clearly the need for a standard, to perform cost-benefit analyses and, where possible, to choose the cheapest route of compliance.

Cutting costs. "The question of the least costly approach has an awful lot of merit," says Auchter. "If we can come up with a method that incurs lower cost, then that makes the most sense, provided we can reach the objective." Many industry observers view the approach as opening the way for the use of personal protective equipment, such as respirators, instead of expensive process controls.

On inspections, the Reaganites will continue to evaluate pilot programs for targeting OSHA visits to the most hazardous plant sites. And the new Administration is looking with renewed interest toward state-run health and safety programs. "Standards make a lot of headlines, I guess," says Auchter. "What we're going to do with this agency is cut down on the number of things, but what we do, we are going to do very well."

Industry officials were at first skeptical about Auchter's youth and lack of technical credentials in safety and health. His OSHA-related experience primarily involved setting up the safety and health program at his family-owned construction company in Jacksonville, Fla., and working on a state OSHA task force. He was special events director for Reagan's Florida campaign.

But now industry representatives believe that Auchter's management experience could be a plus. Although some quietly caution the new leadership not to be too zealous in totally gutting the noise standard, for example, they are pleased that the door to OSHA is more open for them. ■

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Troubled OSHA Faces Further Loss of Power

Th Occupational Safety and Health Administration, plagued by a whole series of setbacks, braces for even more attacks in the Senate, courts.

Foes of government regulation now are quietly winning a decade-long battle against one of their favorite targets, the Occupational Safety and Health Administration.

Recent actions by the courts and by Congress have substantially cut back OSHA's authority to protect workers against health and safety hazards on the job. Already, an estimated 1.5 million small businesses have been declared off limits to OSHA inspectors.

Yet OSHA's opponents still are not satisfied with their success. Over the next few months, they are looking to the Senate and the Supreme Court to further weaken the agency. "We think the time for OSHA reform is ripe," says Mark de Bernardo, labor attorney for the Chamber of Commerce of the U.S., one of several business groups critical of OSHA. "The mood's there—both in the country and the Congress. The votes are there, too."

Even one of OSHA's staunchest defenders, Anthony Mazzocchi, health and safety director for the Oil, Chemical and Atomic Workers Union, agrees that momentum is building against this controversial federal agency. Says Mazzocchi: "It won't be long before OSHA is a meaningless shell."

Some groups, including the American Conservative Union, say their intent is to abolish OSHA. Officials of the Chamber of Commerce and others claim they are trying only to improve the agency. But OSHA Director Eula Bingham views the objective as a larger one. "It's no longer an anti-OSHA drive," she says. "It's completely antiregulation."

Recognizing the growing strength of these groups, the Carter administration has made a number of major changes in OSHA's practices in the past few years in an effort to answer employer complaints.

The best-publicized effort involved the repeal in 1978 of about 1,000 regulations that business managers saw as nit-picking. Unsatisfied by these efforts, many company officials now argue that there has been no significant drop in worker deaths and injuries despite the spending of billions of dollars since Congress enacted the Occupational Safety and Health Act in 1970.

Probably the biggest new setback for OSHA came in the last few days of 1979, when Senator Harrison A. Williams (D-N.J.) agreed to support legislation proposed by the agency's leading opponents in the Senate. Nine out of 10 businesses would be exempt from OSHA inspections under the measure, which was drawn up originally by Senator Richard Schweiker (R-Pa.).

While scores of similar anti-OSHA bills have been introduced in Congress over the past 10 years, most of them have been blocked by Williams—who is chairman of the Senate Labor Committee, author of the original OSHA law and an ally of organized labor. But with Williams's support, hearings on the Schweiker bill will be held soon, and supporters predict that it will be passed by the Senate later this year.

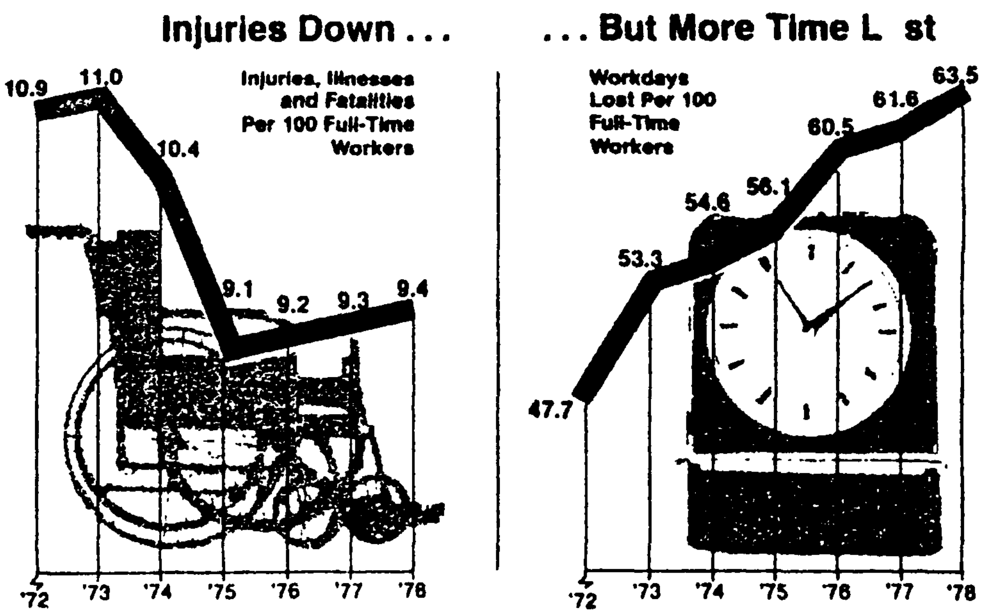
Both the AFL-CIO and the Carter administration vow to oppose Schweiker's bill, which would exempt from inspection by OSHA all workplaces that report no deaths and few injuries during the previous year. Lloyd McBride, president of the United Steelworkers, argues that the bill would strip the agency of its "preventive influence" and encourage employers to file false OSHA reports. Mazzocchi describes the bill as "a transparent attempt to gut the law."

Switching sides. Labor leaders view Williams's support of the bill as a betrayal, even though the senator argues that the measure would serve to focus OSHA's limited resources on the most hazardous workplaces. Robert Hunter, legislative aide to Senator Orrin Hatch, (R-Utah), an outspoken OSHA foe and cosponsor of the Schweiker bill, says that Williams saw "the handwriting on the wall—the mood in the Senate is to get OSHA reformed."

Even before Williams threw his support behind this legislation, Congress was chipping away at the authority of OSHA. Each of these measures was introduced on the Senate floor as an amendment to legislation appropriating money for the agency. That way, Senate opponents of OSHA circumvented Williams's committee. The most recent appropriations restriction, enacted in late 1979, prohibits OSHA

Behind the Debate

Since the first full year of operation by the Occupational Safety and Health Administration—



USN&WR chart—Basic data: U.S. Dept. of Labor

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from inspecting businesses with 10 or fewer employes, as long as they are in industries that have a good safety record. It is this measure that exempts 1.5 million workplaces with 5 million workers.

OSHA's ability to make inspections also is limited by a 1978 Supreme Court decision that employers do not have to admit inspectors to their workplace without a search warrant. Using this decision, the American Conservative Union has published a booklet telling business owners how to turn away an unwanted inspector. But government officials estimate that no more than 1,000 employers refuse to admit the inspectors each year.

Cost of cutting risks. Pending before the Supreme Court is yet another case that could cut more deeply into the authority of OSHA. Opponents of the agency have asked the High Court to uphold a ruling by the Fifth Circuit Court of Appeals in New Orleans that the government must weigh the benefits of its regulations against the costs. The case grew out of OSHA's proposed regulation limiting worker exposure to benzene, a compound that OSHA views as a potential leukemia risk to more than 600,000 workers—most of whom work in petroleum refineries. Industry contends that OSHA's order to reduce benzene to the "lowest feasible level" in the workplace would be too expensive.

OSHA Director Bingham says an adverse ruling by the Supreme Court in the benzene case could cripple her agency's ability to protect workers. "It would be a very distressing decision," says Bingham. "I cannot believe that these justices would say that we should weigh the costs of saving a human life. How do you decide what somebody's life is worth?"

At the same time, OSHA's right to protect workers who refuse unsafe working assignments also is under attack before the Supreme Court. The government is challenging the dismissal in 1974 of two Whirlpool Corporation employes who refused to accept a task that a week earlier led to the death of a fellow worker. OSHA contends that these workers had a right under the Occupational Safety and Health Act to refuse such an assignment without disciplinary action.

Agency of controversy. Virtually nothing that OSHA has done in the last few years has gone unchallenged. Regulations governing worker exposure to both benzene and cotton dust are currently tied up in the courts. Just a few weeks ago, oil and chemical-industry attorneys raced into court to challenge OSHA's new cancer policy—even before it was officially announced. The policy sets forth a comprehensive strategy for regulating an estimated 500 substances that are suspected of causing cancer.

On the cancer issue, business leaders are quarreling with OSHA's decision to rely almost exclusively on animal tests to determine whether a chemical substance causes cancer. "Tests on laboratory rats make for suspect science," argues the Chamber of Commerce. Business groups also contend that the government would require business to spend billions of dollars to create a "risk free" work environment.

Money lies at the heart of each of these disputes between OSHA and its opponents. Business groups say the government is forcing them to spend billions of dollars to clean up workplaces without any evidence that these improvements save lives or prevent injuries. One controversial study predicted that business might be forced to spend as much as 88 billion dollars to comply with the cancer policy.

The Chamber of Commerce estimates that since 1971 business has spent 25 billion dollars and the government 1 billion dollars on occupational safety and health. Despite this, the group argues, there has been an increase in the total number of workdays lost as a result of occupational injuries. Says Chamber President Richard L. Lesher: "I'd like to see that 26 billion dollars spent on cancer research."

Fewer accidents. OSHA officials reject the argument that the agency has had no impact on job safety. OSHA chief Bingham cites another statistic showing that the total accident rate in the workplace has declined. She asks, "What would it have been if OSHA had not been around to protect these people?"

Even if business succeeds in its latest efforts to limit OSHA's power, the battle still may not be over. De Bernardo says the chamber will be seeking additional "reforms" in the future, including government payment of attorneys' fees for businesses that successfully challenge the agency's decisions. "No one bill in Congress could handle all the inequities we see," he says.

Such threats do not disturb Bingham, who contends that business is fighting a losing battle to abolish OSHA. She predicts that OSHA will survive this new wave of deregulation sentiment because American workers are concerned about health and safety.

Says Bingham: "The message is there that people don't want as much bureaucratic paper work. But the message is also there that they don't want their arms cut off." □

Trends in Labor

Wages up—and down. In large union contracts negotiated during 1979, first-year pay raises averaged 8.9 percent—up from 8.3 percent in 1978. These figures, published annually by the Labor Department, represent the average first-year wage increase provided in contracts covering more than 5,000 workers. But in contracts affecting 1,000 or more workers, the average first-year increase was 7.4 percent—down from 7.6 percent in the previous year. Nearly 60 percent of the contracts negotiated last year had clauses promising future automatic increases based on the rising cost of living—a lucrative provision. In all existing labor contracts in 1979, these cost-of-living allowances provided workers with additional wage increases averaging 3 percent.

Strike lull. The number of workdays lost to strikes during 1979 fell to a five-year low, according to another Labor Department report. Strikes last year caused 1.5 lost workdays for every 1,000 workers—the lowest number since 1973. A total of 4,800 work stoppages began in 1979, the second smallest annual total since 1967. The number of workers idled by strikes last year—1.7 million—was the second-lowest total since 1965. Almost one third of all these idle workers and lost workdays were a direct result of 13 major walkouts. Among them were a 10-day strike-lockout in the trucking industry and strikes by the United Auto Workers against three farm-implement manufacturers.

Productivity snag. American business during 1979 registered its worst productivity performance since the last recession. The Labor Department reports a decline of 0.9 percent in output per worker-hour. This is only the second annual decline for a full year since 1947. The last such decline was in 1974, when productivity fell 3 percent. Labor costs rose 10.4 percent during 1979. Administration officials anticipate modest improvement in productivity during 1980, partly due to a rise in unemployment.

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