

employees exposed to the hazard of excessive noise," the court said.

The court affirmed the commission's ruling that OSHA was authorized to seek *ex parte* inspection warrants at the time the *Stamford* was inspected, and that the *ex parte* warrants obtained by OSHA were valid.

This opinion, written by Chief Judge Edward D. Re of the U.S. Court of International Trade, sitting by designation, will appear in a future Decisions issue. Chief Judge Re was joined by Circuit Judges Ellsworth A. Van Graafeiland and William H. Timbers.

Silica

ILLINOIS DEATHS TERMED HOMICIDES; CASES TURNED OVER FOR INVESTIGATION

CHICAGO — (By a BNA Staff Correspondent) — The Cook County Medical Examiner July 11 classified as homicide the death of Ellis Medlin, a former employee of Illinois Brick Company who succumbed to silicosis.

Medlin died November 21, 1983, at age 44. Eleven other employees, out of a total workforce of 30, have contracted silicosis, and two, including Medlin's brother Alton, have died, according to Cook County Deputy Medical Examiner Robert H. Kirschner.

The case has been turned over to Cook County State's Attorney Richard J. Daley Jr. for criminal investigation. A spokesman for Daley's office said the case is now under review, and no decision has been made yet about whether to proceed with the investigation. Last fall, Daley won murder indictments against five officials of Film Recovery Systems, Inc., an Elk Grove Village firm which extracted silver from used film, in the death from cyanide poisoning of an employee (Current Report, Nov. 3, 1983, p. 576; March 1, p. 1042).

Illinois Brick, owned by Old Fort Industries of Indiana, operated two plants in the Chicago area between 1946 and 1981, when the company went out of business. Ellis and Alton Medlin both worked at the Broadview plant, which closed in 1978. A plant in Blue Island operated until 1981.

Kirschner said that on the basis of information gathered from former employees, Broadview "appears to have been an unsafe workplace." Eight other employees, including another Medlin brother, Donald, are being treated for silicosis at Cook County Hospital, Kirschner said. These employees also have filed claims for disability payments with the Illinois Industrial Commission under the state's Occupational Diseases Act.

The decision to classify Medlin's death as a homicide involved several factors, the medical examiner told OSHR. First, "the information we have suggests that the employer knew he was dealing with a dangerous substance." Second, Illinois Brick failed to warn employees of the hazards of their jobs. Third, Kirschner said, the company operated a plant in violation of Environmental Protection Agency regulations governing use of silica. Kirschner said the Occupational Safety and Health Administration had inspected the plant for machinery safety only, and apparently had never performed an air quality test. Employees told his office that the air in the plant was "so thick you couldn't see" with dust. EPA conducted external inspections only, Kirschner said.

Finally, Illinois Brick failed to provide adequate protection for employees, despite its knowledge of the danger, Kirschner said. Employees at the plant were represented by

the Laborers Union International, Locals 681 and 21, which also failed to alert employees to the danger, Kirschner said.

Asbestos

UNION BLASTS OSHA PROPOSAL TO REPLACE ENGINEERING CONTROLS WITH RESPIRATORS

A "flexible compliance strategy" proposed by the Occupational Safety and Health Administration that would allow industry to shift the means of protecting workers exposed to asbestos from engineering controls to personal respirators was criticized July 12 in a Washington press conference by representatives of the Amalgamated Clothing and Textile Workers Union.

"To give employers the option of providing respirators or cleaning up the air is reprehensible," Eric Frumin, safety and health director for the union, contended. Jack Sheinkman, secretary-treasurer of ACTWU, said that the proposed substitution of respirators instead of proper workplace ventilation would "compound an already serious situation by misleading workers into believing respirators are safe." The 400,000 member union represents many workers in the textile and other industries who are exposed to asbestos on the job.

OSHA's proposed standard would allow employers to achieve compliance through a combination of engineering controls, personal protection (respirators), and work practices (Current Report, April 12, p.1195). The agency's draft rulemaking would also reduce the asbestos exposure limit to 0.5 or 0.2 asbestos fibers per cubic centimeter of air, depending on whether reaching the lower level was found to be feasible.

Witnesses in a series of OSHA hearings on the proposed asbestos rulemaking that began in June have already gone on record as opposing the flexible compliance strategy. William J. Nicholson of the Mt. Sinai School of Medicine testified June 19 that respirators were far less positive control devices than are engineering controls (Current Report, June 21, p. 35). Representatives of the Asbestos Information Association, an industry group, testified July 6 that OSHA should not rely on respirator use when engineering and work practice controls can feasibly achieve the permissible exposure limit for the mineral (Current Report, July 12, p. 155).

Worker's Viewpoint

"Respirators are not the answer," asbestos worker James Drye, an employee at the R.M. Industrial Products Company in Charleston, S.C., and a victim of asbestosis, one of several asbestos-related occupational diseases, asserted. "When I wear a respirator, I know for a fact that you can't tighten it enough. By the end of working for eight hours, you can see the dust in there," Drye continued.

Frumin and Sheinkman contended at the union-sponsored press conference that OSHA's proposed regulatory limits for asbestos are well above the levels which are technically and economically feasible for the asbestos textile industry to achieve.

"Workers are dying from asbestos-related disease in epidemic numbers," Sheinkman continued. "OSHA's proposal to substitute respirators for workplace ventilation requirements will surely compound this problem while misleading workers into believing that respirators are safe."