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PUBLIC HEARING

before

ASSEMBLY LABOR COMMITTEE

on

ASSEMBLY BILL 2850

(The Workplace Drug Abuse Testing Act)

September 4, 1986
State House Annex
Trenton, New Jersey

MEMBERS OF COMMITTEE PRESENT:

Assemblyman Robert Littell, Chairman
Assemblyman Newton E. Miller
Assemblyman Peter J. Genova
Assemblyman Joseph Azzolina
Assemblyman Thomas P. Foy
Assemblyman Vincent "Ozzie" Pellechia

ALSO PRESENT:

Joseph Devaney
Office of Legislative Services
Aide, Assembly Labor Committee

* * * * *

Public Hearing Recorded and Transcribed by
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Hearing Unit
State House Annex
CN 086
Trenton, New Jersey

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M E M O R A N D U M

July 21, 1986

TO: Members of the Assembly Labor Committee
FROM: Assemblyman Robert E. Litvell
SUBJECT: Committee Meeting on September 4, 1986

The Assembly Labor Committee will meet on Thursday, September 4, 1986 at 10 A.M. in Room 449, State House Annex. The Committee will consider the following bills:

- A-1405
Kazur Requires employers to provide time off from work for volunteer firemen to respond to a fire.
- A-1956
Paterniti Provide that unemployment benefit claims of union employees in the building trades be made by their representative.
- A-2060
Foy Requires a contract for public work to be done on property leased by a public body to contain a provision stating the prevailing wage that can be paid to workers.
- A-2440
Foy Provides immunity from civil suits to employers who hire replacement workers during a strike and terminate those workers when the strike is over.

A-2652
Albohn

Requires a reduction in extended benefit payments to the unemployed when federal funds are reduced.

A-2850
Mittell/Fox

Designated the "Workplace Drug Abuse Testing Act."

ASSEMBLY, No. 2850
STATE OF NEW JERSEY

INTRODUCED JUNE 16, 1986

By Assemblymen LITTELL, FOY, Felice, Assemblywoman Randall, Assemblymen Haytaian, Arango, Genova, Miller, Zecker, Kline, Dario, Franks, Chinnici, Muziani, Rafferty, Zimmer, Azzolina and Assemblywoman Smith

AN ACT authorizing the Department of Labor to establish uniform standards for the use of drug abuse tests in the workplace and supplementing Title 34 of the Revised Statutes.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. This act shall be known and may be cited as the "Workplace
2 Drug Abuse Testing Act."

1 2. As used in this act:

2 a. "Commissioner" means the Commissioner of Labor;

3 b. "Controlled dangerous substance" means a drug, substance,
4 or immediate precursor as defined in Schedules I through V of
5 article 2 of the "New Jersey Controlled Dangerous Substances
6 Act," P. L. 1970, c. 266 (C. 24:21-1 et seq.);

7 c. "Drug abuse test" means any chemical test, including but not
8 limited to urinalysis, blood analysis, or breathanalysis, used for the
9 purpose of determining the presence or absence of controlled dan-
10 gerous substances in a person's body;

11 d. "Employee" means and includes any person who supplies a
12 service for remuneration or for any contract for hire to an em-
13 ployer in this State;

14 e. "Employer" means and includes any private individual or
15 organization that is an employer under R. S. 43:21-19, any govern-
16 mental authority that is a public employer under P. L. 1968, c. 303

17 (C. 34:13A-1 et seq.) and any other individual or organization
18 which the commissioner designates, by regulation, as an employer
19 under this act.

1 3. The commissioner may adopt and from time to time supple-
2 ment, alter or repeal rules and regulations relating to the adminis-
3 tration of employee drug abuse tests by employers. Such rules and
4 regulations shall establish standards for the acquisition of samples,
5 the handling, control, and disposition of samples, the methodology
6 and procedures used to evaluate the contents of samples, the sta-
7 tistical margins of error associated with a drug test, and the per-
8 sonnel who may be authorized to conduct drug abuse tests. The
9 commissioner shall adopt, supplement, alter, or repeal these rules
10 and regulations in consultation with Commissioner of Health and
11 the Attorney General.

1 4. It shall be unlawful for any employer or his duly authorized
2 agent to administer a drug abuse test or a set of drug abuse tests
3 to any employee or job applicant unless the test and test procedures
4 conform with the rules and regulations promulgated by the com-
5 missioner under section 3 of this act.

1 5. It shall be unlawful for any employer or his duly authorized
2 agent to administer a drug abuse test or a set of drug abuse tests
3 to any employee without first having reasonable suspicion that the
4 employee is under the influence of a controlled dangerous substance.
5 Suspicion shall be based upon visible evidence of erratic job be-
6 havior, including but not limited to severe declines in the employee's
7 productivity, higher than average accident rates on the job, repeated
8 lateness or absence from work, violent behavior, emotional un-
9 steadiness, sensory or motor-skill malfunctions, or possession of a
10 controlled dangerous substance.

1 6. Any violation of the provisions of the act shall be punishable
2 by a fine of not less than \$500.00 to be collected in a civil action
3 by a summary proceeding under the Penalty Enforcement Law
4 (N. J. S. 2A:58-1).

1 7. Any agreement or contract between an employer and an em-
2 ployee, employee association, or union may: a. require additional
3 or supplementary control on the administration of drug abuse tests
4 provided that the standards and specifications established in the
5 agreement or contract exceed the standards and specifications estab-
6 lished by the commissioner in rules and regulations promulgated
7 pursuant to this act; or b. prohibit the administration of a drug
8 test upon any employee covered by the agreement or contract.

1 8. This act shall take effect on the 90th day following enactment.

STATEMENT

This bill authorizes the Commissioner of Labor to promulgate rules and regulations concerning the administration of drug abuse tests by private and public employers. The bill prohibits an employer or his agent from administering drug abuse tests to employees or job applicants if the tests do not meet the standards established by the rules and regulations promulgated under this act. It also prohibits employers from testing employees for drugs without reasonable suspicion that the employee is using drugs. Any person who violates the provisions of the act would be subject to a fine of at least \$500.00. The bill also permits employees, unions, and employee associations to establish agreements with their employers that would provide stronger procedural and methodological standards for drug abuse testing in the workplace or prohibit the administration of drug tests on employees covered by the agreement.

LABOR RELATIONS AND EMPLOYMENT

Authorizes Comm. of Labor to establish uniform standards for employee drug testing.

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55x

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1-133:TDM

ASSEMBLYMAN ROBERT LITTELL (Chairman): I'm gong to ask for a few moments of your time, please. There is a bill being introduced here today, A-2850, with me as sponsor. It is a controversial bill, but it has been successful in generating some interest -- along with the problem itself being very prevalent -- because of the concern many people have throughout this State with drugs in the workplace. It's not an easy issue. There's no clear-cut answer. I think everybody agrees to that. The fact of the matter is, drugs are a part of our life here in these United States, which I'm sorry to admit and say, and drug testing is something we have to learn to live with and deal with.

What we're attempting to do here to be fair handed, to a provide a way that will protect the rights of employees and the integrity of the system, and to make sure that there is confidentiality with regard to their identity in any testing program.

At the same time, we want to make sure that any tests that are administered are tests that are sufficient and safe, and that they are adequate as far as their reliability.

To that extent, we have had many ideas for amendments. We expect to hear many more today. We will hear all of the testimony, if possible. We have about 25 witnesses, so we'll have to move right along. I will probably not go around the table after each witness, in order to save time. Unless you have a specific question that you feel has to be asked, I ask the members to hold them until the end. But if you feel that you have to ask a question, let me know and we will get to it.

We will attempt to hear all of the testimony today, and at a meeting to be held in October, we expect to have all of those amendments prepared for discussion and voting on at a meeting -- some time in October. So, there will be no vote on the bill today and no vote on the amendments today. Because

there are so many issues, we won't attempt to burden the staff with trying to draft all those amendments while we're going through the process today.

Now, I'd like to give Assemblyman Foy, who is the prime cosponsor on this bill, an equal opportunity say a few words.

ASSEMBLYMAN FOY: Thank you, Mr. Chairman. I want to thank everyone who is present today and has taken the time to communicate to the Committee their views on this very important topic.

The genesis of this legislation on the part of Assemblyman LITTELL and myself is our view that the Legislature has an obligation to develop important public policy that affects the people of the State of New Jersey. I don't know of any issue that is as topical in affecting the rights and the responsibilities of individuals in New Jersey as the issue of drug testing and its application in the workplace.

It is clear that there are many dimensions to this issue from a variety of perspectives, and it's our goal in developing this legislation to make it the law of the State of New Jersey that the legislation that is developed is one that addresses the interests of all of the individuals and groups involved. And I see those interests as being, fundamentally, two different extremes -- both of them legitimate.

One: The right of an employer to have a workplace that's free from drug and substance abuse in terms of its employees; but, on the other extreme, the right of every individual and every worker in this State to be free from any type of harassment or invasion of their privacy rights. This bill will be an attempt to reconcile those two extreme, but legitimate views.

And it seems that what we're attempting to do here is to balance those rights of employers and of workers, at the

same time balancing the fundamental right of society and its inherent interest in this particular issue.

So, we welcome all of your input. We're all big boys. We're not afraid to be subject to criticism if you think we've made some mistakes, and we certainly welcome some praise if you think that we've done anything good.

So, good luck with your testimony today, and you may be assured you'll have a full and fair hearing from this Committee.

ASSEMBLYMAN LITTELL: Thank you. We first have Doctor Mark Powell and Jack Dalton, representatives from Hoffman LaRoche. I turn it over to you, gentlemen.

J O H N B. D A L T O N: Thank you, Mr. Chairman. Hoffman LaRoche is one of the world's leading health care companies. Widely known for original research and development, Roche has been responsible for numerous important medicines, some for diseases that affect countless numbers of people and others for diseases that afflict only a few.

A leader in biotechnology, Roche has recently introduced Roferon A, our brand of Interferon, the first product produced for clinical trials through recombinant DNA technology.

Roche provides health care professionals with a wide range of medical products and services, including diagnostic test systems, radio pharmaceuticals, clinical laboratory services, and specialty chemicals. Two of our operating groups, Roche Diagnostic Systems and Roche Biomedical Laboratories, are involved in toxicology testing for drugs of abuse.

Roche Diagnostic Systems manufactures the industry's leading line of substance abuse assays -- known as Abuscreen -- and Roche Biomedical Laboratories performs bioanalytical testing for drugs of abuse, along with offering many other clinical laboratory tests.

Roche believes that good health is the result of high quality medical products and services, knowledgeable health care professionals, and well informed consumers.

As a health care company whose primary concern is enhancing the quality of life, Roche views substance abuse as a disease, and advocates treatment and rehabilitation as its cure.

Diagnostic Dimensions, Inc., a new subsidiary of Hoffman LaRoche, has developed one of the first and most comprehensive programs to address the problem of substance abuse in the workplace. We help client companies to develop and implement substance abuse intervention programs, tailored to their specific organizational needs. This comprehensive approach includes educating and training of corporate personnel to identify and assist substance abusers in the workplace, and the establishment of testing programs to detect substance abuse.

Testing services are offered through Roche Biomedical Laboratories -- the Roche nationwide clinical laboratory subsidiary. The management, education, and training portion of the Diagnostic Dimensions Program was jointly developed by, and is being offered through, Development Dimensions International of Pittsburgh, a major educational firm.

Much has been written on the controversies involving urine testing and, in fact, the June, 1986 issue of Drug Abuse and Alcoholism Newsletter, a copy of which I have attached to my remarks, published by the Vista Hill Foundation, a multi-hospital, nonprofit corporation that specializes in acute psychiatric care, addresses that topic -- controversies involving urine testing.

It says in part -- and I quote: "Removing a substance abuser from the workplace can have a salutary effect upon the work environment, production, and employee morale. Urine and breath testing can make a contribution to this end.

Broader and probably more important goals are served. If an organization has a well-thought-out, fair, confidential program, it will serve as a deterrent to the use of intoxicants by other workers, in addition to those picked up on urine tests.

"This secondary effect has been proven by experience from the military. Three worldwide surveys from all military branches were conducted. In 1980, 27% of military personnel has used an illegal drug within the past month. In 1982, the figure was 19%. And in 1985, it was 9%. The major change during those five years was the institution of a reliable urine screening program."

It goes on to say, "A majority of employees will be pleased with a clear policy and program of reducing drugs in the workplace. They can expect increased personal safety, less theft of their property, and better teamwork with the work group -- in other words, a better environment." Close quote.

My associate, Doctor Mark Powell, directs the Department of Pharmaceutical and Toxicological Testing at Roche Biomedical Laboratories here in Raritan, New Jersey. Doctor Powell received his Ph.D. in medicinal chemistry from the University of Washington, in Seattle. He has published numerous articles in various scientific journals and books.

Doctor Powell serves on the Steering Committee of the North Jersey Drug Metabolism Discussion Group of the American Chemical Society. He is a member of the American Society for Mass Spectrophotometry, the American Association for the Advancement of Science, the American Chemical Society, and is presently serving on the Board of Directors of the Epilepsy Institute.

I'm pleased to present my associate, Doctor Mark Powell, who will discuss the technological aspects of our drug testing programs, and other matters related to them.

D O C T O R M A R K P O W E L L: Thank you very much, Mr. Dalton. Gentlemen, I welcome the opportunity to come in front of the Committee today. It's certainly no secret to everyone in this particular room that the use of drugs in the United States has reached what is commonly referred to as epidemic proportions.

The use of drugs also clearly is not confined to any particular subgroup of people, nor is it confined to any particular type of industry. We're seeing rampant drug use throughout all ages, and throughout all aspects not only of industry, but also of education, of sports -- and we've reached a point where certainly members of the U.S. government have taken a leading role in stating that something needs to be done in order to attempt to combat the widespread use of illicit drugs in the United States.

The various figures that have been tossed around range from probably a low of \$25 billion to a high approaching \$100 billion, in terms of dollars lost to productivity per year in the United States throughout industry. You can debate the relative merits of both the low figure and the high figure, but the end of result of which is clearly a significant problem which involves a great deal of money to industry.

Because of this, we have seen a significant increase in the percentage of Fortune 500 companies which have implemented drug testing policies nationwide. It is estimated that in 1982 only about 5% of Fortune 500 companies in the U.S. had active drug testing policies. It is further estimated that by the end of 1986 that number will have risen to 35%, and it has also been stated publicly that as many as 80% of Fortune 500 companies are currently considering the implementation of a drug testing policy at some future point in time.

Because of the widespread interest in drug testing,

it's very, very important to go over some of the basics that are associated with drug testing itself because it's not enough just to use the generic term drug testing when you're discussing the overall phenomena of the increase in drug testing. You have to get down to the specifics of what types of tests are being used, and how are they being used? This is particularly important in any discussions that are going to relate to accuracy and to specificity.

So, I felt that it was appropriate to take the time in front of the Committee today to go over what I refer to as the nuts and bolts of the drug testing itself, because a reasonable understanding of this is necessary in order to put together any type of legislation which may deal with regulating the drug testing industry.

By and large, drug testing is confined to urine analysis, although it's clearly possible to use the diagnostic kits to measure the presence of drugs not only in urine but also in plasma and other body fluids. Because of the invasiveness of drawing blood, generally the urine tests have been confined to urine analysis.

There are three basic types of testing which can be employed throughout industry in terms of urine. One is so-called pre-employment screening, which means that you're requiring an employee to submit a urine specimen as part of his employment procedure prior to joining a corporation or workplace. Secondly, a so-called "for cause testing," refers to collecting a urine specimen after an accident, or an event of some kind, to determine whether the presence or absence of illegal drugs, or illicit drugs, played a part. And, finally, there's a so-called random testing, which merely refers to the obtaining of a urine specimen at any time for testing.

It has been said previously that these three types of testing are in order for effectiveness, in terms of reducing overall drug use in the workplace. It's probably also true --

and you may hear it later -- that they're in order for increasing difficulty to defend legally.

For that reason, the most widespread use of urine testing in the United States currently is so-called pre-employment drug screening.

A basic tact that is being taken across the United States currently is that policies are being set up whereby the use of drugs is not consistent with long-term employment at a given corporation. And this is the type of policy-- Or, generally, policies are built around this philosophy.

The urine testing itself is widely split into two categories. One category is the so-called screening test, and the second category is the so-called confirmation test. The screening tests are employed to do broad-scale screening of very large numbers of urine samples. Now, I'll deal with each of these two types of tests in turn, beginning with the screening test.

By and large, screening tests are divided into two general categories. One is an immunoassay test, and the second is a so-called thin layer chromatography, or TLC test. The TLC test, historically, had been the most widely used throughout the industry to test for drugs, as well as a number of other medications. They are relatively easy to perform, although they have a high degree of technical expertise associated with them in terms of interpreting the results.

The results that come off TLC tests are not straightforward, and they are dependent upon the expertise of the technician who's performing the test to a much greater degree than immunoassay tests are. Nevertheless, it's easier to use TLC to screen for a broad range of drugs; therefore, these have been widely employed. They are also relatively inexpensive, which is another reason why they've been widely employed.

However, nowadays most people are employing, as

initial screening technologies, an immunoassay test, the two most celebrated of which are RIA, which stands for radio immunoassay, or EIA, which stands for enzyme immunoassay. These are the two types of tests that most people in industry now are going towards as the methodology of choice for your initial screening technology.

These tests are very similar in their approach to the way they detect the presence of drugs in urine, and they both make use of the inherent specificity associated with antibodies to detect the presence of illicit substances in the urine. It's probably not appropriate to go into great detail on the differences between the two types of technologies. They are somewhat similar, and they are both widely employed throughout the United States.

Roche, as do most major clinical laboratories, recommends strongly that all initial positive test results be confirmed by a second, independent confirmatory methodology. This is an extremely important point. And the second independent confirmatory methodology that's recommended -- which I will go into detail shortly -- is gas chromatography, mass spectrophotometry, or GCMS. This is the second part of the two-stage testing procedure, the so-called confirmatory test.

Now there is some confusion periodically that surrounds confirmatory testing, and it all depends on how you define confirmatory testing. Some people define confirmatory testing as any type of testing other than what you did initially. We prefer to define confirmatory testing as the second independent which is at least as sensitive as the initial test, and what has become widely accepted -- particularly in the field of forensic law -- is gas chromatography, mass spectrophotometry. This type of testing actually provides a molecular fingerprint of the drug and is considered to be definitive in its ability to recognize specific drugs in urine. It's extremely sensitive. It's also

fairly expensive. It's technologically very complicated. It requires a great deal of expertise on the part of the technicians who run the instrumentation. Because of that, it's not a good candidate for initial screening. It's too time-consuming for large-scale screening of high volumes of urine. However, it's widely employed as a confirmatory testing technology. So, those are the two components of the testing technology itself.

Now the third component, which actually has nothing to do with testing but is every bit as important as part of the overall policy and procedure that you utilize, is the chain of custody. The chain of custody is the generic term which is -- although it's widely used, refers to the internal tracking system by which a laboratory keeps track of the identity of a specimen at all times that is within the laboratory's confines. This is absolutely essential to having an overall program of drug testing which is legally defensible, and the use of chain of custody -- which most major laboratories provide -- gives not only the location of the specimen at all times when it's in the laboratory but, in addition to that, it gives the names of the actual technicians who did the testing, and it's a record of that which is provided and can be used in a court of law, in a case where a defense is raised that a sample was adulterated at some time in which the sample was within the confines of a given laboratory.

So, these are the essential components of the overall urine testing itself. Clearly, there are a number of issues which are commonly discussed. There are a number of critical issues regarding drug testing: The possibility of so-called "cross-reactivity" when you're using the immunoassay test, which means the possibility that you could be taking some other drug which could mimic an illicit drug, which would cause -- could cause you -- to get a so-called "false

positive" result, which shows the presence of a drug of abuse in the urine when, in fact, no drug had been taken.

There are a number of critical issues which I'm sure may or may not be discussed today, but the components of a successful drug program, we feel, are the use of immunoassay technologies as an initial screening procedure, a chain of custody for documenting the integrity of the sample, and confirmatory testing by GCMS of all initial positive test results.

Are there any specific questions?

ASSEMBLYMAN LITTELL: Doctor, you talked about the possibility of somebody showing a false positive if they had taken another drug which might give a similar effect. There are other things like -- people talk about sesame seeds on a hard roll, or things of that type. Would you just address those for the public, because there is a lot of uncertainty as to how your testing can tell the difference between those sorts of things and real drugs.

DR. POWELL: Okay. Well, you've asked two different questions -- okay? And the reason I say you've asked two different questions is because the sesame-seeds-on-a-roll issue is not a case of a false positive. As you know -- and it's actually not sesame seeds, it was poppy seeds -- poppy seeds, which are derived from the poppy plant, do in fact have the same origin as opiates. And originally this started-- It originally started, actually, out in California a few years back, when a defense used in court for a positive opiate screening -- a result which would suggest prior ingestion of heroin and/or codeine, or some opiate containing material, or like-containing material -- was that the particular individuals involved had eaten poppy seed bagels for breakfast and that had resulted in their positive screening test.

It is true that poppy seeds contain -- actually contain trace amounts of opiates, which are basically

indistinguishable from the opiates that are present in heroin; they're from the same family. However, in order to get a positive test result, the amount of poppy seed bagels that you would have to consume is prodigious. But having said that, there is such a thing that has cropped up which is called poppy seed cakes, which are consumed by people of Middle Eastern descent primarily, and it has been shown in laboratory settings that these poppy seed cakes have tremendous concentrations of poppy seeds in them, much larger than what you would find in a poppy seed bagel. It is possible by eating a few pieces of poppy seed cake that you can show positive on an opiate screen, and if you do the confirmatory testing, you are going to get a positive confirmation if you have levels high enough.

What I want to reemphasize is this is not a false positive; these are real opiates that are present in the poppy seed cakes. The question that has been raised in response to that, therefore, is: "If I wanted to get high, how many of these cakes would I have to eat?" (laughter) That's a somewhat difficult question to answer.

But, along those same lines, there are a number of critical issues. There are so-called herbal teas which have become popular -- not popular, but they've achieved widespread media coverage throughout the United States, and that is, some teas -- so-called Health, Inc. Tea, which are imported into the United States -- actually contain residues from the cocoa leaf plants. These teas are supposed to be decocainized prior to arriving in the United States. Nevertheless, a number of researchers were able to purchase these teas and were able to show that, in point of fact, if you drank several cups of this so-called cocoa leaf containing herbal tea, you could also show positive on a cocaine screen. Again, I'm reemphasizing this is not a false positive.

There was actually-- There are actually trace

amounts of cocaine present in the tea leaves themselves. It may be worth noting that the teas quickly disappeared from the shelves of the stores that carried them. Either they were snapped up by DEA officials, or they were snapped up by people who were energetic in wanting to buy as much as they could.

However, an example which has been referred to as a false positive is something like phenyipropanolamine, a common component of over-the-counter cough medications, which is widely present in most cough/cold medications that people buy. It is well known and well documented that if you take enough phenyipropanolamine, it's possible to get a positive response in an amphetamine screen. Now the reason why this is true is because the structure of phenyipropanolamine -- the molecular structure -- is very closely related to amphetamine, so closely related in fact that the antibodies that have been designed to look at amphetamine cannot adequately distinguish between amphetamine and phenyipropanolamine. They have a much greater degree with amphetamine than they do with phenyipropanolamine; but, nevertheless, if you get enough phenyipropanolamine in there, you can get a positive screen.

Now when you're developing these particular diagnostic reagents, it's always a compromise venture that one finds themselves in. For example, if you want to develop a diagnostic reagent for barbiturates -- we use that as an example -- barbiturates, as you know, is a term that covers a whole family of drugs. There's a whole host of barbiturates: secobarbital, phenobarbital, butabarbital. If you want your initial screening test to be able to look at all these barbiturates, you need to make your antibody nonspecific enough so that it can see them all as a class of drugs. If you make them so specific that they'll only look at one of the individual drugs, then you may have to build 20 different antibodies in order to cover a class of drugs that has 20 representatives.

Therefore-- And in a case, for example, of barbiturates, there may be other barbiturates that you -- it's beneficial for you to look at. For example, methamphetamine, which is closely related to amphetamine, is also an abused drug; therefore, it's to your benefit to have a screening test which looks at both amphetamine and methamphetamine. However, what needs to be emphasized is that the confirmatory testing can easily distinguish between, for example, phenylpropanolamine and amphetamine.

The confirmatory test, GCMS, can easily distinguish -- for example in a opiate screen -- between morphine and codeine. So that as long as people follow the recommended procedure of doing the confirmatory, secondary confirmation testing from initial screening results, things like phenylpropanolamine, which could give a positive reaction for amphetamine, would be flushed out, as it were, on the confirmatory testing.

ASSEMBLYMAN LITTELL: I was not going to get into a lot of testing, but because he's the expert on testing, I will give everybody a chance to ask questions. Go right ahead.

ASSEMBLYMAN PELLECCCHIA: I happen to be a-- There are other drugs that are on the market which take care of people with pain, for instance people who have sugar and they have a neuropathy of their legs, or something, or they are given drugs to maintain their sanity, sometimes. Would this show up in a test?

DR. POWELL: Well, you've covered a number of different drugs in that question. One of the most celebrated examples of a certain type of immunoassay testing -- the EMIT test -- it has been documented that certain non-steroidal, anti-inflammatory agents, which are widely taken for pain -- for example, Motrin, Advil, Nuprin -- can give positive reactions in one of the EIA tests for marijuana. This is something that the company is currently actively working on

changing -- the enzymes involved -- to try and solve this particular problem.

ASSEMBLYMAN PELLECCCHIA: So this could be a problem?

DR. POWELL: It can be a problem. The company is aware if it, however, and the company makes their clients aware of it also. It's something that needs to be taken into consideration when interpreting initial toxicology test results.

Again however, if one does the confirmatory testing--

ASSEMBLYMAN PELLECCCHIA: The second test?

DR. POWELL: The second testing, it will easily distinguish between a non-steroidal anti-inflammatory agent and marijuana because of structural differences.

But it does point up the fact that to do the testing is not a simple matter of obtaining the urine, running the screening test, and pumping out the answers. Okay? There's more to it than that. There's expertise involved in interpreting the answers. There's expertise that's required on the part of medical directors which are administering the programs. We need to develop a medical background. What drugs, if any, was this patient taking? What drugs, if any, is this patient currently taking which could impact on the urinary testing results?

We are also actively, of course, always interested in testing the potential, and we have an ongoing program, which is very active, to always test the potential of any drugs that are around, to give a possible false positive result of one of our diagnostic reagents. This is an ongoing program that we have. We have a great deal of information -- when I'm saying we, I'm talking about Roche now -- gathered already, but it's an ongoing program, all the time, to test new drugs that come on the market to see if they can impact upon our diagnostic reagents.

ASSEMBLYMAN FOY: I have just two questions. The

first question is, do you advocate that an appropriate protocol be developed for the administration of drug tests so as to minimize the opportunity for either false positives to occur, or positives that are unrelated to abusive substances?

DR. POWELL: Well, we strongly recommend that certain procedures should be followed in developing drug testing programs. Towards that end, Mr. Dalton has outlined that we have an entire division which is charged with helping people develop policies and approaches to the drug testing program.

ASSEMBLYMAN FOY: That includes the secondary confirmatory testing, does it not?

DR. POWELL: Absolutely. We strongly recommend to all of our clients that the testing procedures be a two-stage process: Initial screening, follow-up confirmatory testing, use of chain of custody. And, also, we strongly recommend that the testing be only one part of an overall employee assistance program.

ASSEMBLYMAN FOY: Okay. That deals with rehabilitation?

DR. POWELL: That deals with rehabilitation.

ASSEMBLYMAN FOY: Similar to the situation that is fairly prevalent with regard to alcoholism in the workplace?

DR. POWELL: Absolutely. We strongly recommend that the testing be an integral part of the overall rehabilitation program. However, it's been widely stated by a number of people that in the absence of testing, employee assistance programs may not be as effective as with testing, because that really gives the EPA program its bite.

ASSEMBLYMAN FOY: Second question: Can these tests-- Or, do they account for, or are there individual variations that may occur as a result of either gender, race, or nationality? For example, would blacks test differently from whites? Would women test differently from men? Would Armenians, who eat a lot of poppy seeds, test differently from

the Irish, who drink a lot of whiskey? (laughter)

DR. POWELL: Okay. It's a multi-faceted question. I'll try and deal with the issues in point.

ASSEMBLYMAN PELLECCCHIA: With the whiskey.

DR. POWELL: With the whiskey first? (laughter) I'll begin with your first question, which refers to race. And I think probably what you're driving at is a celebrated toxicologist in the Southeastern region of the United States who made a statement at a meeting some time back that people of dark skin who have greater proportions of melanin in their urine, will have a higher incidence of positive results on a marijuana screen than white skinned people.

Okay, let me go on record right now, although others have gone on record before me, and say that this is categorically untrue. At the time that this particular information was released, it needs to be emphasized there was no scientific information presented along with it. These results have never been published to date in any scientific journal, and in point of fact a number of researchers, including groups at the university of -- down in Mississippi -- have, in fact, investigated this in a laboratory setting and have found a number of things in a controlled laboratory setting:

One, that they have taken urine specimens and have spiked them with melanin. In other words, they have added melanin into controlled urine in amounts great enough to turn the urine black, and there are no recorded incidents of positives using either RIA or EIA technology.

Secondly, they've done the confirmatory testing by GCMS. There are no molecular similarities between marijuana and melanin which are sufficient to give results which are equivalent by GCMS.

And, thirdly, there were a couple of studies done which were fairly large in nature, looking at population

screening -- where they compared groups of blacks to groups of whites -- and there were no statistical differences in incidents of positive results on the marijuana screen. Nevertheless, this has achieved widespread media coverage because of the particular nature of the question. Now you asked me, secondly, about--

ASSEMBLYMAN FOY: Gender and nationality.

DR. POWELL: Gender and nationality -- there is nothing to distinguish, to my knowledge, between gender and/or nationality whatsoever.

You mentioned eating poppy seed cakes. It may be that some people eat more poppy seed cakes than others. That, however, is probably a habit rather than a nationality.

ASSEMBLYMAN FOY: Okay. Thank you, Doctor.

DR. POWELL: Any further questions, gentlemen?

ASSEMBLYMAN FOY: Are there any questions? (no questions)

ASSEMBLYMAN AZZOLINA: You snowed me with some of those terms.

DR. POWELL: Oh, by the way, I apologize for not having prepared written comments. I had brought a slide presentation with me, but because of the constricted space we elected not to do that. I will prepare written comments and have them forwarded to the Committee Chairperson to pass out.

ASSEMBLYMAN LITTELL: Well, we're getting it on tape, I hope. Thank you.

ASSEMBLYMAN GENOVA: Just one brief point. In fact, I'd like to thank the Doctor for his testimony. It was well prepared and I'm sure you couldn't have done a better job with your notes.

I'd just like to ask you about pre-employment for cause, and random-type sampling. Do you have any recommendations as far as frequency of testing to make it more effective in the workplace?

DR. POWELL: Well, of course, in pre-employment screening you would not be concerned with frequency of testing because these people would not be in your employ.

I think it's fairly well documented that some of the EPA programs, or a number of EPA programs, currently have drug testing as part of their rehabilitative process, in other words, the monitoring part of their EPA Program -- and it's not uncommon to have urine tests submitted every two to four weeks. And, in point of fact, that's probably relatively common for those companies which do have testing as part of the EPA, or part of their rehabilitative programs.

Generally speaking, however, things like for-cause testing and random testing are usually one-shot deals. This is generally what we see. Okay? In other words, if there's been an accident of some kind, or if there's been an incident, they take a urine specimen and they don't routinely then take them every two weeks for the next year. However, if someone is in a rehab program, it's not uncommon for them to submit urine specimens every two to four weeks for some period which is specified in the program and is part of the policy. In other words, you have to stay clean for some 'x' period of time.

ASSEMBLYMAN AZZOLINA: What will it cost to test? I guess the greater the number, the cheaper it is. But--

DR. POWELL: Generally speaking, screening test results will run in the order of anywhere from \$10 to \$15 per specimen, and the figures I'm giving you are pretty much general no matter which company is doing the testing.

ASSEMBLYMAN AZZOLINA: Well, yeah. How do you--

DR. POWELL: And the confirmatory--

ASSEMBLYMAN AZZOLINA: How do you go about getting the urine? Who's going to watch that it's your urine or somebody else's? Then, do you ship it out for the \$10 or \$15

DR. POWELL: Okay. Generally speaking, the companies

that use the services -- their own medical director is responsible for the urine collections.

ASSEMBLYMAN AZZOLINA: Okay. So, you have to have a number in order to get that \$10 or \$15 cost. You can't have 10 people in something like that?

DR. POWELL: The \$10 or \$15 cost is -- it doesn't matter about the number. I'm not real--

ASSEMBLYMAN AZZOLINA: Well--

DR. POWELL: I'm not really involved with volume discounts particularly; that's another part of the company. I'm sure they exist.

ASSEMBLYMAN AZZOLINA: Do they come to your place? Do you send somebody to a lab?

DR. POWELL: Our particular company, Roche Pharmaceutical Laboratories, has a nationwide carrier network whereby we go to sites all across the country and pick up the specimens on a daily basis and bring them to the laboratories. Other companies may have different methodologies for getting the specimens into the laboratory. We use our own carrier system and we pick up specimens all over the United States.

ASSEMBLYMAN AZZOLINA: You don't send a person out to do it, do you?

DR. POWELL: We sent a carrier out to pick up the specimens themselves.

ASSEMBLYMAN AZZOLINA: Yeah. Okay.

DR. POWELL: But they have collected the specimens. For example, their medical director has been responsible for overseeing the collection of specimens.

We do have drawing stations, where if a company does not have their own medical director, etc., they send them to a medical group which will be responsible for collecting them -- and this is something that we've seeing more and more all the time: Medical groups, or groups of physicians which are

servicing a great number of industries.

ASSEMBLYMAN AZZOLINA: Yes. I've heard where it costs \$100, \$200, \$150. I've heard all those kinds of figures.

DR. POWELL: Well, there's a lot of different figures that get tossed around. The initial screening figures cost anywhere from, roughly, \$10 to \$15 per sample.

Confirmatory GCMS testing, which is more expensive, costs anywhere from \$40 to about \$75 per specimen. That's only the positives. I don't know of any laboratories that charge much more than that. If they do, you probably may not want to be associated with them.

ASSEMBLYMAN AZZOLINA: Very good. Thank you, Doctor.

DR. POWELL: You're welcome.

ASSEMBLYMAN LITTELL: I want to thank you very much, and the same to you, Mr. Dalton. We appreciate your contribution to the very important hearing, and we'll send you a copy of your report so you can have it for your file. Thank you.

DR. POWELL: Thank you very much.

ASSEMBLYMAN LITTELL: Next we have Mr. Jeffrey Fogel, the Executive Director of the ACLU of New Jersey.

J E F F R E Y E. F O G E L: Thank you, Mr. Chairman and members of the Committee for the opportunity to testify before the Committee. Our office of the American Civil Liberties Union in New Jersey receives multiple complaints from workers regarding urine testing programs every week, and has done so -- I think we've received them for about the past year.

We have about six cases in litigation, primarily involving public employees -- fire fighters, police officers, transit workers, and so on.

The urine testing programs that are in place today in America, and those that are being proposed, are certainly the most widespread invasion of privacy rights of American citizens that has ever occurred in the history of this

nation. More people's privacy is being invaded as a result of urine testing than any other procedure employed in the private or the public sector in the history of this country.

Make no mistake about it, urine testing is not-- We can use euphemistic words like screening; it is a search. It is a search of the bodily fluid of a person. It can be perhaps suggested that it's less intrusive than sticking a needle in their arm and extracting their blood, but it is certainly more intrusive than asking them blow their breath into a Breathalyzer machine, which most people are familiar with -- or at least familiar with the general notion of.

We do not suggest in our society that anybody who operates a motor vehicle -- which I think we all recognize is a lethal weapon in the hands of millions of Americans each day -- that they take a Breathalyzer test before they get in their car to go to the corner candy store or supermarket. We do suggest, and we do insist that our law enforcement agencies observe people as they drive on the highways, and when and if there is evidence of motor function or impairment, then, and only then -- when there are grounds to believe that the person is intoxicated -- do we allow them to use the device called the Breathalyzer, one of the least intrusive devices in this area.

Every court that has considered any question involving urine testing has started from the proposition that it involves a search of the citizen involved. You must think about this issue when you think about workers being searched in this regard -- as if the employer had the right to require his or her employees to take off all of their clothes before they entered the workplace and before they left the workplace, in order to observe whether there was anything improper in their possession as a result of bringing into the workplace or taking out of the workplace.

In my view urine testing-- And I think one of the

facts that was left out by Dr. Powell, who otherwise gave an excellent presentation, is the limitation of urine testing and urine screening, which is: You cannot, through the use of screening -- through urine testing -- determine the content of an active intoxicant in the body at that time. You can only test for inactive metabolites of a substance -- that is, the evidence that's left from past usage of a substance, in contradistinction to the Breathalyzer, which tests the amount of alcohol in the bloodstream at that very time, and from which you can draw inferences as to the impact on the motor functioning and other abilities of the person who has that in their bloodstream at that time.

When you look at urine, you've looking at inactive metabolites being discharged by the body after some period of usage has passed. And there is evidence, for example, that an employee can come to work, can go into the bathroom and use a drug, give a urine test at the same time, and they'll test negative. They will test negative because that urine test is not testing for the current, active ingredient in the body but, rather, evidence of past usage.

What we have here is employers looking to see what workers are doing off the job, with no ability in the scientific community yet to use urine to test whether or not any of these workers and functions are impaired on the job which, it seems to me, is the critical question that most employers should be involved with. Then, it seems to me, that it's no different than allowing employers to go to the homes of his or her employee and riffle about their belongings to see whether there's any evidence of past drug usage. Why not? If we presume to allow them to search their bodies to look for evidence of past drug usage, why not let them go into their homes and look for evidence of that past drug usage, whether it be vials of cocaine that are empty, or whether there are small substances involved -- whether they be the

leftover remains of marijuana cigarettes or paraphernalia associated with heroin use, there is no distinction. The body should be, in my view, as sacrosanct as the castle, which we all consider to be our home, and if we legitimize this process in American industry, we will legitimize the process by which the body is no longer the possession of each individual citizen in our country but, rather, belongs to he or she who we are employed by.

It is for that reason that we believe the Legislature ought to prohibit urine testing in much the same way that 20 years ago it prohibited the use of lie detector tests in the employment sector. Many, many employers would like to use lie detector tests. We see those cases as well. We have a good relationship with the Department of labor, and we refer them to them for prosecution. One of the problems with the lie detector test too -- in general terms -- is, one, they are intrusive. They, in fact, constitute some form of a search of the mental processes of the individual. Secondly, there is no scientific evidence of their reliability.

There is some scientific evidence, as Dr. Powell has indicated, as to the reliability of urine testing -- again, only for the question of, "Can we determine if there's evidence that you did something on your own time, off the job, which we don't like for some reason?" And I'd like to get to that in a second. But as he indicated, in every instance there is expertise involved. There are questions of change of custody involved, and there are a variety of different testing procedures on the marketplace. I don't think he, as a scientist, would ever suggest that the tests are 100% accurate, even if they do a screening test, followed by a confirmatory test, as is suggested by Hoffman LaRoche.

If you had a 1% error rate, 99% degree of accuracy and if, as the President's Commission on Organized Crime suggested, that all American workers be tested in the

workplace -- if we tested a million workers, 10,000 of them would be sacrificed who had no involvement with drugs whatsoever.

As Dr. Powell indicated, Hoffman LaRoche -- among other concerns -- are still testing for those kinds of substances which might cross-react, that might show false positive. There is no indication yet that the scientific community has come to a point where this is error free, and we will find ourselves, as we do today, sacrificing workers because of a program which attempts to deal with drug usage in America, but, rather, involves the most widespread violation of privacy rights possible.

So then, we believe that the Legislature should ban the use of urine tests and should have employers rely on the time-tested methods that employers have always relied on to determine questions of work productivity and work safety, which is evaluation of their employees. And any major corporation will tell you that it is the responsibility of management to provide good personnel evaluation, for supervisors to be observing employees and, if there is a problem, to be identifying that problem as the result of the outward manifestations of the inability to work, or of the creation of a safety problem -- much in the same way as we require our police officers to observe the impairment of motor functioning before we allow them to stop a motor vehicle in this State and require something like a Breathalyzer test.

Why is it that we have such widespread use of urine testing, and proposed urine testing, in America? Well, I assume there are a variety of reasons. There's no question that a number of employers are rightly and justifiably concerned about drug usage and the impact of drug usage on the job, in terms of both the productivity and in terms of the safety of other workers. There's no doubt the workers are concerned about their own safety with regard to the

possibility that other workers as well may be using drugs. So, there's no question of management versus labor in that regard, but workers are also concerned about other workers who have an impact on their safety.

Nonetheless, there has to be limits on what you allow to be done, and on the net that you allow to be spread out in order to catch the few that are involved, and it is interesting to me, as we look out at the number of cases that we see come across our desk -- as has been pointed out in a number of publications -- the problem with alcohol abuse in America still makes the problem of drug abuse pale.

The problem of alcohol abuse, in terms of loss of productivity, in terms of danger and safety on the job to other workers and to the public, in terms of increased health cost to the employer -- drug usage is pale in comparison to the problems presented by alcohol use. And yet, we find very, very few employers either utilizing or suggesting that they utilize a device which is minimally intrusive, highly accurate, and tests for the very question that's at issue, the impairment of the employee -- that is the Breathalyzer test.

And one has to wonder, why is there such great concern over drug usage on the job -- in the work force, which is a legitimate concern -- when there doesn't seem to be anything that compares to that concern for alcohol use on the job, which is a much more significant problem? And I would suggest that there are many employers who would be afraid of that proposition because alcohol is their drug of choice and they wouldn't want to set a hypocritical standard. Although many of them may take three-martini lunches and come back to work impaired, they're not about to impose that requirement on themselves as well, and I ask that you consider that as you look over the land-work of this whole issue.

Nonetheless, we think the Committee, and particularly Assemblymen Littell and Foy, are making some positive effort

here, and I say that because we are seeing so many cases across our desk of people -- either job applicants or people who are employed in occupations -- being fired as a result of tests that are very limited in their utility, failure to use confirmatory testing, failure to give the worker any opportunity to challenge -- even whether or not it's his or her urine that's being utilized -- and, certainly, the other factor that I think is critical to consider is, "Should the work force be treated in a punitive fashion when it is found that they may be using drugs off the job with no evidence of impairment on the job?" And, of course, that is a critical question to be addressed.

From society's point of view, if a person is a drug user, do we want them to be without a job? What is the impact on society if the employer uses that opportunity to punish the worker? We as a society have looked at these questions of drug usage, and this Legislature, for example, has come up with a number of responses in terms of the criminal law. We treat offenders who are only users in particular ways. If a person is an occasional user, a recreational user, we treat them as first offenders and give them several opportunities because of a recognition that these people are not really criminals and that putting them in jail is not going to serve any societal purpose.

With respect to those who are victims of drug use -- that is, those who are dependent on drugs -- we look at the question, and increasingly have, of the necessity to help those people to help themselves in terms of rehabilitation, and to protect us as well, because drug users who have no money have to rob us in order to get that money. If we throw them out of work, we're going to have them on the street, perhaps even robbing us, and we will create yet a greater problem for society in terms of drug usage in general, and the impact of those drug users on the rest of us as well.

But most people in the private sector today are totally unprotected in any manner whatsoever, and we also have problems with the public sector as well.

I'd like to give you a couple of examples. Dr. Powell told you that his clients -- he recommends that they not just use the abuscreen test that Hoffman LaRoche has developed, but that no personnel action be taken without using confirmatory testing. Now I can tell you of a number of cases, say with New Jersey Transit who seems to unwilling to pay the cost of the confirmatory test, where people have been fired as a result of a positive result on a drug screen -- no confirmatory testing ever done.

The same thing is true in the pre-employment area, where New Jersey Transit employs Hoffman LaRoche, and they utilize the abuscreen, radio immunoassay test and they never use confirmatory tests, and deny people employment on the basis of that test. And in one case, we had a worker who had applied for a job with New Jersey Transit and came to us and said, "It showed up marijuana but I don't use marijuana, can't we do something about it?" New Jersey Transit wasn't interested. There's no right to a hearing. There's no right for that applicant -- the job applicant -- to challenge whether the chain of custody was maintained accurately over the urine, whether there was any cross-referencing by another drug, whether or not the employer -- in this case the public employer -- even used confirmatory testing.

So we see those problems and, obviously, any legislation that sets standards requiring the best available test would be of assistance to that group of people. But realize that there are people in this country who are seeking to enforce the criminal law through the work force, which is to say they're seeking to employ private industry to enforce the criminal law. And I ask when you look in history, when government has called upon private industry to enforce the

criminal law, we have had authoritarian and totalitarian societies, and that is the direction in which this issue is going.

The question is, does the employer rightfully have an interest in securing productivity and safety? Yes. Do they have an interest or a responsibility to enforce the criminal law and to provide even greater penalties than we as a society have decided should be the penalties for simple drug use? The loss of a job is a much more significant penalty for smoking marijuana than what will happen to you in the criminal courts of our State, and if the choice were there everybody would choose the criminal courts rather than the work force. So we are encouraging people to impose greater penalties than we as a society have determined are appropriate under these circumstances, and I think part of the danger lies there among those in government and the President's Organized Crime Commission, who are the cheerleaders for utilizing the private sector to enforce the criminal law. And I think it's a very dangerous effort because I think of what it leads to, and the people who are being abused in the process of that effort.

But again, I come back to the fact that the workers in the private sector are unprotected in any regard at all right now, and that is why we have indicated in the letter that I sent to Assemblyman LITTELL -- and I think I shared copies of it with the members of the Committee -- what I think are the minimal requirements in any bill like this, which would provide some minimal measure of protection to workers in that sector, even if the Committee shouldn't consider the possibility of outlawing the use of urine tests in this society.

Now you have to recognize as you listen to Hoffman LaRoche, they're making a lot of money in the urine testing business. I don't want to suggest how much -- or how much they were hurt by the loss of their patent on Valium, and have

replaced that with urine screening, but you have to recall that people who are testifying before you have an interest. I have an interest. We are an organization, primarily interested in civil liberties. I don't want to suggest that Dr. Powell in any way hid anything from you, but I want you to recognize that the drug companies in our State -- the pharmaceutical industry -- has an interest in urine screening, and it's a financial interest.

What are our most serious concerns here? The definition, as I indicated, of reasonable suspicion I think is far too broad. I bring you one example of a young man who was a computer operator for Public Service Electric and Gas. He had an argument with another worker. He was black; the other worker was white. He was 25 years old. He grew up in Newark. He went to Essex County College. He took himself out of the ghetto and he got himself training as a computer operator and a job at PSE&G. He had an argument with another worker. The argument had some racial overtones to it and, indeed, the argument continued after work, and there were, in fact, fisticuffs exchanged between these two workers at a bar in downtown Newark. The next day this gentleman received a letter from his manager saying, "Your erratic behavior, your racially insulting remarks, and language that was entirely inappropriate to the workplace, and your threat of bodily harm, leads us to two conclusions: Number one, we're disciplining you. We're suspending you for ten days. Number two, anybody with such erratic behavior is a likely suspect for being a drug abuser and you must now take a urine test once every three weeks for the continuation of your employment for the next three years. If you fail, you will be fired. If you refuse, you will be fired."

Now, this is a case that we wanted to take. The gentleman -- and I'm happy to report for him -- got a job with a company where he could be a computer operator, that had some

element of humanity to it, and some sanity to it. But I tell you that the definition that you have for reasonable suspicion would have justified the requirement that was imposed in that case, and would have been irrational.

I had the flu this month for about three weeks. During that period of time, whether or not I was taking antihistamines or antibiotics, my motor functions were impaired somewhat. Much of the definition that is in this bill right now, under "reasonable suspicion," would have allowed my boss, if I had a boss, to have required me to take a urine test, and you've got to recognize that not only is that a problem in definition, but the employer or supervisor who wishes to abuse a worker can utilize the most minimal kind of evidence that is set forth in your definition of reasonable suspicion to justify the demand that the worker take a urine test, and to have the worker disciplined if they don't, for insubordination.

We have had others who have been fired for refusing to take tests. We've had others, as I said, in the pre-employment area as well.

I suggested another definition to you, one that stays away from legal terminology because legal terminology gets difficult when it gets applicable in the lay area. Suspicion, in many people's minds, means a hunch. They don't recognize that reasonable suspicion means that you must be able to articulate objective facts that would lead a reasonable person to that conclusion. I suggest you stay away from it, just as I would suggest you stay away from probable cause. Very few people, including lawyers and judges know what those words mean.

I have suggested some terminology which is not perfect, but at least suggests to the person there be trustworthy basis, not because they received an anonymous tip from another person who hated that worker, not because the

supervisor is angry at the worker, but that there be a trustworthy basis for believing that the worker's abilities are impaired by the use of drugs before it be allowed.

Thirdly, we don't think that the bill has been strong enough in requiring the Commissioner of Labor -- if you go that route -- to identify the most reliable methodology available in the urine testing area, and to prohibit any job action unless that methodology is utilized. Third, the bill must provide for confidentiality regarding the records of employees' drug testing.

Fourth, employees should have the right -- which is not in this bill -- to challenge the results of any abuse test this is not in compliance with the statute or regulations promulgated thereunder. Right now, all that happens is a possible \$500 civil penalty to an employer and, note, the worker who's been fired has no rights under this statute -- no right to get their job back, no right to back pay even if the screening was wrong. So that you haven't really given any protection to workers if you don't give them the right to challenge the results, to challenge the methodology, to challenge the chain of custody, before they're booted out on their rear end with a family that has no money. And now you're talking about people without any money, and destroying families when you take people out of jobs.

As I said in my letter, we are opposed to urine testing, but as I've said to you today we recognize that much that's in this bill, particularly if some other provisions were added, would be an advance over what currently exists, particularly in the private workplace.

While we believe that we will do okay in the courts as we're litigating in the public sector, it's much more difficult since, for example, the Fourth Amendment to the Constitution, while it provides some protection to public workers against unreasonable searches and seizures -- which is

what I consider these to be -- it does not apply in the private sector. So, if I were to suggest that if there's any import here it's the import to that question of the private sector. Not only address the methodology of urine testing, address the question of whether or not an employer should be allowed to take action based on what an employee may do on their vacation. If an employer runs into an employee in Jamaica and that person is standing on the street corner with a bunch of Rastafarians, smoking a marijuana cigarette, should that be a basis for firing the worker thereafter? And you must remember that marijuana is the drug that stays in the system -- or the evidence of marijuana stays in the system for the longest period of time. Your heroin user, apparently one or two days maximum; cocaine user, one or two days, maximum. The largest group of people who are going to be swept into this hysteria are people who use marijuana, which I think as a society we've recognized is one of the least dangerous of the drugs which we have prohibited, and certainly less of a problem to industry than the problem of alcoholism.

So, I would commend the Committee for looking at this problem, which is a very serious one; for attempting to set some standards; and for attempting to provide some protection to workers, but not nearly going far enough, even in the spirit that the Committee seeks to achieve, no less what we believe -- which is that it should be prohibited.

ASSEMBLYMAN LITTELL: Jeff, you surely provided a great balance on this program here today. I want you folks to know that I had the pleasure of doing a T.V. program with Jeff Fogel and with Doctor Mark Powell, and you can imagine I didn't have to talk too much. (laughter)

MR. FOGEL: My mother and father used to complain about that.

ASSEMBLYMAN LITTELL: Have you got a copy of that letter for me? (affirmative response from unknown speaker)

MR. FOGEL: If there are no questions--

ASSEMBLYMAN LITTELL: Well, let me just ask. Does anyone have any questions?

ASSEMBLYMAN FOY: Just-- I want to point out one thing. As a result of your letter, I think a number of the amendments that we've already prepared address, to some degree, the issues that you raised in your letter. I think we may need to go into them further. I thought your presentation was excellent in terms of giving us a perspective in terms of individual rights and liberties regarding it.

I just really have one question for you. Do you want to see us move forward in this area, or do you think we ought to let eight men and one woman on the New Jersey Supreme Court ultimately decide this issue?

MR. FOGEL: Only six men and one woman.

ASSEMBLYMAN FOY: Oh.

MR. FOGEL: It's eight men and one woman on the United States Supreme Court.

ASSEMBLYMAN FOY: Yes, six men and one woman on the New Jersey Supreme Court.

ASSEMBLYMAN AZZOLINA: He's a lawyer.

MR. FOGEL: No, that was unfair on my part. I apologize. But, you know, as somebody litigating civil liberties issues, I'm always thinking -- you know, should we be going State courts or Federal courts? And, you know, you sort of get used to knowing the numbers.

ASSEMBLYMAN FOY: My question is, do you think the Legislature ought to move to fill the gap in this area, in relationship to the private sector, or ought we to wait out that laborious process of having the Supreme Court decide? I don't want judges to decide this issue, to be honest with you.

MR. FOGEL: Well--

ASSEMBLYMAN FOY: I think it's incumbent upon us to do it.

MR. FOGEL: Certainly, in the public sector you can't avoid having judges decide the definition of the Fourth Amendment with respect to public employees.

ASSEMBLYMAN FOY: Right. Cases are there and apply to them.

MR. FOGEL: I can tell you my real concern is for workers in the private sector, unrepresented by labor organizations, because in your typical labor contract, for example, nobody-- Or, first off, you have the problem that employers should be obligated to bargain over this change in the conditions in employment -- a new requirement that workers subject themselves to urine tests. I think the courts will find that.

Secondly, in most union contracts you will find what we think is the appropriate standard to be determined -- used in determining discipline, which is "just cause." And nearly all arbitrators, as you probably know, who use just cause define it as "that which can be proven to impact on job performance." Most arbitrators will find that the urine tests, since they measure evidence of past usage -- they don't measure how much was used, nor even whether or not you were intoxicated -- certainly don't demonstrate intoxication on the job, and don't prove just cause.

So, my concern is primarily for the people who have contacted us, which are people in the private sector, unrepresented by labor organizations, who right now have no protection whatsoever and who are the most subject to abuse.

I feel bad for the New Jersey Transit worker who's been fired on the bad test. I feel bad for the postal worker. We're litigating those cases. I have some confidence that we'll win them. I'm most concerned about the private sector employees, unrepresented by labor unions.

ASSEMBLYMAN LITTELL: Assemblyman Azzolina?

ASSEMBLYMAN AZZOLINA: How about the great number of

people that are abusing themselves, abusing the employers, and abusing other employees? I've gone through this in business. I think people are very abusive, and we need to do this to protect not only them, but to protect other employees. And I'm for rehabilitation if they want to rehabilitate first, but most of them don't want to rehabilitate. They just want to keep abusing, and we're going to take that-- Well, right now, it's out there so much that, yes, maybe somebody will -- such as the transit worker and so forth -- have to litigate it. But you can't let this just keep going on, and on, and on. It's crazy what's happening out there. It's all over the United States now. It's too prevalent, and we've got to stop it somehow.

MR. FOGEL: You see, I don't think anybody questions the right and responsibility of the employer in the public or private sector to be looking at employees for questions of productivity and safety, but the question is what methodology do you allow? Do you assume everybody is guilty and require them to prove they're innocent? And observe then -- recall -- what's going to have to happen then is you go into a room, you have to urinate, and somebody has to observe your genitals as you urinate in order to make sure that you're not slipping some other urine into that bottle. All right?

Now the question is, why not go into their homes and look for evidence of drug usage? There is a limit to-- There's a question here of human dignity, and there's a limit to which I think you can allow people's bodies to be invaded without cause, and that's what's going on today.

ASSEMBLYMAN AZZOLINA: Well, I resent being stopped also on the highways, in mass, but, yet, they have to do it to catch the drunken drivers. I resent having to wear a seat belt. I don't wear a seat belt -- okay? (reaction from audience) Well, listen, if you're going to regulate-- (laughter) Well, I don't mind saying it.

MR. FOGEL: Assemblyman Foy is a lawyer, he might tell you -- advise you otherwise.

ASSEMBLYMAN AZZOLINA: We resent a lot of things in life. We resent an awful lot of things. But this is the most damaging to the human body and to other individuals, drugs -- the use of drugs -- and we have to do whatever we have to do to stop it.

If one individual is going to be wrongly accused, then defend it in court. I feel sorry for that individual. But if we can stop 100 people, or 1000 people, and somehow one gets caught in the web, it's going to happen. Then we have to defend that individual some other way, but let's stop it.

MR. FOGEL: You see, the question that comes up in my mind--

ASSEMBLYMAN AZZOLINA: I can't tell when somebody is taking drugs most of the time. They're pathological liars. I've gone through this, plenty of it. They're pathological liars, and you just can't tell. And you've got to find it. Like the military said, it was 27%; it's down to 9%. Boy, if we can get that down to 9% in society -- or less -- we ought to do it, no matter what.

MR. FOGEL: But, wait. Nobody told me when I was born that I was enlisting in the United States Army. That's a choice you make to enlist in the Army, with a recognition of all of the rights of an individual citizen that you lose in that regard. We should not be treating our entire citizenry as if they were privates in the United States Army.

ASSEMBLYMAN AZZOLINA: Then let's not stop people at the bridges, like they're going to do on -- what? -- the George Washington Bridge.

MR. FOGEL: I couldn't be more in agreement with you.

ASSEMBLYMAN AZZOLINA: Let's not stop all these people.

MR. FOGEL: No, we should observe people, and when we

can observe the malfunctioning of people in their car--

ASSEMBLYMAN AZZOLINA: Well, you know, out of 1000 people stopped at random checks, I think it was like 30, maybe, arrested for drunk driving.

MR. FOGEL: Correct. So, 9700 (sic) were inconvenienced in order to identify 30.

ASSEMBLYMAN AZZOLINA: Well, that's going to happen here too.

MR. FOGEL: But every time we have a social problem, are we going to throw out the values of this society?

ASSEMBLYMAN AZZOLINA: I've got 1300 employees. I'd venture to say if you tested every one of them-- I haven't tested anybody yet, but I'd venture to say you're going to find 50 that are on drugs, maybe more -- maybe more -- and those people are very damaging to the business, to the assets, and to the other employees, and they're even pushey to other employees.

MR. FOGEL: If you had an employee who was very trusted and reliable--

ASSEMBLYMAN AZZOLINA: I can't catch him. I'm trying.

MR. FOGEL: If you had an employee in a high level position who was a very trusted and worthy employee, and you found out from a urine screen that he or she used marijuana, would you fire him?

ASSEMBLYMAN AZZOLINA: No, I would take another test, and I would try to rehabilitate them. That's what I want to do.

MR. FOGEL: Okay, but right now those workers are being fired, not based on their work performance.

ASSEMBLYMAN AZZOLINA: Well, I'd try to rehabilitate.

MR. FOGEL: This law doesn't protect them from being fired. It says there will be a penalty against the employee.

ASSEMBLYMAN LITTELL: It will.

ASSEMBLYMAN AZZOLINA: Yeah, but you don't want any

testing at all.

MR. FOGEL: No, this law doesn't protect them.

ASSEMBLYMAN LITTELL: Not in its present form.

ASSEMBLYMAN AZZOLINA: But you don't want to test them at all.

MR. FOGEL: I don't believe they should be tested because it doesn't prove anything that you can take cognizance of.

ASSEMBLYMAN AZZOLINA: Then let's not test anybody.

MR. FOGEL: But on the other hand, I can tell you I have appeared in courts where we've had trials of people charged with being under the influence of drugs, which is a crime in New Jersey, and doctors have testified, and courts have found people guilty beyond a reasonable doubt of being under the influence of a drug without using urine tests, as extraordinary as that may seem. And we've been doing it for decades. So that the scientific nature of these tests, which has only come into force recently in a cheap method, is not sine qua non of making -- of determining drug usage on the job, or dealing with it. We can observe people, and you can observe people's motor functions are impaired and, for whatever reason, you deal with it as an employer.

If they're taking antibiotics, which is legal, they're still impaired and you may want to do something about it. I'm just as concerned about the pilot who's taking antibiotics or antihistamines as I am about the pilot who's using cocaine because they're both impaired. One of them is using an illegal substance, and one of them is using a legal substance, but they're both a danger to me.

So, the question is: Are we on a moral campaign or are we on a legitimate campaign to identify a problem that we have a right to look at without violating individual rights and liberties? We can't throw out the values that make America great by saying we'll solve a social problem. You

don't have a major social problem in much of the totalitarian societies of the world with drugs.

ASSEMBLYMAN AZZOLINA: Well, under your theory we'd better get rid of a lot of laws we now have.

MR. FOGEL: Well, I've been here arguing that an awful lot. (laughter)

ASSEMBLYMAN LITTELL: Assemblyman Genova?

ASSEMBLYMAN GENOVA: Are you against all methods of drug testing -- your organization?

MR. FOGEL: Well, it's strange. The most accurate form of drug testing would be the blood test. If you were to test a worker that you had reason to believe was under the influence of a drug, if you used a blood test, that would give you an indication of whether or not the drug was in their bloodstream at the time and, therefore, acting on their brain.

ASSEMBLYMAN GENOVA: Would you support that method?

MR. FOGEL: Well see, now your balancing. Obviously, as Doctor Powell pointed out, there's a reluctance to use blood tests because of how intrusive it is -- sticking a needle in somebody's arm and extracting blood. Now there the problem isn't with the test; it's with the intrusive nature of the test.

ASSEMBLYMAN GENOVA: If it was socially accepted, would you accept it -- your organization?

MR. FOGEL: No. I think we would accept a test that wasn't that intrusive that could give the same results as to current impairment on the job, based on reasonable cause.

ASSEMBLYMAN GENOVA: Give me an example.

MR. FOGEL: Well, I don't think that the scientific community has given us that test yet, unfortunately.

MR. FOY: Brain waves. In Joe's report, there's one way. They plug your head into a thing and if you have a dippy brain wave, like probably at least 120 members of the Legislature-- (laughter)

MR. FOGEL: For example, we don't have any problem with the use of the Breathalyzer which measures that very question in an inobtrusive way. And we don't have any problem with it on the highways. We think it should be used. It's a good device. It's a reliable device. And, you know, it's accurate as to the current question, which is: "Is this driver under the influence?" -- not did they drink three days ago. Are they drinking now and, therefore, a danger to us? So, the Breathalyzer works well. If we had a device like that, I think we would feel differently.

ASSEMBLYMAN PELLECCCHIA: How would you protect the confidentiality of it?

MR. FOGEL: In the work force?

ASSEMBLYMAN PELLECCCHIA: Yes.

MR. FOGEL: Well, you've got two factors. On the one hand, many employers, if well advised by a lawyer, will keep it confidential because if they make a mistake and the employees decide to sue, they may have some liability there. But I think what you've got to do is make some penalties for the disclosure of this information. I think that's going to be the only way that you're going to protect, because some of the employers-- I can tell you this from working in the lie detector area. The lie detector, where an employer has violated our law, they get fined \$50. There are many employers who are willing to spend \$50 for the right to use a lie detector, and there may be employers willing to get rid of an employee for the cost of the \$500 that's in this bill because the employee is a troublemaker -- a union organizer or some other kind of troublemaker. Five hundred dollars is cheap to get rid of them. And they can rest on this proposition of the urine testing, and it's not going to be assailable before the National Labor Relations Board because, really, what they are firing the person for is union activity in a non-union shop.

ASSEMBLYMAN PELLECCCHIA: Could we permit the individual to go to a private physician after the original test?

MR. FOGEL: To have another test done?

ASSEMBLYMAN PELLECCCHIA: Yes.

MR. FOGEL: Well, I mean anything that you do adds on either another test -- confirmatory tests are obviously necessary -- or it gives the employee the right to have their own test done to protect against some of the potential for abuse. It only adds to the protection of workers here, no doubt about it. No doubt about it.

ASSEMBLYMAN GENOVA: In the City of Plainfield there was a recent case where they dismissed 16 firemen and four or five policemen, and the mayor of the town objected to not only urine involvement, but the involvement of several other organizations -- the FMBA, the PBA, of course -- because the mayor felt it certainly was not in the best interest of the community to have these people reinstated as quickly as you wanted them to. Do you feel that might be a case, especially with police and fire people who occupy extremely sensitive positions, that this type of testing should be in place?

MR. FOGEL: Well, can I say -- because I shared this with Mayor Taylor -- we were -- have been on the same side of the fence many times as well. The first case I ever worked on when I was in law school was in 1967. You may recall that there were civil disturbances all over North Jersey, including Plainfield. There was a robbery at a gun factory in a nearby town to Plainfield, and it was thought that many of those guns might be in the black community and being used. You know, if you'll recall, the result of that was a wholesale search of 100 homes in the black community by State Police, National Guard, and local police -- ransacking through homes looking for those guns. Not a single gun was found. And I try to remind Mayor Taylor, who had been an opponent of that, "Well,

if in fact the information was accurate, that was a very dangerous and explosive situation, and why didn't that justify the random searching of homes?" He disagreed then.

Now he's the mayor. He thinks he should be able to search the urine of the fire fighters. Now you know what happened in that case. They came in. They didn't trust their own police department. They hired a team of private investigators. They locked all the doors to the fire house. They woke up all the fire fighters, and while the private investigators observed, required them to urinate into a bottle. Now we still don't know what test was used, how good the chain of custody was, and the nature of controls that existed at the laboratory as well. We know none of those things. But there was no proof that any one of these fire fighters or police officers who were discharged had ever had any problem on the job.

Now, there's something that distinguishes police officers, perhaps, from other workers, which is that since we employ them to enforce the law, we expect of them a higher standard of conduct off the job as well as on the job. That does not, still, justify searching their home for evidence of that off-the-job conduct. Still, you've got that Fourth Amendment there.

It's always interesting to me that nobody is suggesting the judges be urine tested. After all, the integrity of the law is more dependent on the conduct of judges than it is on police officers, and I haven't even heard about anybody talking about legislators being given urine testing.

ASSEMBLYMAN PELLECCCHIA: I'll be glad to.

MR. FOY: I'll voluntarily test for drugs; I will not test for gin or beer.

MR. FOGEL: Well, I'm not sure which may impair the legislative process more. (laughter) That may be a question

of judgment.

So I would say that you could expect a higher standard of conduct from police officers off the job, but still, the question is what methods to use to investigate it; and, to me, it's like requiring strip searches as they walk into the job, or looking into their homes for evidence of what they did off the job.

If you observe a police officer-- If a police officer is arrested for using drugs off the job, you might expect him to be fired, as opposed to, let's say, a clerical worker who might be arrested for possession of marijuana. You wouldn't expect that person to be fired -- very different standards. But the question involved in urine testing is, are you going to allow wholesale, random searches of their bodies without cause as a means to determine whether or not they're violating the law outside of the job, and I say it's no different than going into their homes; it's only a little more efficient, but it still violates the sanctity that the Fourth Amendment protects.

ASSEMBLYMAN AZZOLINA: Let's test judges.

ASSEMBLYMAN LITTELL: Assemblyman Miller.

ASSEMBLYMAN MILLER: I can't say that I agree with you 100% but you certainly shed some light on the whole problem.

MR. FOGEL: Thank you.

ASSEMBLYMAN MILLER: I appreciate it.

MR. FOGEL: That's the best I can hope for.

ASSEMBLYMAN LITTELL: Thank you. Next we have Bob Yackel, Legislative Liaison for the New Jersey AFL-CIO.

B O B Y A C K E L: Good afternoon, gentlemen. It's good to see you again after all day.

The indiscriminate and random use of dangerous drugs in our society has become the scourge of the 1980s. It's creating havoc and untold suffering our homes, schools, and the workplace. It is no longer a question of whether tough

measures should be instituted to stem this creeping and prevading (sic) menace, but rather when and what form these measures will take.

In the workplace, some of the largest public and private employers have already implemented various drug testing programs for their employees, and we believe it is safe to say drug testing will only increase and intensify in the years ahead. New Jersey currently has no uniform regulations or standards for drug testing of workers, and the courts have been anything but consistent in ruling about constitutionality of testing.

Such an unstructured environment does not bode well for the continued maintenance of civil rights and liberties. With this in mind, the New Jersey State AFL-CIO supports, with reservations, enactment of legislation designed to establish uniform statewide drug testing standards and regulations, and stringently defined conditions and tests under which the tests may be conducted.

Basically, the State AFL-CIO supports the concept of drug testing and rehabilitation as a means of protecting those not on drugs from becoming the innocent victims of drug-related accidents or mistakes, and as a means of fulfilling society's obligation to those already relying on drugs in the workplace.

Drug abuse by employees reduces efficiency and productivity, lessens the quality of goods and services, and increases the risk to the public and fellow employees through unsafe operating procedures and poor workmanship. However, organized labor can only support drug testing so long as it does not erode basic worker rights and becomes as much a threat to our society as that posed by drug abuse itself. We cannot overemphasize the need to enhance guidelines and testing procedures that promote rehabilitation, not discipline, and ensure that the tests are equitable and the results are valid.

You must guarantee as much as humanly possible that no careers or reputations will be jeopardized by false positive results.

While we agree with the overall thrust of A-2850, the State AFL-CIO would urge this Committee to consider and adopt several amending provisions that further address legitimate rights and concerns of workers, specifically:

1) The quality and type of permissible testing should be rigidly defined in this act to prevent the possibility of inaccurate tests being used. We have read reports that up to 66% of the tests administered nationwide are returned with false positive results, a situation that is totally unacceptable.

2) If a first test on a worker shows positive, a second test should automatically be administered for verification. If the second test is also positive, the employee should then be referred to rehabilitation without disciplinary action, unless he or she refused the treatment or fails to complete the assigned course of action.

3) Section five of the bill should be amended and revised to read, "probable cause," instead of "reasonable suspicion" in order to comply with Section 2C of the State's criminal code.

4) Any and all mandatory drug testing should be prohibited in New Jersey until minimum standards, as promulgated by this State, are firmly in place.

5) Strict confidentiality must be maintained in all aspects of the drug testing process.

6) We ask that the proposed advisory committee on employee drug testing be instructed to make a final report to the Commissioner of Labor within nine months instead of 15 months, as presently suggested. We are facing a crisis situation both in New Jersey and throughout the entire nation, and action must be expedited concerning this matter.

New Jersey has the opportunity to take the lead, nationally, in establishing adequate and accurate standards for drug abuse testing in the workplace. We believe that these amendments, along with existing provisions in the bill to allow employees and unions to establish collective bargaining agreements to either strengthen standards or prohibit drug testing altogether, will provide sufficient civil liberty protections while creating a viable anti-drug instrument to benefit society and the workplace. Thank you.

ASSEMBLYMAN LITTELL: Thank you, Mr. Yackel. We're not going to get into any more questioning because we'll never get on with the testimony today, and I want to accommodate everybody who came here.

MR. YACKEL: I think that's as concise and as informative as I can make it, as our position.

ASSEMBLYMAN LITTELL: We will consider every one of your points. Thank you for your support.

Okay, next we have Pat Whitmer of the New Jersey State Chamber of Commerce.

UNKNOWN SPEAKER: I think he's stepped out in the hall.

ASSEMBLYMAN LITTELL: Oh, okay. Well, let's go to the next person on the list, Mike Nolan, New Jersey School Boards attorney.

J. M I C H A E L N O L A N, J R.: Well, I'm not a New Jersey School Boards Attorney.

ASSEMBLYMAN LITTELL: I'm sorry.

MR. NOLAN: But that's okay, I like that idea.

Thank you very much for having me here, and particularly Jim Harkness who supplied me with a lot of information regarding your deliberations on this bill.

I'm hoping to give you a general overview of the legal parameters involving this. I'm in a unique position. I don't come here to advocate anything. I don't represent

anybody. I was just asked by Jim, because I've had some experience in this field on both sides of the fence, to give the Committee some legal parameters that you could draft your bill with, and leave those decisions up to you.

I think I'm going to echo some of the comments which have been made by some of the other individuals, and basically I think the purpose of my remarks is to set forth a way so that you avoid potential lawsuits, so that this bill doesn't create a lot of useless and needless litigation. Being a litigator, I guess I just cut my fees for the next year, but so be it.

ASSEMBLYMAN LITTELL: I was just going to say how useless and needless can it be if it's profitable?

MR. NOLAN: Right. I'll still go with my original remark.

I think it's clear to everyone that's been reading the newspapers that the general law in this area is unsettled. I think you've heard from the ACLU regarding their lawsuits and the fact that they're still out there in the courts resolving these questions.

I think the case law, though, does give this Committee some guidelines. I think you can look to it, even though there are decisions on both sides of the fence, to assist yourselves in drafting this legislation.

First and foremost, I think the Committee has already recognized the fact that it's not necessarily a question of public or private; it's really a question of what the person does in their job. It's a question of whether a person is working in a safety-related field or a non-safety-related field. I think you can have different standards, and let me give you an example.

You call for, in some of your amendments, random testing -- quite correctly, I think, in light of the recent case law. You can have random testing if you're involved with

a person who's in a safety area. I think to the extent that you try to put random testing in other areas, I don't believe the courts are going to uphold that.

Specifically, in reference to the bill as it's presently drafted -- and I appreciate the fact that this is going to be redrafted, and there's going to be significant modifications to it in the future -- I think you should consider several issues which are going to be important.

One, in terms of your definition of employees, there are some interesting cases which deal with the question of whether or not subcontractors are employees. I think that's something you should look at. I think it's something you should consider.

In terms of retesting, I quite frankly -- in any context, private or public -- think you'd have to have a retesting requirement. I think that second test, whether for the medical reasons that Doctor Powell puts forth or some of the private interests which have been put forth, is necessary. And, I think, in light of some of the decisions which are coming down -- not necessarily in New Jersey -- I took the time to look at the case law throughout the country on this, along with my poor associate sitting in the back of the room who had to do that. I'm not going to pretend that I did it.

But in any event, in looking at cases throughout the country, retesting is something which other states are looking at very closely and I think that it's fair to say that it's going to become a requirement, and it should be a requirement in this bill.

In terms of -- it's been mentioned -- the custody, I've spent up to seven days proving chain of custody, as an assistant prosecutor in drug cases. It sounds easy. It sounds like just keeping track of the samples. I think this will have to be strengthened in that area. Chain of custody

is a very, very difficult thing to do, and if it isn't done properly all of your testing procedures are essentially worthless.

Furthermore, in terms of chain of custody-- I know that Hoffman LaRoche was here but, at the same time, not every lab that's doing this testing -- and I've seen these cases -- is really well qualified. I'm not quite sure as to what the State standards are for the labs, and I'm not quite sure industry is going to reach out and always utilize the best procedures. So, consequently, I think you have to look at the question of the reliability of, not the testing -- because I'm not going to get into that -- but, rather, are the people who are doing it qualified to do what they're supposed to be doing?

I think also, you mentioned in your amendments the confidentiality. I think that's absolutely critical. It would open up numerous-- If you do this, it would certainly open up-- If there's not a confidential requirement in there, you're going to certainly create numerous litigations.

I also think it's important because it's been brought up in other cases that these tests can't be utilized for criminal prosecution. In the Federal District Court case involving Plainfield, I think that was part of the discussion. More importantly, in cases which have gone up to other Supreme Courts around the country, utilization by private employers of drug testing which then result in referrals to the local county prosecutor -- or something along those lines -- have not been looked on with favor at all. Quite frankly, they've been knocked down for that reason.

In conjunction with that, testing has been utilized to discover other possible medical problems an employee might have: They're subject to seizure. There's an AIDS case out in California; they were testing for drug usage and found out that the person had AIDS, and the person was fired. That also, I think, would-- I think you can guard against that at

this stage and avoid a lot of problems by addressing that issue.

I just have a couple of questions about the bills, and I'm sure you can -- about the amendments -- address these at another time and place.

But in terms of rehabilitation, who pays for it? Does the employee get paid during that point in time? I've set up some of these plans for companies that are doing drug testing, and these are the plans that we've addressed in the State of corporations within the to address the Committee may want

to consider in any context this bill have been in New Jersey backwards and individuals. procedure in the courts.

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I think you might want to think the employee, in procedure in order for amendments which the courts it's any secret here as times, have bent over the fence on behalf of the to need some kind of appeal procedure and this bill running into problems in

It's also a very, very-- I think it's a very common procedure that you're seeing throughout the country that an employee who tests positive and has a second test -- there's some kind of appeal procedure. The employee can have some kind of hearing. Now, how you do it? There's a whole bunch of different ways you can do it; but I think you have to consider that because it's a very important issue. And I say these are important issues, not from my perspective necessarily but, rather, from the perspective of the various courts that have dealt with this issue in other jurisdictions.

One simple thing which I think helps both the employer and the employee is to have a verification procedure.

I know that you have notice procedures. Like before you'd be subject to testing, you would have to have -- you'd have to be notified of that. That's in the amendments. But to have a situation where the employee, in fact, is made aware of those procedures and signs something -- a statement to that effect -- eliminates potential questions about, "Well, I wasn't sure that I was being tested, and I really didn't know what it was all about."

And then, just a last question because it has come up in previous testimony -- or a last comment, really -- in terms of the race question. There's some interesting case law in New York State where it has been brought up -- the fact that certain racial minorities tend to test higher than others for whatever reasons. In that particular case, involving a bus driver, the allegation was made that members of the black race are more likely to be heroin addicts and the testing wasn't appropriate because it had discriminated somehow. Those kinds of challenges have been knocked down uniformly throughout the country. I just tell you that. I don't know if it's a real concern or not. I just heard it and I'm familiar with those cases because I had one.

But in any event, I would hope that those comments are helpful to you. In terms of, I guess the last issue I'd like to address -- the type of testing that you may go with -- as I said before, if it's an employee working in a safety-related area -- in a nuclear power plant, driving a bus, whether private or public -- I think you can have random testing, and I think random testing will meet the requirements of the law if it's a safety related part of their work.

However, if it's a person who cleans the bus at night, I don't believe there's any way that you can have random testing. I think you're going to have to have reasonable suspicion. I think reasonable suspicion and probable cause are terms which may -- while it may be correct

to say to the lay person, they may have different meanings within the context of the law, in this State at least. Under terms which have been commonly used, there are books and books with cases in them explaining what those terms mean, with hundreds of examples. And I think this Committee should stick with terminology which the courts in this State are familiar with and which have been interpreted, so that we don't come up with some kind of new term, because a new term, I don't think, isn't going to be very helpful if the courts, at some point in time, have to interpret what this Committee was talking about.

Obviously, if there are any questions, I'd be happy to answer them or, if it's more convenient, if Jim wants to give me a call at some future time, I'd be more than happy to assist you, Mr. Chairman.

ASSEMBLYMAN LITTELL: Thank you very much, Mr. Nolan. You said that there was a situation where companies already have these plans in place and one of the problems that we've been trying to deal with is, how can we deal with a company that already has a plan for testing in place that both the employees and the company find satisfactory -- whether it be negotiated or implemented? We normally do things like that with a grandfather clause right now. Do you think that becomes discriminatory to everybody else?

MR. NOLAN: No, I don't believe so. I think that-- I heard some statistics before from Doctor Powell as to how many people have plans in existence. I think they're a little bit low but, in any event, I think you could do that.

At the same time, Mr. Chairman, I would think that the present language here which talks about things at a minimum might be helpful. I mean, I think at a minimum you should have certain things, particularly when you talk about retesting. I think that's absolutely essential. I don't know of any plans which have been worked out -- that I've worked on at least -- that don't call for a lot of the things that I

spoke about today and a lot of the things which you included within your amendments, because I think the amendments went a long way toward putting this bill in a situation where it could survive and would not be subject to a real challenge.

ASSEMBLYMAN LITTELL: Great. And on reasonable suspicion or probable cause, do you think that we need to identify that further by saying that there'd be a preponderance of evidence, or some term like that, so that there isn't a case of somebody walking in one morning with a gruff attitude and upsetting their boss, who then says, "Well, he's an irrational person. I'm going to have him tested?"

MR. NOLAN: Well, I would not think that example -- and I've heard that example -- would rise to the level of reasonable suspicion. In the criminal context, where these terms are normally utilized, there's a pretty clear definition which lawyers can argue about until they're all blue in the face but, at the same time, I think there are some definitions and examples that can be utilized.

I think anything you can do to clarify it would be helpful; however, I think in the bill, already, there are some concrete examples of what reasonable suspicion is to this Committee. I think that's very helpful.

I would be concerned about the hypothetical you put forth. I'm not so sure that is necessarily going to be reality though. You know, I'm sure that's going to happen. I'm absolutely sure it's going to happen. I'm sure it's going to be -- because there are grudges -- that people will be tested, or whatever. But I don't have the great fear about it which has been expressed before.

I think most of the times in the situations I've seen, the testing has been done by responsible people who are concerned about other people. And I think that some of the-- I heard the horror stories about the bus driver, and I'm sure that's for real. At the same time, I think that in any

situation you're going to have isolated instances where the wrong thing happens, as set forth in your hypothetical. But I don't think that this Committee has to do a lot more on that issue because I think you've already made efforts to define it. I think you might want to refine that a little, with some additional language, but I think you're certainly moving in a direction which will meet the legal -- you know, fall within the legal parameter, and that's all I'm here for. I have a general idea where the legal parameters are, and whatever you do within those legal parameters, I think that's up to your legal discretion. That's why you're the Legislature.

ASSEMBLYMAN LITTELL: Thank you very much.

MR. NOLAN: Thank you very much. It's a pleasure being here.

ASSEMBLYMAN LITTELL: Pat Witmer?

P A T R I C K W H I T M E R: Thank you, Mr. Chairman, and members of the Committee. My name is Patrick Whitmer, Director of Legislative Affairs for the New Jersey State Chamber of Commerce.

The State Chamber appreciates the opportunity to work with the Chairman and Assemblyman Foy, prime sponsors of A-2850, toward the goal of developing a uniform standard for the use of drug abuse tests in New Jersey. If we had our will on this legislation, Mr. Chairman, based on the large amount of testimony which has already been presented from both sides, which was very strong, it would be our will that an advisory committee would be established that would study this issue for a year and recommend legislation to this Committee, and we would hope the Committee would then follow up on that recommendation with any proper legislation which would be recommended.

However, in the absence of--

ASSEMBLYMAN AZZOLINA: Do you have to take a year?

MR. WHITMER: Six months to a year. We think it

would take quite a while to adequately study the issue in the absence of such legislation.

The State Chamber believes the ability of employers to effectively test workers for illicit drug use, and properly deal with the results of those tests, is of utmost importance to the State Chamber of Commerce.

We believe when the Legislature is willing to provide immunity to employers for accidents at the workplace that produce liability law suits -- which may be directly related to illicit drug use by their employees -- then restrictions on the ability of employers to administer drug tests should be considered by this Legislature.

The responsibility to provide a safe workplace and to produce safe products for public demand, in some instances, requires the screening of employees and potential employees at the workplace.

The State Chamber supports the amendments proposed by Assemblyman Foy, which would establish an advisory committee on employee drug testing, with the exception of the proposed amendment to page 2, Section 8. We believe in order to give sufficient time to the Department of Labor and the proposed advisory committee to review their findings and proposed comprehensive regulations, the effective date of the act should be at least 90 days following the final report of the advisory committee to the Commissioner.

If I'm not mistaken, at the present time the Commissioner of Labor would be required to develop and implement regulations prior to -- at least six months prior to receiving the final report by this advisory committee. We'd like to see that effective date amended.

In the interest of public safety, the State Chamber believes certain employer/employee categories must be exempted from the proposed regulations. These should include public safety officers and all high-risk industries. The exempted

areas should be determined by statute and by the Commissioner upon the recommendations of the advisory committee, and I believe that proposal is addressed by the proposed amendments to the section 6(a), which were provided to us.

The legislation proposes to regulate drug testing in the workplace. The long standing procedures of many companies for pre-employment screening, however, should not be interfered with. Page 2, section 4, line 3, should therefore be amended by deleting the words, "or job applicants."

The goal of A-2850 is to establish a uniform standard for drug testing in the workplace. Once established, the State Chamber believes that standard should not be altered by agreements between an employer or employees. We believe that standard should be the law of the land, and no exemption should be provided. In the interest of protecting worker safety, the law should be enforced uniformly in all areas of employment which are not specifically exempted by statute or regulation. Therefore, we believe section 7 of the proposed legislation should be deleted.

Regarding the amendments on treatment and counseling, and on the leave of absence, we believe an individual who has broken the law, who has threatened the safety and very life of a fellow worker by his use of drugs, has violated the contract of his employment. Such a person needs help and assistance, but the provisions of this bill mandate counseling and treatment provided by the employer as a condition for random testing.

ASSEMBLYMAN AZZOLINA: Would you say that again?

MR. WHITMER: Certainly. The provisions of this bill mandate-- I'm sorry, the amendments to the bill, the proposed amendments, would mandate counseling and treatment, provided by the employer, as a condition to random testing.

ASSEMBLYMAN LITTELL: Do you agree with that?

MR. WHITMER: We would disagree with that, although

many members of the State Chamber right now -- in fact, the vast majority -- provide counseling and treatment programs, and provide a leave of absence. However, in the interest of smaller employers who may not be able to afford that type of treatment, we believe the program should be voluntary -- as it is right now -- rather than mandatory. Some employers simply can't afford to provide an unlimited-time leave of absence for employees. It could be a year or more, under the proposed legislation, and then you're required to rehire that employee when he returns, supposedly free from drug use. We would oppose that provision of the bill.

ASSEMBLYMAN AZZOLINA: Oppose the provision to give them a leave of absence?

MR. WHITMER: Of giving an unlimited leave of absence, yes. If you-- You know, if you want to amend it to a shorter period of time--

ASSEMBLYMAN AZZOLINA: Six months or a year, would you agree to that?

MR. WHITMER: I think the State Chamber would probably have to oppose a six-month leave of absence. If you could consider an employee with -- a company with 10 employees, whose assets cannot afford more than 10 employees, if one person is granted a leave of absence for six months, another person would have to be hired to take that person's place. I mean, it's only common sense that if your assets cannot afford 11 employees and, yet, this bill would require the rehiring of that employee who was granted the leave of absence after a six-month period, you would have to keep-- You would have to have 11 employees. With that small number of staff, or work force -- you know, the bottom line would be very much affected.

You may want to consider an exemption for companies with 50 or fewer employees as an example -- and that may be something the State Chamber might want to recommend.

ASSEMBLYMAN AZZOLINA: Yes, but even with 50 or more employees, he may have five in this category and five in that category.

MR. WHITMER: You're absolutely right.

ASSEMBLYMAN AZZOLINA: And he can't afford to. You know, I go through-- I give a lot of time for employees to rehabilitate, I do. But I have a lot of people.

MR. WHITMER: Our preference would be for a voluntary program which would allow for employers with many employees to allow an unlimited leave of absence.

We believe the threat of a job loss--

ASSEMBLYMAN AZZOLINA: When you say unlimited, you mean years -- two years, three years?

MR. WHITMER: Well, as the bill is written -- as the proposed amendments are written right now, the leave of absence is unlimited, yes.

ASSEMBLYMAN AZZOLINA: That's pretty rough too.

MR. WHITMER: As I read it.

We believe the threat of job loss should be enough to convince any employee to kick the habit. And, therefore, drug tests would never have to be used if that threat is there -- if the employee knows that his job, which he holds near and dear, is threatened by his use of illicit drugs.

I'll close my statement by stating that the National Institute of Drug Abuse has issued a study which says that employees with drugs in their systems are one-third less productive and three times as likely to injure themselves or another employee on the job. And so, therefore, we would commend, once again, the sponsors for addressing this issue. We think it's one that needs to be addressed.

The State Chamber supports the establishment of a uniform standard for drug abuse tests in this State, and we would hope that the advisory committee would be given at least one year to study this issue and then recommend legislation to

this Committee to consider, and that legislation -- hopefully -- will be passed and implemented at its earliest possible date.

ASSEMBLYMAN AZZOLINA: How large would you recommend the committee be, and what kinds of people?

MR. WHITMER: Well the committee, as proposed by Assemblyman Foy in his amendments, would be adequate, and I think that's 13 members, including eight private members -- eight public members.

ASSEMBLYMAN AZZOLINA: And the Department of Labor also?

MR. WHITMER: Yes, I believe it includes the Department of Labor, and the Department of Health, and several other public agencies.

ASSEMBLYMAN FOY: I might add that I was contacted by two groups, one wanting in and one wanting out. PERG basically feels that since the Department of Labor is represented, and they're in and of the Department of Labor, it's unnecessary for them to be on the committee, and also the fact that they are in effect neutral in terms of public labor disputes, it would be inappropriate for them to be on the committee.

Civil Service has asked to come in on it since they're the department that deals with personnel, and I told them I would consider it but that it would be up to the Committee regarding that. If Civil Service wants in, maybe we should have somebody from the public employee unions in with respect to that.

As far as your statements go, you made some good points, particularly regarding the issue of small employers and how we deal with the rehabilitation issues, and that's something that obviously needs to be considered.

You did reach back into the Stone Ages when you said that the threat of a loss of a job ought to be enough for

somebody to stop taking drugs. For some people, in terms of the way that addiction has translated into a disease -- the same way alcoholism is a disease -- that's like saying to somebody, "Well, stop having cancer because you're going to lose your job if you have cancer," or "Don't be diabetic any more because you may lose your job if we find out you're a diabetic." That kind of thinking -- I know it was a momentary slip. One of your brain waves just took a dip. You didn't really mean it, I know that.

I wouldn't want all of the good things you had to say in your statement to be overwhelmed by that lunacy

MR. WHITMER: Well, if I could add something, Assemblyman, other amendments which have been proposed we also support, which would require confirmatory tests after one test. And I think we would have no problem with an employer providing a written policy statement to his employees or potential employees on the use of drug tests in his workplace.

ASSEMBLYMAN FOY: How about the confidentiality issue, the other problem regarding the sealing of the records and, you know, non-disclosure? Do you have difficulty with that?

MR. WHITMER: No, but I would add that that written policy statement, once made available to all employees -- I hate to slip back into the dark ages, but I think in some instances that might make an employee think twice, at least we would like to think so.

ASSEMBLYMAN AZZOLINA: It might be a deterrent. In reference to the part you brought up on counseling, a lot of companies can't. For instance, you know I have a lot of employees. I just can't afford to have a full-time counselor there. But what we do when we find drugs -- and I think this may be an answer -- is that we seek and find the various types of counselors, you know, through government agencies, hospitals, and psychiatric centers. We find all these sources

and we recommend these sources, that they go. Some is covered by insurance. Some isn't covered by insurance. Some may charge very nominal fees. And we recommend they go, and a lot of them get rehabilitated. If they get rehabilitated, we take them back and we let it go for a long time.

Some health insurance programs do cover costs and some don't. I have my own member of my family who went through a very, very expensive program this summer, and because it was covered by insurance.

Is that covered? There's other programs that cost a lot less and they're very good programs.

ASSEMBLYMAN LITTELL: Well, as we look into rehabilitation, we'll have to examine what some of these alternatives are.

ASSEMBLYMAN AZZOLINA: There are a lot groups out there. Believe me, we've learned a lot in the last couple of years.

ASSEMBLYMAN LITTELL: We'll see if we can't develop something on that.

All right, thank you very much.

Next we'll have John Tomeo, Chemical Workers Association.

J O H N T O M E O: Good afternoon, Assemblyman. Thank you for the opportunity of being here, Assemblyman LITTELL, Committee, and colleagues.

I want to thank you for the opportunity of presenting the Chemical Workers Association's position on A-2850, authorizing the Department of Labor to establish uniform standards for the use of drug abuse tests in the workplace.

For the record, a clear statement -- I believe -- is necessary. The Chemical Workers Association does not support nor condone the use or abuse of any controlled dangerous substances or alcohol in the workplace.

Speaking for over 2400 union members, we were

saddened that there would be in your bill the right of an employer to require testing or drug screening of an employee who showed emotional unsteadiness. Corporate policies in New Jersey abound now with strangely worded phrases for cause testing such as:

- Friction in the work group;
- Motor skill malfunctions;
- Errors;
- Forgetfulness of details;
- Carelessness about personal appearance; or
- Mood swings, etc.

Everybody in this room would have to go down to Medical for a drug screen using this criteria.

Providing all employees with a fairness doctrine legislation stating that everyone from the plant manager on down will be treated equally is essential, with no double standards taking place.

Indiscriminate testing of employees with the further stigma of being labeled as a drug suspect is not only counter-productive, it alienates the employee, which we vehemently oppose.

What is needed is plain language in our laws that everyone can know and understand. We need to throw away the outdated hammer-and-discipline approach and address this critical issue by positive, meaningful solutions that we believe will reach our fellow workers.

An independent employee awareness program -- an EPA, if you will -- could be implemented with the emphasis on rehabilitation. The concept of this approach is significant in that it recognizes the attendant problems with and the awareness of substance abuse, while providing meaningful supportive help to all our employees and their families.

It has been documented by the National Institute of Drug Abuse -- NIDA -- whether you have 10 employees or 1300

employees, that every dollar spent in the public and private sector on substantive rehabilitation, there is a \$10 return to the employer.

As was stated on national T.V.'s "48 Hours on Crack Street," by Dan Rather: "We are in a war that we simply cannot afford to lose."

Gentlemen, we believe that legislation is drastically needed now to protect our workers and their families.

By the way, I forgot to introduce myself. I'm Joseph Tomeo, Chairman of the Safety and Health Committee for the DuPont Chemical Workers in Salem County, and I thank you again for the opportunity of being here.

ASSEMBLYMAN LITTELL: Thank you, we appreciate it. Are there any questions? (no questions) Okay. Thank you.

Next we'll have Mr. Rick Engler from the Industrial Union Council -- IUC.

R I C K E N G L E R: Thank you for the opportunity to testify. My name is Rick Engler, and I am Director of Occupational Safety and Health for The New Jersey Industrial Union Council, AFL-CIO. The IUC represents over 200,000 workers in the public and private sectors.

We start from the premise that drug addiction and alcoholism, both, are illnesses, and those suffering from these diseases need treatment not punishment.

Labor unions have long promoted prevention and rehabilitation programs in the workplace and community, and have sponsored institutes on alcoholism, have made referrals to drug and alcohol treatment programs, and have established on-the-job treatment programs through collective bargaining. So, unions have a long history in this area.

We are deeply concerned about the stepped-up efforts of employers, public and private alike, to use drug tests to screen all job applicants and all employees, or to force applicants and employees to submit to such tests on a random

basis. The IUC is absolutely opposed to such testing, which clearly violates human rights and dignity.

We find it most curious that when we try to negotiate objective medical testing programs to determine how much harmful mercury, lead, asbestos, or other chemicals are in our bodies from employer-generated workplace exposure, employers frequently refuse to provide such tests. Yet, employers are now enthusiastically testing workers for drugs where there is no evidence of on-the-job impairment.

We can only conclude from this experience that the current wave of employer drug testing is essentially a means to increase management control of the work force and to reduce union ability to represent its membership. It's become part of a new tool of personnel policy and management prerogatives.

We have the following specific comments on Assembly Bill 2850. In the current form-- Let me make clear, in the current form we do not support the bill. With amendments, it's possible that we would support the bill.

First, fundamentally we are concerned that the bill sanctions employer drug testing that is entirely inappropriate. Therefore, section 7 should be amended to additionally require that no employer may utilize drug testing without prior agreement from the collective bargaining representative on the overall and specific nature of the drug testing program.

This is an area where we have joint interest in. Management and labor both have a concern that drug use be minimized and eliminated, and that this terrible thing that's happening to our society be eliminated. If that's the case, the ability to implement such programs ought to be based on labor-management cooperation, and labor-management agreement, and not a unilateral imposition of standards, even if based on minimum state standards by management.

Not doing it this way, essentially allowing

management to bargain -- perhaps bargain to impasse -- and then to say later, "Well, we bargained; we informed you of the program; we discussed it;" and then to come in and essentially unilaterally impose some type of a drug testing program would not work. It would lead to decreased morale. It would lead to new techniques for those who are on drugs to figure out how to avoid tests. It would lead to friction in labor-management relations. There's just no point to it. So what we're suggesting is, with a program that affects our families, that affects the community, that affects our very jobs as well as our health, that the requirement before there be any employer drug testing, is that there be a written drug testing program as suggested in the amendment, but, additionally, that there ought to be a labor-management agreement to the terms of that written program.

Now it's been raised: "What do we do about the fact that most people are not represented by labor unions?" We think the Committee ought to explore at least two areas:

One, the possibility of elected representatives from the non-union workers to participate in the formulation of that drug testing policy.

Another idea that has been suggested is that there be Department of Health representatives actually present in the workplace to evaluate, or review drug testing in unorganized workplaces.

But essentially -- and I can't emphasize this too much because I think this is where the most notable thing about the testimony that we present is that in order for employers to do drug testing, management and labor must first agree in writing on the basis for testing, test methodology, privacy concerns, job and income protections, and rehabilitation responsibilities, and that those protections would apply to all employees, not simply to the hourly wage roll -- but to be applied to management on a consistent basis.

Two, the definition of "reasonable suspicion" in section 5 is far too broad. The comments from the Chamber about high-risk industries were quite interesting, given that according to employer-supplied statistics given to the U.S. Department of Labor, job site and injury illnesses are soaring in every sector of the economy. And according to the definition in the bill, as it stands now, that would mean that virtually the entire American work force could be tested simply because the accident rate is going up across-the-board in the United States under the Reagan administration's policies related to OSHA, and under increased changed policies of the American employers.

Under the bill's definition of reasonable suspicion -- as I said, higher than average accident rates would lead everyone to be tested.

Sensory or motor skill malfunctions could mean anything from dropping a pencil to having a cold. Decline in employee productivity could easily result from management failure to invest in new machinery. So that if an employer decides to phase out a plant -- to close a plant -- which is an issue which the IUC has long been concerned about, and decides not to invest in new machinery and put capital investment into that facility, employee productivity does go down when there's not adequate investment. That would be a basis for testing.

We believe in -- and share with the New Jersey Civil Liberties Union -- the criteria. We support the criteria that there should be only trustworthy grounds to believe that the employee is under the influence of a controlled dangerous substance. And, again, we emphasize that testing should only be permitted where there is a mutually agreed upon drug testing program that meets the state minimum standards.

Three, the bill should be amended to require the Commissioner of Labor and the Commissioner of Health to

identify the most reliable testing methodology and to issue regulations to prohibit other methods from being used.

Four, employee rights should be established by the statute, and clearly protect confidentiality of test results and the right to privacy regarding tests, the right to challenge the test results and the methodology of the tests, the right not to be fired or otherwise punished for having a disease.

And again, I have to comment. I mean, if certain employers can't afford to rehabilitate, I think we should base it on the same criteria that certain-- We should survey those employees that can't afford to get fired, and that would be a useful parallel. They should be the ones that clearly would be able to go into a rehabilitation program.

Again, the emphasis should not be punitive but rehabilitative, and some companies have made provisions for that, as the attorney who testified earlier indicated.

We have one other area of emphasis that we really haven't addressed to a great degree in this hearing, and that is: What are the causes of drug abuse? We didn't start from that discussion. One of them is clearly related to the workplace, and workplace related stress, and studies have shown that workplace stress causes abuse. It's one of the indications of that stress. Stress includes excessive workload and hours of work, rotating shift work, arbitrary supervision, lack of possibility for career advancement, fear of plant closure, and unsafe working conditions. In other words, the nature of work itself is one of the contributors to drug abuse.

This being the case, the employers should, before they look at their employees to blame the victim, they should look at their own practices, and what they should consider is how much of their own policies and personnel practices contribute to drug abuse. And one thing they might consider

in humanizing the workplace and working conditions is making sure the workload is not too high.

For instance, the one example in the supermarket industry is carpaltunnel (phonetic spelling) syndrome. That's a repetitive motion injury that comes from people on checkout lines who are forced to stand up all day. When I asked workers in Sweden about why they were sitting down, they couldn't believe people in the United States were forced by employers to stand up all day to check out groceries. They thought it was absurd because they all sat down.

ASSEMBLYMAN AZZOLINA: What do they do in a manufacturing facility? They stand up, don't they?

MR. ENGLER: That's not necessarily the case. There's a lot of ergonomically designed industry in Europe, where people are not subjected to the type of working conditions they are here.

My point is that many of the problems of drug abuse are caused by things like having to work on a monotonous assembly line, or processing paper all day, or working before a video display terminal that leaves one with headaches and worries and fears at the end of the day.

ASSEMBLYMAN AZZOLINA: You know, you're so wrong--

MR. ENGLER: So the victim--

ASSEMBLYMAN AZZOLINA: You know, you're getting involved in areas you don't know anything about. In fact, it happens to be the checkers are the least of our problems with drugs. It's the others.

ASSEMBLYMAN LITTELL: Okay. Now go on.

MR. ENGLER: Let me, in conclusion, point out that the IUC supports broad educational efforts in our schools and universities, to alert youth to the danger of drugs. We support law enforcement efforts to curtail drug distributions. And we support national priorities that could go far toward reducing drug abuse by redirecting funds from

fraudulent military defenses, like Star Wars, to the elimination of poverty.

The IUC strongly supports the call by the AFL-CIO for a moratorium on drug testing until any regulations are issued, and we encourage this Committee to hold public hearings, not in an effort to delay action on the bill, but you can see from the interest and concerns today -- including from some of the people who had to leave earlier -- that there's tremendous public interest, and we stand ready to move and support rational efforts on a prompt basis. But we think a full range of testimony also should be heard.

The IUC stands ready to work with the Committee to produce a bill that appropriately addresses this serious national problem. Thank you very much.

ASSEMBLYMAN LITTELL: Thank you, Mr. Engler. We'll certainly take all of your thoughts into consideration.

ASSEMBLYMAN MILLER: Just a comment.

ASSEMBLYMAN LITTELL: Assemblyman Miller?

ASSEMBLYMAN MILLER: It's the first comment I've made since the people have testified. I read this paragraph: "Instead of using drug tests to blame the victim, management should examine how much of their own investment policies and personnel practices in their quest for productivity and profits, contribute to drug abuse," and, "Scientific studies have shown...work related stresses."

You know, it seems to me, way back when, there were 10 hour days, seven days -- six days a week, and I don't recall any drug abuse problems at that particular time. You talk about stresses, we had plenty of stresses then.

MR. ENGLER: I'm sure one could look at alcohol rates for that period and find something.

ASSEMBLYMAN MILLER: Same thing. Absolutely. I don't disagree with you, but I think your statement in here-- I think you're-- Well, I know from whence you come, so I can

relate to that. But it just seems to me you've gone overboard with what you--

MR. ENGLER: Well, I think to the extent that I've tried to bend the stick in the other direction, because the victims to date have been the workers, not management, and all I'm trying to encourage here -- in perhaps a slight overstatement -- is for management to examine their own practices and evaluate to what extent the conditions of work led people to this substance abuse.

ASSEMBLYMAN PELLECCCHIA: Rick, you did a fine job.

MEMBER OF COMMITTEE: Right. And without management you wouldn't have anything to complain about, so consider yourself lucky.

ASSEMBLYMAN FOY: Let me bring this back to the center. How do you feel about the idea of the advisory commission developing, essentially, the program that would be translated into a bill? Are you just opposed to the concept of drug testing at all?

Now, you've indicated several times in here about the random drug testing, but what about drug testing based upon a definition that's tighter than "reasonable suspicion?"

I kind of like your definition. The only thing is, I've had a number of police groups tell me that the better one for the workers is the "probable cause" definition because it's tougher to prove. So, I'm not sure what your definition -- where that would fall between "reasonable suspicion" and "probable cause."

Are you saying that you could live with drug testing that's done on a basis in which there is some form of -- for lack of a better term -- probable cause, provided these additional safeguards you're talking about were built into it?

MR. ENGLER: Well, I think the additional safeguards are very, very significant -- meaning that if a union was able to negotiate the program with the employer and agree with the employer, we would assume that the union would represent its membership on both civil liberties issues and the genuine

concern the workers have for being free of drugs in the workplace.

ASSEMBLYMAN FOY: The problem that I have is not for the 750,000 workers in this State that are represented. Realistically, if their unions are strong enough and are able to do it, they can do right now what you're proposing. Okay?

The problem that I have is for those several hundred thousand unrepresented workers in New Jersey who are being victimized, as Jeff Fogel says, right now. That's the ones that I'm concerned about. If we simply leave it to the unions to deal with, it's a great organizing tool, but it may be a long time before everybody gets organized to have the benefit of your collective bargaining agreements.

And I have a concern, and I think that Jeff made a very telling point, that in the private sector this is important legislation, to establish an appropriate balance and safeguard to those workers' rights, and if we just-- I'm a little concerned that if we're too tight to what you propose here, and that's involving the collective bargaining process as kind of the final arbitrator, that we will then defeat the purpose of protecting the people who don't have the benefit of collective bargaining.

MR. ENGLER: I think more attention has to be devoted to that, and I have to be honest, I don't think we have all the answers on how to provide protections there. We discussed some possibilities. We'd be happy to work on that further.

ASSEMBLYMAN LITTELL: Okay. One more comment.

ASSEMBLYMAN AZZOLINA: Yeah, I would like to-- As far as I'm concerned, we're here today to represent all the workers, not union, not non-union, but everybody. And I think we need a uniform program to get collective bargaining. This is such a serious issue that we really need a program that's going to benefit everyone, and take care of the problem for all the workers in the State, not just think in one direction.

ASSEMBLYMAN FOY: I agree with you.

ASSEMBLYMAN AZZOLINA: Am I right? It's getting so far that it's going to be all collective bargaining, you know.

ASSEMBLYMAN FOY: I agree.

ASSEMBLYMAN LITTELL: He's making a point. He's using that to make a point He wasn't--

ASSEMBLYMAN FOY: No, we agree with each other. Maybe I didn't make it as clear, but that was the point I was trying to make.

ASSEMBLYMAN AZZOLINA: Oh, okay. I thought so, but I wanted to clarify it.

ASSEMBLYMAN FOY: I'm just trying to get to the center. I don't want to move over to the--

ASSEMBLYMAN AZZOLINA: Oh, okay.

ASSEMBLYMAN LITTELL: Is Mayor Richard Taylor of Plainfield here? (no response)

Next I'd like to have Dennis Crowley, representative of the Attorney General's office, please.

ASSEMBLYMAN PELLECCCHIA: You have three minutes.

D E N N I S C R O W L E Y: Three minutes? I have three minutes? That's all I'm going to take.

ASSEMBLYMAN FOY: Well, we thought the Attorney General was going to be here, and he was going to get six minutes.

MR. CROWLEY: Well, I'll take his three on account.

ASSEMBLYMAN MILLER: On account of you don't have anything else to say?

MR. CROWLEY: I may need it for a later meeting.

ASSEMBLYMAN AZZOLINA: Can we bring him down at a later date when we finalize this thing?

MR. CROWLEY: Sure. He'd be more than happy to meet with you.

We've been listening to the testimony and, first of all, I want to commend the Committee for providing the

opportunity for such a wide range in dialogue and discussion on an issue that is really almost convoluted in its impact. And we don't want to speak to that broad impact today, however. We only want to raise one concern to you -- as you consider possible amendments to this piece of legislation in the future -- on behalf of the Department of Law and Public Safety.

We would urge you to think seriously about removing law enforcement personnel from the terms of this legislation, and to place that law enforcement personnel under guidelines, regulations, promulgated through the office of the Attorney General who is, in fact -- as you know -- the chief law enforcement officer of the State.

We make this suggestion to you because of the unique nature of law enforcement personnel in this State. They are both a role model in a societal sense, and are also the ones who we charge with enforcing the laws, including the drug laws.

ASSEMBLYMAN AZZOLINA: Would you put the National Guard under that too then?

MR. CROWLEY: There is an amendment on the table today, I believe, which does that. We're not prepared to comment on including the National Guard in that on a regular basis.

ASSEMBLYMAN AZZOLINA: They go under Army regulations anyway.

MR. CROWLEY: That's one of the reasons we wouldn't be prepared to talk about it now.

We're looking, at this particular moment, at a study that's going on inside of our Department for quite some time on this very issue. What should be the standards which regulate the drug testing of law enforcement personnel? Who should control those standards? How should they be promulgated and implemented? And the very issues raised today, in terms of protocol and evidence -- both the initial

and follow-up testing/screening procedures -- these are all issues that we're looking at also in the narrower -- much narrower -- context of how it affects law enforcement personnel.

As you deliberate on the issue here, please keep in mind that we would urge you very strongly to remove those law enforcement personnel from the legislation and require that the Attorney General, as chief law enforcement officer, develop those regulations and, in fact, function as the chief law enforcement officer that he is.

ASSEMBLYMAN LITTELL: Where do you draw the line? You're talking about full time, paid police officers and full-time, paid firemen?

MR. CROWLEY: We would probably draw the line-- And the line is not firm yet, and that's why the study hasn't been completed. But we would most definitely be looking toward those individuals who are authorized to carry weapons and who are required to enforce the law.

ASSEMBLYMAN LITTELL: Our police? Local police?

MR. CROWLEY: Yes. Local police, municipal police, State Police.

COMMITTEE MEMBER: Special police? Bi-State Agency Police?

MR. CROWLEY: Yes, possibly.

ASSEMBLYMAN FOY: Well, anybody with 2-C powers is regulated by 2-C. Federal 2-C is the law enforcement statute that New Jersey -- which regulates all those types of personnel: Marine Police, ABC Inspectors, State Police, municipal police, county and part-time police. All those people are covered by 2-C. The only one in the list in terms of your amendment, Mr. Chairman, that there's a question in my mind about is the fire fighters because they're really not regulated under 2-C, and we have representatives of one of the fire fighter organizations here. I saw some others. I don't know what their position is about whether they want to be covered by the Department of Labor or covered by the A.G.

ASSEMBLYMAN AZZOLINA: You're talking about paid and unpaid volunteers?

ASSEMBLYMAN FOY: Paid. Not volunteers. Paid.

MR. CROWLEY: There are two other groups that we have not addressed in our deliberations. In the amendment they are corrections officers and National Guard.

MR. FOGEL: Well now, you say here, "Guards employed in the service of any county or municipal penal institution, guards and law enforcement personnel in the Department of Corrections." That's in the amendment.

MR. CROWLEY: I know. They're two groups that we had not considered including.

ASSEMBLYMAN AZZOLINA: Isn't National Guard under Federal law?

MR. CROWLEY: Yes, that's one of the--

ASSEMBLYMAN AZZOLINA: They go under whatever they do for the military.

MR. CROWLEY: They're members of the military.

ASSEMBLYMAN AZZOLINA: How about civil threats? That's an important responsibility.

MR. CROWLEY: Certainly, we could consider that type of employee in the procedures, but at this time we wouldn't be prepared to say yes or no.

ASSEMBLYMAN LITTELL: The county coordinator would be the person would be directly in charge of any disaster, whether it be natural or man-made. You know that's the problem we have.

MR. CROWLEY: Sure.

ASSEMBLYMAN LITTELL: We need some clarification on how far you want to go.

ASSEMBLYMAN AZZOLINA: He'll give it to you, I guess.

MR. CROWLEY: We plan on giving it to you.

ASSEMBLYMAN LITTELL: Okay, sir.

MR. CROWLEY: I understand that you'll be meeting again later this month.

ASSEMBLYMAN LITTELL: Okay. Anybody else have any questions? (no response)

ASSEMBLYMAN GENOVA: Let's go home.

ASSEMBLYMAN LITTELL: Go home?

ASSEMBLYMAN GENOVA: He was the easiest.

MR. CROWLEY: We're easy to get along with.

ASSEMBLYMAN GENOVA: What the hell, you took everything out. (laughter)

ASSEMBLYMAN LITTELL: Next we'll have Jeff Monahan, Department of Health.

J E F F M O N A H A N: Good afternoon, Mr. Chairman. My name is Jeff Monahan. I am the Legislative Liaison from the Department of Health. Unfortunately, our Assistant Commissioner for Alcohol, Narcotic, and Drug Abuse -- who you asked to be here today -- could not be here.

The Department is in support of the overall concept of developing a procedure on drug testing in the workplace. We do think the legislation that ultimately emerges should contain several specific provisions.

Number one, we think that careful consideration should be given to the issue of random or unannounced testing for certain individuals who are in high-risk or safety sensitive occupations, where there's a great deal of public safety involved.

ASSEMBLYMAN FOY: Can you speak up just a little bit for the people who are in the back straining to hear you.

MR. MONAHAN: Sure.

ASSEMBLYMAN FOY: Those mikes are just for the tape. They're not for--

MR. MONAHAN: We also think that the legislation should address the issue of quality assurance procedures concerning the laboratories which do the testing and,

similarly, we think that there should be mandatory, confirmatory testing in any instances where the initial test proves positive.

It's our understanding that two of the most common occurrences are false positives for situations where improper procedures were followed by the laboratory, and where confirmatory testing wasn't done after an initial positive test came through.

We also would like to see the legislation, in some form, deal with some type of employee assistance, or some type of training for individuals who do test positive, and we would also like to see the confidentiality issue assured in the legislation which eventually emerges.

ASSEMBLYMAN LITTELL: Does anyone have any questions?

ASSEMBLYMAN PELLECCCHIA: Just one question. How do you feel about the third layer, the individual who wanted to go to a private doctor after the first two tests have been given?

MR. MONAHAN: I don't think we would have any objection to that. We haven't carefully considered it, but I don't think it--

ASSEMBLYMAN PELLECCCHIA: Would you object to him using that as evidence against the two tests that were given?

MR. MONAHAN: With what now?

ASSEMBLYMAN PELLECCCHIA: Would you object to having him use whatever the results of his test are, against the two tests that were taken?

MR. MONAHAN: I don't know that we would. I think probably the law enforcement departments could better address that question than the Department of Health.

ASSEMBLYMAN PELLECCCHIA: Okay. Thank you.

ASSEMBLYMAN LITTELL: Okay? Thank you very much.

Bill Flynn, fire fighters.

B I L L F L Y N N: Thank you, gentlemen. I am Bill Flynn

from the New Jersey State FMBA, Firemens' Mutual Benevolent Association.

ASSEMBLYMAN AZZOLINA: I thought you were Assemblyman Flynn. (laughter)

MR. FLYNN: He left; I'm still here.

ASSEMBLYMAN LITTELL: He's the reason he left. He's the victim; he's the cause.

MR. FLYNN: Dennis Crowley was up here from the Attorney General's office. He did not mention fire fighters, and a reference was made to the paid firemen in the State of New Jersey. We do feel that we should come under the Attorney General, the same as police officers. We are part of public safety and law enforcement, and we would wish the Committee would consider that at this period of time.

We feel that the bill-- The idea of the bill, we are 100% in support of. We do feel that any individual that is on drugs, or has a tendency for drugs, is a safety hazard to every fire fighter in the State of New Jersey. So, the concept of the bill is good.

We came here originally to support the bill after talking to the Attorney General's office, and their feelings of having their own study and including us under the Attorney General -- we would rather support that and be excluded from this bill. But the concept of the bill we support, and we appreciate Assemblyman Littell's foresightedness in having the bill. But if you would just exclude us to fall under the Attorney General's office, we would appreciate it.

ASSEMBLYMAN LITTELL: Thank you very much.

Irene Von Dohlen, Department of Labor.

I R E N E V O N D O H L E N: Thank you on behalf of the Department of Labor for allowing me to speak on this bill. We've seen several amendments to this bill in the last few days, but I'm just going to address the basic bill.

As it stands, the Department feels the bill is very

restrictive regarding the drug testing. First of all, we feel it's an intrusion on the collective bargaining process. Under current--

ASSEMBLYMAN AZZOLINA: Do you feel it's an intrusion on the collective bargaining process?

MS. VON DOHLEN: Yes. Currently, only tighter restrictions on drug testing or no drug testing at all can be negotiated. If an employer wanted to have mandatory drug testing and the employees agreed to it, that couldn't result; it would be prohibited.

ASSEMBLYMAN AZZOLINA: Yeah, but you're talking about mandatory now. Let's see, you've got me confused here.

MR. DEVANEY: Random or routine testing is prohibited under a collective bargaining agreement. Under the law, it would be prohibited.

MS. VON DOHLEN: Yes, some unions where members depend on their colleagues for safety may want--

ASSEMBLYMAN AZZOLINA: Oh, you're opposed to that portion you mean?

MS. VON DOHLEN: Yes.

ASSEMBLYMAN AZZOLINA: Okay, then I misunderstood that.

MS. VON DOHLEN: They may want to enact tougher drug testing policies, and this would be prohibited under the bill.

Another difficulty we have with the bill is that in certain instances we feel drug testing is necessary. This would be in the area of air traffic controllers, health care practitioners, law enforcement personnel. These employees cannot be tested under this legislation prior to the employer discovering a reasonable suspicion to administer a drug test.

Often the public, the employer, and fellow employees feel that -- particularly in dangerous occupations -- waiting for a reasonable suspicion may endanger the health and well-being of anyone coming into contact with such a person

who would be under the influence of drugs.

The Department also feels that this is restrictive in that the bill would not permit voluntary testing. Some employer, some employees, may be in favor of it. The President of the United States is in favor of voluntary drug testing. This would be prohibited under the bill.

Finally, the legislation calls for the bill to take effect 90-days after enactment. Given the highly technical procedures which will have to be regulated, as well as the large number of agencies, both public and private, who will have input into the regulations, it is anticipated that a more realistic effective date would be one year from enactment. This will enable time for regulations to be promulgated since, as written, the legislation calls for no drug testing until these regulations are put into effect, and would terminate all drug testing in New Jersey from the effective date until the regulations were issued.

Because of all the controversy surrounding this issue -- as can be seen by the testimony here today -- and the vast impact a drug testing policy would have in the State, the Department feels that an advisory commission should be established to study the whole issue of drug testing, and there should be no change in the status quo until the commission issues its report to the governor.

We feel that only in this case can a drug testing policy, with a broad enough consensus to be effective, be established. Thank you.

ASSEMBLYMAN LITTELL: Would you be kind enough to send us that?

MS. VON DOHLEN: This is basically a summary of a letter I had sent you.

ASSEMBLYMAN LITTELL: Okay. Thank you very much.

Dr. Toni Mullins, New Jersey School Boards Association?

T O N I M U L L I N S: Mr. Chairman, gentlemen, thank you very much for allowing me to testify today. As you know, I'm Tony Mullins from the New Jersey School Boards, and I give you a lot of credit. It's been an exhausting day, but certainly a very informative one.

First of all, the New Jersey School Boards supports A-2850, with amendments. We support State standards for the administration and screening of drug abuse tests, especially after hearing the very excellent and diverse testimony today. There's definitely a need for a standard.

These standards would provide useful guidance for Boards of Education and would eliminate the risks of improper screening and invalid results. In addition, standards would reduce the likelihood of multiple suits on issues of drug testing that could occur if boards administer their own tests. In fact, we would seek assurances that employers who would follow standards would not be liable to employees in any court action.

Second, we support the standard of reasonable suspicion, as has already been indicated by one of the attorneys. We feel that the definition is general enough and has been in use enough, and we are comfortable with it.

Third, we approve the establishment of the advisory committee on employee drug testing, but we would like to be part of that advisory committee. We would request that we could be on that committee.

Most important, NJSPA does seek an amendment that would eliminate the provision in the bill that allows employers to agree with employees not to administer drug tests. This provision would restrict existing board rights, based on case law, and such a provision would tie boards' hands with respect to teachers exhibiting signs of drug abuse. This specific legislation could possibly supersede existing legislation that currently allows boards to require

employees to submit to physical examination when there is evidence of physical or psychiatric abnormality.

So, in conclusion, we believe that it's essential for boards to continue their responsibility to protect the children and to retain their right to test employees when they reasonably suspect drug abuse.

School boards should not be subjected to the possibility of being pressured into agreeing to a contract provision prohibiting such responsibility. So, we certainly urge you to support the base provisions of A-2850, but we would like to see an amendment to the bill to exclude that provision that would tie our hands in dealing with drug tests.

ASSEMBLYMAN LITTELL: Thank you. Do you have copies of that for everybody?

MS. MULLINS: Yes, I do.

ASSEMBLYMAN AZZOLINA: Just quickly. Do you think the use of drugs by teachers throughout the State is prevalent -- a lot, a little? You know, without putting you on the spot--

MS. MULLINS: I don't have any indication.

ASSEMBLYMAN AZZOLINA: So you think maybe it's 5%, 10%, 15%, 20%, 25%? I don't know.

MS. MULLINS: I really cannot say, Assemblyman. I don't know.

ASSEMBLYMAN AZZOLINA: But it's out there?

MS. MULLINS: As in all other testimonies that you've heard, we realize that this is a prevalent problem nationwide for all people, and teachers are people like everybody else. The problem could be there as well as anywhere else. So, we'd just like to see something standard so that we could perform our responsibilities.

ASSEMBLYMAN LITTELL: Doctor, you mentioned excluding the portion that would allow somebody to negotiate not to have any testing. You know, I really don't see why you'd want to

take that out, because all these people would say no. You know, if you're going to negotiate with somebody and they want something, you say, "No, we're not going to negotiate that."

MS. MULLINS: Well, I understand what you're saying, but our concern is that we already have -- there's already legislation out there. We're concerned this would supersede our ability to do, as we have been able to do in testing.

ASSEMBLYMAN FOY: Let me tell you precisely why that's in the bill, from my perspective. I didn't want this issue to become imbued with the issue that seems to be the crux of relations between public employers and public employees in New Jersey, and that's the issue of whether or not something is an illegal or a mandatory subject of negotiations.

Rather than deal with that in the context of there being a scope of negotiation petitions filed by an employer any time the union saw fit to deal with the issue of drug testing policy, I felt it important to put the issue to rest at the outset by saying that it is, in fact, a subject of negotiation, that if the union can negotiate not to have a drug policy they are free to do so at the bargaining table.

I want the drug policy in this State to be uniform to that extent, rather than have a situation in which, if we didn't speak to the issue, you would then be going before PERG -- you being an employer, or a representative of an employer group, going before PERG and having PERG make a determination about something that ought to be an overall policy decision of the Legislature and the Governor. That's why it's in there, for no other reason than to have no other agencies involved. That's one of the reason why PERG wants off of the commission. I assume you want in, and Civil Service wants in, and there are two union groups in there.

One of the things that I'm becoming concerned about in hearing the testimony -- and I want to offer it as a

general comment, not relating specifically to yours -- is that there is, in my mind, a limitation to what we can do with a bill. And I think we are, in a sense, overstepping our authority if we think that we can cross every "t" and dot every "i" in this piece of legislation to deal with all of the plethora of issues that have been discussed today regarding drug testing in the workplace.

I think what we've got to do is create the skeleton. and allow that commission -- the representatives of the public, of the administrative branch of government, of the various agencies and interest groups involved -- to put the flesh on those bones that we create.

So, maybe my role was different in terms of perceiving what my role is from what I'm hearing from different groups, but I don't think we want to go so far and come up with a 90-page bill that really does the job of what the Department of Labor and that advisory council are supposed to do in terms of putting flesh on the skeleton that we devise for them legislatively.

We can, I guess, debate that, but just say that where I'm coming from, up front, I don't want to put a bill in there that does everything everyone wants to do, or accommodates every interest. I want to put something together that puts you all together in a room and has you fight out that particular thing.

ASSEMBLYMAN AZZOLINA: How about testing school board members also? Would you go along with that?

MS. MULLINS: We're talking about all people.

ASSEMBLYMAN AZZOLINA: Okay.

MS. MULLINS: That's not a problem, and in fact if we could participate -- if we could have a representative on the advisory committee, it would help out very much in ironing out some of the concerns that you may have and that we may have.

ASSEMBLYMAN AZZOLINA: I don't mind being tested, right from the top.

ASSEMBLYMAN MILLER: You know, in line with your thinking, Tom, basically what are trying to accomplish here-- Basically? I think what we're trying to accomplish is the welfare of the individual, the welfare of society in general, the welfare of the employer, and if we're going to allow this to be negotiated then we're really not interested in the welfare of the individuals, society, or the employer. If we're going to negotiate this thing and say "You can't do this," we've wiped out what we're trying to accomplish.

I kind of hedge on putting this in as a negotiable item. I kind of hedge on that.

ASSEMBLYMAN AZZOLINA: If we're going to be testing, we've got to do it like seat belts, even though I don't like them. Everybody is supposed to wear them. If we're all going to have to wear seat belts, at least we should--

ASSEMBLYMAN FOY: You'd better because when it hits the papers (indiscernible) will have something to write about. (laughter) I can see the headline: Strap Azzolina In.

ASSEMBLYMAN AZZOLINA: That might be the headline today.

ASSEMBLYMAN LITTELL: Thank you.

Next we will hear from Lester Kertz, Business and Industry Association.

L E S T E R K E R T Z: Mr. Chairman, members of the Committee, you have in form of a letter our overall statement, but I'm going to sort of paraphrase it, and add to it -- add to some of the things that I said to you in the letter that we sent to all the members of the Committee.

NJBIA supports the creation of a uniform standard, which are rules and regulations relating to the administration of employee drug abuse tests, and by that I mean that we favor uniform guidelines for the taking of blood or urine samples and a methodology and procedure used to evaluate the contents of the samples.

At the same time, our members are opposed to any law which in any way restricts an employer's right to determine when he can request an employee, or a job applicant, to submit to a drug abuse test.

Some of the testimony I've heard here this morning-- It seems to me that the problem that this country faces, and this State in particular, is it just hasn't reached down to the bottom. Several years ago -- and some of the members of the Committee will remember -- this country committed several million of our young men to a war in Vietnam but, at the same time, we tied one of their hands behind their back.

The President just recently committed the private sector to a war against drug abuse because the government has been unable to interdict drugs coming into the country, and he's committed the private sector to the front. But, from some of the things that I've been hearing from the Legislature -- before this Committee -- there is an attempt to tie the hands of the private sector in this war in the workplace.

We've heard testimony this morning about protecting the rank and file, but tell that to the families of the people who were killed in the airplane accident in California, where there is some -- and it hasn't come out yet, but there's been some connection between the use of drugs and the accident. If you recall, there were 30 people in the flight control room -- 31 people -- and drug tests found 15 of them had been positive on the first try -- three of the 15 or 16. Three of them have initially been found to be drug users.

ASSEMBLYMAN LITTELL: I've got to interrupt you. I don't believe that the individual who was involved with charting that plane had anything to do with that at all.

MR. KERTZ: I'm not saying that. I'm just saying that there is--

ASSEMBLYMAN LITTELL: Let's not accuse somebody.

MR. KERTZ: No. I didn't say that, but what must the

Legislature do, wait until there is a meltdown at one of our atomic generating stations before we try to untie the hands of the employer, or that we have a Bho Pal incident at a--

ASSEMBLYMAN LITTELL: That's why we're here today, to find out. Tell us.

MR. KERTZ: But I'm just saying that there are some--

ASSEMBLYMAN LITTELL: Tell us what you want.

MR. KERTZ: As I said, we do support uniform guidelines on how the tests should be taken, the methodology in taking the tests. But I think because of the nature of our industry in this State, the wide diversity of businesses, it's very difficult to put in a strait-jacket and put every company in the same -- to follow the same rules and regulations with respect to drug testing.

I might point out, who would have thought that a computer operator at a airlines reservation desk who had been using marijuana would forget to put a computer tape into a machine and, as a result, the company lost \$19 million on reservations? Who would have ever thought? The company does test their pilots, now they're doing the testing of their clerical people because of an incident like this.

You have to leave flexibility in the hands of employers. They have been charged to fight a battle against drugs and they are doing, very carefully -- they're going very slowly in implementing policies with respect to testing for drug abuse. We should not tie their hands in any way because this is a war, and there have been a number of companies that have instituted drug testing procedures in the hope of eliminating drug abusers in the workplace.

At this time, it's too early to measure the success of the corporate war against drugs. Some companies already cite impressive results. So far, their hands have not been tied, and I just implore the Committee not to tie the hands of the employer.

ASSEMBLYMAN AZZOLINA: Are you saying we shouldn't have a law then?

MR. KERTZ: I didn't say-- No, I'm saying that we shouldn't have a narrow law because we have so many different industries. What might apply to a manufacturing operation does not apply to a service company. So, we've got to be careful in developing a law which would not restrict the employer's flexibility in determining when he should provide drug testing for his employees, and not wait until -- not tie his hands and then have some incident come up where we say, "Gee, we tied your hands."

There are people who are getting hurt today on loading docks, forklift operators who-- It's an accident, but there's some suspicion that it might be drug related. Many employers today have found that if there is a work related injury, automatically they test that employee for drugs. How they handle it afterwards, if it is a positive or a false positive, I don't know. Every company operates differently.

So, I'm just suggesting that this Committee be careful in how they structure a piece of legislation so that it doesn't tie an employer's hands, because there's a war out there and I'm hoping that this Committee would accept that and deal with it accordingly.

ASSEMBLYMAN LITTELL: We're trying. That's what we're here for today, and we're going to be at this for a while, Mr. Kurtz.

ASSEMBLYMAN FOY: Les, let me ask you a question. Right now, as you understand the law, doesn't a union have the right to negotiate away any drug testing in the workplace if they can get it at the bargaining table?

MR. KERTZ: Oh, yes. No question. There is that. But where their contract is silent, there is some question for-- If an employer can justify it, he can do it unilaterally, as is being done.

ASSEMBLYMAN FOY: That issue has not really ever been resolved yet in the private sector.

MR. KERTZ: No, it's in the court. Well, it's in arbitration. The question in one case I know is in arbitration right now, whether the employer has that right. But he's doing it. He's attempting to justify it for the sense of safety.

ASSEMBLYMAN FOY: Okay. One of the things that we're aiming at is to try to take out of -- to take away the mystery and the possibility for a whole series of diverse decisions. For example, you get one arbitrator that says, "I think that the company's unilateral decision to test regarding drugs really violates the spirit of the contract. They don't unilaterally have that right, so you can't do it, company." So, there's an arbitration that says they can't.

A week later, you can get a different arbitrator who says, "Well I don't think that this--" "The way I look at the contract, I think that's something that's an inherent management prerogative and they ought to be able to do it." Then he renders a decision that says they can do it. And, well, he's writing this.

What we need to do is bring some uniformity to the whole issue, and I think you agree on one portion of it at least, and that is the administration of the tests.

MR. KERTZ: Right.

ASSEMBLYMAN FOY: But you also feel that you should have the unfettered right to administer random and routine tests.

MR. KERTZ: Subject to-- If it's abused, subject to an individual suit against the employer.

ASSEMBLYMAN MILLER: Arbitration as well as--

MR. KERTZ: Well, not arbitration.

ASSEMBLYMAN MILLER: Well--

MR. KERTZ: I'm saying that if the employee feels

that an employer acted unreasonably or incorrectly, he is subject to suit. So, those employers that have presently instituted testing programs are doing it very carefully. They're protecting themselves in every way possible. That's-- And only a small number of employers in the State are doing testing right now, but it's growing and it's going to continue to grow. And to that extent, if we can provide guidelines which permits them to do it within certain guidelines, our Association would support that.

ASSEMBLYMAN LITTELL: Based on that movie, "On Crack Street," more people have watched that, and I think you're going to have a lot of testing going on all over the place. They said in that program that there are 5000 new crack users in this country every week. And that's an alarming number.

Okay, Lester. Thank you very much.

May I have Don Phillippe, please, from the IFPPE? You represent-- Some of your people work for the Department of Transportation?

D O N P H I L L I P P E: State highway workers.

ASSEMBLYMAN LITTELL: Okay. How many employees do you have?

MR. PHILLIPPE: We represent 7500.

ASSEMBLYMAN LITTELL: Just the Department of Transportation?

MR. PHILLIPPE: No, in all State departments.

ASSEMBLYMAN LITTELL: In all State department, okay.

MR. PHILLIPPE: Thank you for the opportunity of appearing before the Committee on Assembly 2850. We considered this whole issue at our international convention, and we've come up with the following resolution concerning drug testing in the workplace:

Drug addiction and alcoholism are illnesses, and those suffering from these diseases need treatment, not punishment. The problem of substance abuse ought to be

addressed squarely and cooperatively by employers and unions.

Our international union has promoted prevention and rehabilitation programs in the workplace and the community, and local unions have sponsored institutes on alcoholism and drug abuse with trained union counselors to offer guidance and referrals to those with drug and alcohol-related problems, supported community facilities for treating victims of drug and alcohol addiction, and established on-the-job treatment programs.

In recent years it has become increasingly fashionable for employers, Federal, public, and private, to use drug tests to screen applicants and all employees, and to force applicants and employees to submit to such tests on a random basis.

Many of these tests companies use to screen workers for drugs and alcohol are very inaccurate -- especially the ones the companies use in volume -- with the results of these tests, which purportedly screen for illegal drugs, affected by the use of such common substances as cough syrup, caffeine, asthma medicine, and other common chemicals.

The laboratories which perform drug and alcohol screening tests often have very high false positive error rates and, as a result, workers or job applicants may lose a job either because accurate tests are not available or because companies prefer to use less accurate, inexpensive tests in mass screening programs.

Few testing programs include procedures for workers to challenge inaccurate findings or secure relief from the result of error. The administration of these tests on a random or across-the-board basis is degrading.

Mandatory drug and alcohol testing programs raise serious legal and constitutional questions.

We believe the collective bargaining process should be used as a vehicle through which unions and employers can

develop carefully tailored and balanced programs which stress education and prevention of addiction.

We propose, through the collective bargaining process, certain appropriate limits, or conditions, for the use of tests for alcohol and drugs, including focusing only on workers who exhibit symptoms of job-related impairments. I think that was discussed regarding the section of the bill where you used the term "reasonable suspicion," or as proposed today, "reasonable cause." It's our position that unless there's some reasonable cause for testing, that it should not be used.

We also propose to establish safeguards for those who test positive, including guarantees of workers' rights of privacy and confidentiality. I think a number of people have also proposed that as an amendment to the bill.

Fully inform workers and their representatives of the testing methodology an employer administers, and I think some of that is in a section of the bill -- regarding how the tests would be performed. Only certain people might be required to be licensed to give these tests, and I think we heard testimony from one of the representatives of Hoffman LaRoche that only trained people and trained technicians should be the ones to administer these tests because they have the expertise and it lessens the amount of error.

We think that any legislation should provide non-punitive, on-the-job responses and helpful treatment, for those who are, in fact, unable to perform their jobs because of drug addiction and alcoholism, and where contractually possible, submit any adverse actions resulting from positive tests to binding arbitration.

Our international union and its affiliates continue to develop constructive solutions to the addiction problem, responsive to the legitimate needs of all parties, with no random screening or imposition of punitive programs which ride

roughshod over the rights and dignity of workers and are unnecessary to secure a safe and efficient workplace.

Now, we reviewed the bill. We think the areas that need strengthening are especially in the language regarding any rehabilitation programs. It is our position that drug addiction and alcoholism are both illnesses and should be treated that way, with rehabilitation programs.

I see -- from one of the amendments that I saw recently -- that some of that was added into the bill. That's an integral part of what we consider necessary to any rehabilitation program.

Right now in the State service, we do have some drug programs through the Employee Advisory Service, or as other people call them, "employee assistance programs," where people are given a leave of absence -- all right? -- they are sent to clinics, and they don't lose their jobs. There's no punitive measure, nor are the people being dismissed. As long as they complete the rehabilitation program they can return to their job. That's what we think the whole idea of rehabilitation program in this legislation should mean.

Now there's other areas of amendment that we do not agree with, and that is the random testing for what you consider certain public workers, or public safety workers. We still think the real criteria is how the man is performing, or how the woman is performing on the job, not what job he has.

I think that we've found out from recent tests which involved the State Police -- I think they tested some 2400 troopers and they found six people on drugs. Now, if that test costs, as was said initially, \$15 a piece, they spent up to thousands of dollars and this whole area of cost would be-- You know, if you're talking about the number of State workers, there's some 70,000 people. The immunoassay test alone would be some \$15, and everybody seems to agree that you have to have the second test for a confirmation -- I mean,

that would run somewhere from -- from the estimates given by the people that do it -- \$40 to \$75. I don't know where the money is coming from. How much is it going to benefit the interest of the State? How much are you going to get out of it for this amount of money?

Really, are the taxpayers going to support proposals to spend this amount of money to do this type of testing? We don't think that, really, they're going to support that amount of money to do this type of testing. We feel there has been very little evidence, at least from disciplinary cases that we have with people in our unit, regarding people being removed for any drug abuse. I think we could probably count on our hands the people who've been removed for any charges against drugs.

For those reasons, you know, we think that those amendments should be included in the legislation, especially areas regarding the rehabilitation section.

ASSEMBLYMAN LITTELL: Don, do you have a copy of your written comments? It would make it easier for us.

MR. PHILLIPPE: Yes.

ASSEMBLYMAN LITTELL: Thank you very much.

Next we will hear from Bob Purcell and Virginia Loolfe, C.W.A.

ASSEMBLYMAN MILLER: Bob, while these people are coming up, just an observation here. I've heard nothing today about education, an educational program of any kind, getting into this. Nobody's testified in that area.

ASSEMBLYMAN LITTELL: Yes. We had somebody here from the Department of Education, but they had to leave, I guess.

ASSEMBLYMAN MILLER: I've heard nobody say we need an educational program like the alcohol program.

And, also, the police test. They have a Breathalyzer test that they use for the alcohol program. Maybe something should be done in that area too, about training police to --

or hospitals to work with the police departments in doing this kind of testing when they pick someone up on the road, drug-related, because we're talking about drunk driving, DWI's, but the drug part never gets involved because we don't have any program. Again, this is another part of this, and I just happened to pick this up.

Then you say, "How's he performing on the job?" Well, we have a roadblock today for DWI. We catch them before they have the accident, yet you don't with performance on the job. You have to see them weaving down the road in an irrational manner, then you stop them. I'm trying to tie these two together. I don't think you can wait until you see what happens before you take action. I think you have to try to prevent it. And maybe we only got six to eight troopers out of the 2000 tested, but it is a preventive maintenance type situation: You are preventing other people from getting involved because they know they're going to lose their job if they do use it.

These are just a few of the points I happened to notice here.

ASSEMBLYMAN LITTELL: Okay, thank you.

Mr. Purcell?

R O B E R T P U R C E L L: Thank you, Mr. Chairman, members of the Committee. I think our position generally follows that of Jeff Fogel, in that I see this as an extreme invasion of privacy and that drug testing should be banned rather than legitimized. The issue, especially for public sector workers who have constitutional guarantees, will eventually end up being favorably addressed through the courts.

In 1972, the State of California passed an amendment to their Constitution, guaranteeing the right of privacy as inalienable right. We would prefer to see you going that way

rather than establishing drug testing standards that will enable the invasion of privacy.

For that reason, we oppose the bill in its present form. We would encourage a moratorium on drug testing be established pending the resolution of this, recognizing that this will proceed despite our opposition. And for those workers who aren't covered by contracts or don't have representation, eventually your standards will be a vast improvement over what's happening in many sectors of the economy.

Rather than be repetitive over what's happened, I'll just make a few points that haven't been made, or that I'd like to have emphasized.

It was interesting that Hoffman LaRoche was the first to testify today. It sort of like rang a bell inside my head that about 15 years ago I applied for a job at their Vitamin C plant in Belvidere, and I went through a urine test and a blood test and a very thorough physical and interview. And I was told after the interview that pending the outcome of the physical exam I had the job, and two weeks later, I got a letter back from Hoffman LaRoche saying that they had decided not to employ me. Well, there's no reason why they didn't employ me. Now I'm beginning to wonder whether there was a false positive because I had poppy seed cakes or maybe some herbal tea earlier in the day.

So as we're talking about different categories, we're obviously more concerned with the employees that we currently represent and the right of an applicant to at least have some kind of knowledge that he's being tested for drugs, if that's indeed the case -- and I don't know if LaRoche was testing for drugs 15 years ago, I assume they were -- and some kind of right of appeal, if there is a screening test that determines that there may be drugs, and a confirmatory test -- as they recommended.

As Don Phillippe indicated, the cost of this has been largely overlooked, not only in the amount of money that it's going to cost to test workers to determine whether or not there is drug abuse going on, but -- especially now -- the litigation and the challenges to its unconstitutionality. The East Rutherford High School ended up paying \$23,000 in legal fees to the ACLU, coupled with \$50,000 of legal fees, battling the case in the Superior Court -- money that clearly was wasted, in retrospect.

Again, recognizing the danger to society of drug problems, our union represents 60,000 workers in the private sector, and local and state government. I can't recall more than five cases where workers have been brought up on charges because of drug-related incidents. And, as Don Phillippe pointed out, when they are brought up they're fired under Title 2C. When they're convicted in Municipal Court for possession of the drugs, there's no indication as to how rehabilitation will play into some kind of situation such as that.

The dangers in alcoholism and tobacco to society vastly outweigh the problems of drug abuse: Tobacco claims, according to Doctor David Musto (phonetic spelling) who wrote the "American Disease" back in 1973, 350,000 lives a year; alcohol, 100,000 deaths a year, and according to his statistics 3,500 deaths are related to cocaine, heroin, PCP, and other CDS's.

Clearly, the proportion of interest generated here may be warranted, but in perspective to the tobacco and alcohol problems it seems to be out of proportion.

I also thought it was interesting that Chief Justice Rehnquist, in his confirmation proceedings -- it was disclosed that he was addicted to placidyl for five years, which is a prescription drug. It slurs speech. It causes distorted perceptions as a side effect. I mean, there's some kind of

message there, that a Chief Justice on the Supreme Court -- a Justice on the Supreme Court -- can, for five years, be addicted to a drug and get away with it, and we're not talking about testing those kinds of officials. There has to be some kind of balance in this process.

Then you hear, in the paper, statements by municipalities implementing, or considering implementing, drug testing. In Flemington, Councilman George Schorisos (phonetic spelling) said he favored tests for police and heavy equipment operators, but opposed drug tests for elected officials -- quote: "I think it's an invasion of my civil liberties." Well, why is it an invasion of his civil liberties and not someone else's?

Granted, the right of the public to the services is great, but it doesn't warrant the overriding of constitutional rights in the process.

Related to the bill, we also basically encourage paragraph 5 of section 5, to be amended to either include "probable cause," or "trustworthy grounds," whichever is a stricter standard and, again, it's another thing that's open to interpretation.

We would recommend deletion of lines 5 through 10 of section 5, where it gives indication as to evidence of erratic job behavior, or declines in productivity as very vague and subjective, and open to interpretation.

We-- Again as Assemblyman Miller pointed out, no one has mentioned education. The thrust should be not only rehabilitation but education. We think that the money spent testing workers could be much better spent educating the workers to the dangers of drugs, and we would support more of an education thrust than a testing thrust.

And, assuming tests are eventually implemented, obviously the concern is over the quality of the tests. As the men from Hoffman LaRoche indicated, there are various

tests that can be given. We would, obviously, prefer the most reliable, the GCMS -- the mass spectrophotometry -- and would encourage that confirmatory tests be mandatory in cases where workers are screened initially.

And in the event that this becomes law and workers are identified as offenders, we obviously would feel that first offenders, if not second offenders, should be given some kind of right to leave of absence for rehabilitation, and a right to return to their job should they succeed in their rehabilitation program.

One thing that may or may not be implied in this: A worker who is asked to take a drug test should be able to invoke his Winegarten rights (phonetic spelling), the right to union representation during the request that he submit to a drug test and while the actual test is being conducted, as part of the chain of custody concept.

We believe that the collective bargaining process does provide a great value to this society and that it can, in this situation, aid in assisting the employer and the employees in ridding the workplace of drug abuse, and we would support mandatory collective bargaining over this, rather than permissive, or as a second thought. Thank you.

ASSEMBLYMAN LITTELL: Thank you, Mr. Purcell.

Virginia Loolfe is also from the CWU, and she just asked for--

V I R G I N I A L O O L F E: I'll try to be brief because much has been said already.

I'm the Vice President of the Administrative-Clerical Bargaining Unit of Local 1038. I've bargained two state contracts with the State of New Jersey, and I'm very concerned also with the impact on collective bargaining.

Just so that Mr. Azzolina knows where I'm coming from, I have another interest here also. My 19-year-old son died of a drug overdose in December, so that I'm not

completely adverse to some kind of protection for workers, but I don't really feel that random drug testing is a protection for workers. I really feel that--

ASSEMBLYMAN AZZOLINA: Well, let me tell you something. I don't mind because it's been public knowledge. I have a son, and I've just spent \$50 thousand -- we're lucky we have insurance.

MS. LOOLFE: Is he alive?

ASSEMBLYMAN AZZOLINA: He's alive.

MS. LOOLFE: God bless you.

ASSEMBLYMAN AZZOLINA: And it all was because of a lot of it that happened recently. It's been going on over years, but we discovered it only recently -- which is about year ago, I should add -- so he's, hopefully, almost drug-free at the moment.

However, where he started getting his overdoses, and really heavy, was right in one of our own supermarkets, from an employee that was a pusher in there -- and there were others getting it from her also. And if we had a drug testing program, believe me-- I don't know whether I want to have one or not but I'm leaning in that direction. If I had a drug testing program at the time, I probably would have discovered it a lot sooner. We couldn't figure out who the hell had it, and who was pushing it, and who was using it; we just couldn't figure it out. They're pathological liars, all of them. They use it, and you can't find out who. They don't tell you the truth. They lie like hell and, you know, luckily we discovered it when we did. He almost could have got-- He almost could have died, that's how bad it was. So, I know where I'm coming from. I was lucky. I was very lucky.

MS. LOOLFE: Yes, you are very lucky that your son is alive; however, if you could look through the grievance files that we have in our office, you will see that many times a supervisor will zero in on an employee, and it would seem to

me that with this kind of a background to rely on, that that kind of supervisor, zeroing in on an employee, could employ spurious charges.

I don't really want to belabor the point. What I'm more interested in is seeing that if this bill does, in fact, come to fruition, that before that happens we exhaust every avenue of testimony -- listen to what people have to say. I certainly hope it doesn't take a year. I would like to see it happen sooner than that. I would hope that there would be some kind of a committee formed, where the input from all the segments of society that are going to be affected by this, and that's just about everybody we know, will -- that input will be sifted and we can fashion a bill that will be as fair as could possibly be to the worker.

The collective bargaining issue bothers me a lot. We're very limited in the State of New Jersey, as State employees, at the bargaining table. We sometimes feel as if we're constricted by two contracts rather than one, since we have to deal with Civil Service also. So, I would hope that it does not impact too adversely on collective bargaining.

I compliment you for bringing a bill like this to the Legislature. I, unfortunately, feel that perhaps it's a reaction to the panic that is now upon us.

I did not watch that show last night. I couldn't bring myself to do it, but I know that there is a terrible problem out there. But we have to go very, very slowly on this because there's a question of rehabilitation, there's a question of education. Who's going to pay for the rehabilitation? Is the worker going to be allowed to take the leave of absence? Who's going to support his family in the meantime? There are so many, many questions, and I don't think just any of them have been answered; I think you've only scratched the surface by bringing the bill to this point, but I would just ask you, and caution you, to go slowly and get as

much information as you possibly can.

Being an employee representative, sitting on my side of the table I fear for the safety of the employee; I also fear for their health. But I don't want to see a thing like this used to adversely impact on their career possibilities.

That being said, I'll thank you very much for allowing me to appear here.

ASSEMBLYMAN AZZOLINA: Better we find out who are the abusers.

MS. LOOLFE: You have to go to Washington for that.

ASSEMBLYMAN AZZOLINA: Go to Washington?

MS. LOOLFE: Yes.

ASSEMBLYMAN AZZOLINA: Well--

MS. LOOLFE: That's a whole other subject.

ASSEMBLYMAN LITTELL: Thank you.

MS. LOOLFE: You're welcome.

ASSEMBLYMAN LITTELL: Ray Peterson, Federation of Teachers.

R A Y P E T E R S O N: Thank you, Mr. Chairman.

UNKNOWN SPEAKER: If I had been taking drugs at the beginning of the hearing and was tested now, it would be out of my system. Excuse me.

ASSEMBLYMAN LITTELL: Some of us have been here since 10:00, Jim.

ASSEMBLYMAN AZZOLINA: What are you a wise guy or something?

ASSEMBLYMAN LITTELL: Jim, I just called you.

UNKNOWN SPEAKER: Thank you very much. I apologize for my comments.

MR. PETERSON: Mr. Chairman, we've been here since 10:00 this morning, and I want to commend you for your patience in your handling of this. I believe you've extended yourself to get as much input as possible. I'll be brief. I know you have a letter from me.

Most of what I'll say will be a reaction to the things I've heard today. I only have one small page of notes.

In its original form, of course, we have a lot of problems with this bill because it would tend to legitimize a practice that may very well be unconstitutional. So we believe it would require major amendments, along the lines that have been mentioned: Probable cause to go after people who are obviously guilty, and not to harass the innocent.

A means should be found to deal with the unreliability of the test. The confirming tests and so forth should be dealt with.

Confidentiality is an important issue. You need to strike a balance, obviously, between the interests of the employers, the interests of the employees, and the public interest, and I endorse the idea of having a public hearing to get further input. I think a lot of light has been shed today, and I would hope that we can get further light shed on this.

The thing that troubled me about the bill was to find out what the purpose of the bill was. That wasn't stated. Now, I didn't know whether it was designed to fire people or to get them into rehabilitation programs. And, obviously, where we're coming from, we see it as an illness that needs to be treated.

The war on drugs has been mentioned, and this, of course, is a very narrow front -- the war on drugs. The major emphasis really should be on public education, a program perhaps even bigger than the anti-smoking campaign that's having some results now; the campaign against drunk driving, which is having some results now, and so forth -- or vigorous law enforcement, with long prison terms for people who traffic in drugs. Those are where I think we can do more good.

And I've seen shows. I've listened to the interview shows -- as attentively as you have, I hope -- to all the

things that have been happening here, because this is the number one national problem and it deserves more than just this sort of approach. It needs an expansive approach.

So I believe the bill needs extensive amendments that are in line-- The amendments that were supported or proposed by the AFL-CIO are certainly in line with our national position. I would like to share with you -- and if I had the opportunity earlier I would have read into the record -- the National AFL-CIO's position on this, which we approve of wholeheartedly. I've shared this with you in a letter, and I'd like to make sure the other members of the Committee get it. I won't trouble you with reading it right now, although it's well thought out.

Does anyone have any questions?

ASSEMBLYMAN LITTELL: We appreciate your patience in staying here too. It's certainly not easy for you to sit here and have to listen to everybody else. It's not easy for me to decide who ought to go first, and I really didn't have any particular scheme here. I've kind of been jumping around from place to place to satisfy everybody here, and try to get business and labor, and a little bit of everybody.

MR. PETERSON: It's an important issue, and it deserves a lot of attention.

ASSEMBLYMAN LITTELL: Thank you, Mr. Peterson. Doctor Freedman, the Committee of Interns and Residents.

D O C T O R J A N E T F R E E D M A N: Thank you for the opportunity to testify on Assembly Bill 2850. My name is Doctor Janet Freedman. I'm the President of the Committee of Interns and Residents, a union of 5,000 resident physicians and dentists who work in New Jersey and the surrounding area.

Substance abuse is a major legal and medical issue in the United States today. Without a doubt, abuse of alcohol and other dangerous substances is a leading cause of morbidity and mortality, as well as being a contributing factor to

social and family problems. The human consequences of substance abuse are seen daily on the nation's highways and in our hospitals. Now forms of drugs available, as we now see on T.V., are on the streets and are cheaper, more readily available, and more highly addictive.

It's understandable, therefore, that the public is searching for solutions to this problem. The CIR applauds the New Jersey Assembly and this group for tackling this complicated area and attempting to devise a rational, fair approach to the volatile issue of drug testing.

I have tremendous concern, however, that the discussion of drug testing going on in legislative bodies and the sensationalism of the issue by the media will mislead the public and the citizens of New Jersey to believe that drug screening will somehow provide the solution to our substance abuse problems. But, as I will address in my testimony, drug screening tests will not identify all abusers, will not exonerate all non-users, will not lead to prevention of drug abuse, and will not lead to stopping present drug abusers.

What is required is public education and rehabilitation programs. Alcohol abuse has been recognized by the public as an illness that responds to certain rehabilitation techniques. Similarly, substance abuse must also be recognized as such and treated accordingly.

In addition, legislation which acts to regulate drug testing, as this Act rightly does, needs to include detailed requirements of the state of the art of technical aspects of testing, as well as strong language regarding confidentiality of results, highly specific and restrictive criteria for the cause for testing, and penalty of misuse of the sample items.

As a representative of the pharmaceutical industry has explained already the technical aspects, I would just like to emphasize a few points on that matter.

There's a difference in the purpose and the

reliability of the screening test and the confirmatory test. We've already heard this. Screening tests are prone to false positives and are only designed to screen a large population quickly and inexpensively. It is not a diagnostic test. Positives are not treated as true positives in the medical community; they must receive a confirmatory test such as the GCMS that you've heard about.

A major concern of the CAR with this proposed legislation is that it does not require this confirmatory testing. Section 3 does state that the commissioner may adopt rules and regulations to "establish standards for acquisition of samples," etc., "and methodology used to evaluate the contents of samples." I believe much more specific language is needed, namely that any positive screening test should be followed by a second professionally recognized confirmatory test. In addition, the bill should clearly prohibit adverse employer action on the basis of one unconfirmed screening test.

I'd like to illustrate a few more of the problems with the currently used screening test, the immunoassay and the thin layer chromatography.

As you've heard, many false positives occur from commonly used legal substances; these test as if they were controlled substances. Sudafed will test as an amphetamine. Topical ointment containing lidocaine -- such as commonly used for hemorrhoids -- will test positive for cocaine. And any prescribed anti-convulsive medications may test as a barbiturate.

There was a question earlier about a diabetic neuropathy and the medications used for diabetic neuropathy are the same as those used for anti-convulsives, and they would test as a barbiturate.

ASSEMBLYMAN FOY: So, we'd better not test Ozzie because he's going to test positive.

DR. FREEDMAN: He will be positive on the screening test. Okay.

ASSEMBLYMAN AZZOLINA: How about insulin?

DR. FREEDMAN: Pardon?

ASSEMBLYMAN AZZOLINA: How about insulin?

DR. FREEDMAN: To my knowledge, I don't believe insulin will mimic one of the controlled substances. I may be wrong on that.

ASSEMBLYMAN FOY: Will confirmatory tests screen those out?

DR. FREEDMAN: Yes. Confirmatory tests give what's called the fingerprint, and every molecule has its own fingerprint, even one atom difference will show -- will do that.

ASSEMBLYMAN FOY: So all those substances you raised, if you gave them that second test, would--

DR. FREEDMAN: Right. But as we've even heard today, to the best of my knowledge, the air traffic controllers have only had screening tests, and guilt is presumed just by having been given the tests, not even by knowing the results of the tests.

ASSEMBLYMAN AZZOLINA: That's by Federal law, the air traffic controllers. We don't control that.

DR. FREEDMAN: Pardon?

ASSEMBLYMAN AZZOLINA: That's only by Federal law.

DR. FREEDMAN: Right, but it's a good example of how the public can misconstrue these tests.

In addition, employers may be quite reluctant to undertake the second test. As we've heard, it may be five to seven times more expensive than the screening test.

I'd like to take a little aside also, and talk about the Breathalyzer, which has been discussed a lot here. The Breathalyzer test for alcohol is very different than the urine screening tests for other drugs. A Breathalyzer tests the active alcohol in the body at that time, and gives you a quantitative amount.

In driving, you're allowed to have a certain amount of alcohol in your blood and still be legal to drive. The Breathalyzer tells you if you're over that limit. Drug screening tests do not tell you the quantity of drug in the body; they just show you inactive metabolites. They do not tell you when the drug was taken, how much was taken, and they do not tell you if the person is a regular user or an infrequent user.

ASSEMBLYMAN AZZOLINA: How long does that stay in your system?

DR. FREEDMAN: Which?

ASSEMBLYMAN AZZOLINA: Let's say I took drugs the last time a month ago.

DR. FREEDMAN: It depends on the drug that you're speaking about.

DR. FREEDMAN: I have a better question. How long does it take to drain it out?

DR. FREEDMAN: Okay. This depends on the drug you're speaking of, and it depends on the individual.

ASSEMBLYMAN AZZOLINA: Cocaine, that's the biggest one, I guess.

DR. FREEDMAN: Cocaine, to my understanding, takes several days to be clear. However, the metabolism of an individual and other medications they may be taking, legal or illegal, can alter how quickly a body clears it.

ASSEMBLYMAN AZZOLINA: How about marijuana, and what's that other-- Marijuana, does that take long to get--

DR. FREEDMAN: Marijuana takes long because marijuana is stored in the fat cells. An overweight person will keep marijuana in their body, although not being impaired by it, for a longer length of time.

ASSEMBLYMAN AZZOLINA: The other more severe than cocaine, what's that?

DR. FREEDMAN: Heroin.

ASSEMBLYMAN AZZOLINA: Heroin, how long does that stay in the system?

DR. FREEDMAN: To my understanding, metabolites of heroin will be clear in about three to four days.

ASSEMBLYMAN AZZOLINA: Okay.

DR. FREEDMAN: But again, these have very variable rates, depending upon the person.

ASSEMBLYMAN AZZOLINA: So you can assume in most cases that they probably had drugs within a month or so?

DR. FREEDMAN: I'm not a toxicologist, but I would say that's a safe assumption, within a month, but not, currently -- at the time -- how much, not how frequent. A person who has taken marijuana--

ASSEMBLYMAN AZZOLINA: And can you tell which drug they'd been on?

DR. FREEDMAN: A confirmatory test will tell you which drug.

ASSEMBLYMAN AZZOLINA: A confirmatory test?

DR. FREEDMAN: The second test, the GCMS.

ASSEMBLYMAN AZZOLINA: The urine?

ASSEMBLYMAN FOY: The spectrophotometry.

ASSEMBLYMAN AZZOLINA: What's that?

DR. FREEDMAN: It is done on the urine, but it is a specific test.

ASSEMBLYMAN AZZOLINA: Okay.

DR. FREEDMAN: In addition, if a person has used marijuana for 30 days, every day, and a person has used marijuana once, 30 days ago, both these people may be positive, and the test doesn't tell you if one person has more or less. It's the same.

In addition the language calling for a confirmatory test, the CIR supports proposals by others to amend the bill to require the formation of an advisory panel consisting of labor, management, technical and medical experts, to make

recommendations to the commissioner regarding the development of regulations authorized by this bill, including which tests might be used.

I would also like to comment on issues raised in section 5. Again, I commend the sponsors for seeking to prohibit random and mass screening, and for developing a definition of reasonable suspicion. However, I question the entire issue of an employer needing to determine if a worker is an occasional drug user. Employers already have methods of discipline, or even dismissal if needed, to deal with the stated erratic behavior, decline in productivity, lateness, violence, and motor impairment.

I also don't know the definition of the term "emotional unsteadiness," and I believe its inclusion leaves this bill open for unscrupulous behavior. Keeping in mind, as I said, that the testing cannot determine the amount of drug ingested, when the substance was used, how often it is used, or how impaired the individual is at the time of drug use or even at the time of testing, the term "emotional unsteadiness" may be a method to corner a lot of people. This can circumvent the intended limitation of drug screening, and allow employers to test workers with very questionable cause.

Also, once the sample is collected, there's little to prevent an unscrupulous employer from testing for other prescription medications to identify workers with a variety of medical problems, or even from running pregnancy tests on female workers, which only requires two to three drops of urine.

Is it the right of an employer to know which worker has a treated seizure disorder or, for that matter, is it the right of an employer to police what employees do off the job? We believe a legitimate concern is the employee's safety and ability to do work, but neither of these are determined by drug screening tests.

The bill also does not address the issue of confidential handling of test results. These should be considered medical tests, with results treated as such. No provision is made for reporting of results. Should the results of testing be reported to the future employers, to the police, or to an employee's personal or family physician?

And, most importantly, what is an employer to do with a positive drug screening result? A testing program that is not a part of substance abuse rehabilitation is more than useless.

Existing rehabilitation programs do utilize testing as part of their programs, but only when integrated into extensive counseling and treatment.

In summary, the CIR recognizes that substance abuse is a serious disorder and the public is eager for a solution to this complex problem, but drug screening is not such a solution. Even with carefully used tests and an understanding of the meaning of the results, drug testing represents a potential invasion for privacy and violation of medical confidentiality. Drug testing cannot distinguish the casual user from the abuser, and it cannot distinguish the user from the pusher.

Assembly Bill number 2850 begins to address the complex issue of regulation of drug testing, but the CIR opposes this bill in its current form.

We encourage the committee to include, 1) a mandatory, confirmatory, second test; 2) an advisory committee to participate in development of regulations, and keep the commissioner informed of new technical and legal developments; 3) stronger penalties from misuse of the test by unscrupulous employers, and the right of workers to challenge test results; 4) confidentiality of test results with no release of results unless authorized by the individual concerned; and, 5) drug rehabilitation programs available to all workers of this State. Thank you.

ASSEMBLYMAN LITTELL: Thank you very much. That was excellent testimony and over soon. So, your suggestions, I think, are well taken as far as making improvements on the bill or, if they're not ultimately in the bill, the material that the advisory committee needs to examine if they're going to come up with a viable testing program that's acceptable in part, if not totally, to all of the interests concerned.

Please give my regards to John Ronches. He used to be one of my bosses many years ago, so say hello to him.

Hey, John! I didn't see you back there. John used to be Vice President of the AFL-CIO. I mean, we've gone to a more affluent profession now.

ASSEMBLYMAN GENOVA: What's he doing with the interns?

ASSEMBLYMAN LITTELL: Well, he negotiates contracts for doctors. That's a lot better than negotiating contracts for laborers, you know.

DR. FREEDMAN: I don't know if it's any easier though.

ASSEMBLYMAN LITTELL: Thank you, Doctor.

DR. FREEDMAN: Thank you.

ASSEMBLYMAN LITTELL: Now we have two left, as I see it, Mike Roche, of GPU Nuclear Corp., and Bill Fenimore of PSE&G.

Don Bates?

MR. BATES: I'm with Mike.

MR. ROCHE: Don can lead off and then I'll follow up.

G. DONALD BATES: Thank you, Mr. Chairman and members of the Committee. I know it's late and I'll be brief, but my name is Don Bates and I'm Assistant Manager of Public Affairs for Jersey Central.

Jersey Central generally supports the establishment of a standard rule and regulation relating to the administration of drug abuse tests. However, we strongly feel that any guidelines, rules, regulations, that are adopted are not adopted without the detailed input of the business

community, and I think that's the way you're heading.

But, with respect to the bill, we take exception to section 5 which states, "It shall be unlawful for an employer to administer any drug tests to any employer without first having reasonable suspicion." Jersey Central feels that it's our obligation to do everything that we can to ensure that the employees are of sound mind when they're on the job, whether it be a meter reader going house to house, or a lineman or linewoman whose negligence would severely injure themselves, other workers, or cut service to our customers.

Presently Jersey Central does not have a random drug screening program, but we would like that option available to us if we determine it would be in the best interest of our employees and our customers.

Now at our Oyster Creek Nuclear Station, the implementation of a random drug screening program is being considered, so with me today is Mike Roche from our GPU Nuclear Corporation, who's the operations chief of our nuclear plant, who will discuss the reasons and methods of such a program.

M I K E R O C H E: Thank you. I'm Mike Roche. I'm the Safety and Environmental Controls Director for GPU Nuclear.

In the amendments to your bill, I notice that there's a potential for an advisory committee. I kind of empathize with both you and the advisory committee, since I just spent a year on such an advisory committee, setting up the policy and procedure for what we call "fitness for duty." That's kind of a nuclear term that covers both drug abuse and alcohol abuse. We now have -- the company has had since its inception -- a policy on fitness for duty. We now have a new policy and a new procedure which deals with fitness for duty. It went into effect in June of this year.

I have prepared written comments, and I distributed them. I'm just going to try to hit the highlights to save

time. We believe there should be no unnecessary doubt about worker fitness in any endeavor with the potential to significantly affect public health and safety. That's been said before by others.

In the nuclear industry there's a particular sensitivity to both drug and alcohol abuse. The U.S. Nuclear Regulatory Commission, on August 4th, issued a policy statement in which there are minimum standards that they have established for fitness for duty procedures and programs.

One of the those standards requires that there be an effective monitoring and testing procedure to provide reasonable assurance that the people working at the station, or that are involved with the nuclear industry, are fit for duty. In fact, just recently, the U.S. NRC has decided to randomly test their own employees who go to the sites.

A program which only tests people suspected of being under the influence does not provide sufficient incentive for people to refrain from using illegal substances, and we believe that one portion of the proposed statute which would essentially prevent random or routine testing should be broadened to allow both type of testing. In fact the procedure at Oyster Creek really has five types of testing, random, routine, pre-employment, a follow-up to rehabilitation, and "for cause" if there is observation of abhorrent behavior.

By the way, the company does have an -- has embarked on an education program to train supervisors and employees to the dangers of both drug and alcohol abuse. The industry in general -- the electric utility industry -- has produced a booklet which provides guidelines to the utilities for such programs.

Finally, the company applauds the efforts of the Committee to adopt uniform standards. Much of the work that I did in the past year on the advisory committee was to deal

with that very question, and it's a thorny issue. However, we believe that the legislation should be broadened to allow random and routine testing in any endeavor which involves or has the potential to involve and impact on the public health and safety.

Additionally, we don't believe that there should be a link to the collective bargaining agreement, as in the latter part of the bill. Thank you.

ASSEMBLYMAN LITTELL: Mr. Roche, is the Nuclear Regulatory Commission going to move into this area as the Federal Railroad Regulatory Commission has?

MR. ROCHE: The Nuclear Regulatory Commission's policy recognizes that the electric utility industry has adopted a kind of self-policing approach. They referenced the NRC's policy-- The Nuclear Regulatory Commission's policies directs the utilities to adopt the guidelines developed by the industry in a booklet, which is about 40 or 50 pages. It says that if the utilities don't do that, they will take enforcement action against them. So, in an indirect way the NRC has said that.

We believe from feedback that we've gotten from inspectors from the NRC, that they will -- that the programs that, for example, we have will be sufficient to satisfy their criteria.

ASSEMBLYMAN FOY: Mr. Roche, the CPU Nuclear was involved--

MR. ROCHE: TPU?

ASSEMBLYMAN FOY: TPU. It says CPU here. TPU Nuclear was involved with litigation before Judge Hyatt, isn't that correct? Is it the same company? I have a note here: "U.S. District Court Judge Daniel Hyatt issued an injunction against testing" -- it says "CPU Nuclear Corporation, 1986. Judge Block random tested 3200 employees at nuclear plants in New Jersey and Pennsylvania until an arbitrator determines

whether the tests are legal under a union contract." Is that your company?

MR. ROCHE: That is our company. That case is in Pennsylvania only. It's not in New Jersey.

ASSEMBLYMAN FOY: Oh, okay.

MR. ROCHE: It's at our Three Mile Island Plant. There is a pending arbitration which will be heard next week on that particular-- It's the same policy, however, that we're applying at Oyster Creek.

ASSEMBLYMAN FOY: And there the issue is basically whether the company had the unilateral right to impose the policy?

MR. ROCHE: There's two issues. One is that-- The second issue is whether there is random and routine testing, or an abrogation of the constitutional rights of the individuals.

ASSEMBLYMAN FOY: Do you see why we need a uniform policy? There's a judge everywhere in this State and in the country making decisions about this.

MR. ROCHE: I'd like to point out that if you look over the utilities in the country and you see the cases, particularly related to nuclear utilities -- but not exclusively -- you'll find the arbitrators and judges are ruling in favor of the utilities.

There's a PEPCO case in Virginia that was-- Judge Harold Green enjoined the company from applying a policy identical -- essentially identical -- to the EEI or our policy. In that case the arbitrator has ruled that PEPCO does have the right to randomly and routinely drug test.

In Florida just recently -- I haven't seen the decision yet -- there's a Federal or a state court in Florida that says Florida Power and Light has the duty to test their employees on drug screening. So you--

ASSEMBLYMAN FOY: You basically view those types of

employees as being almost quasi public safety, and being in the form of an exempt category from a prohibition on random tests. You feel you should be able to do them basically because of their employment situation.

MR. ROCHE: Yes. The potential for impact on public health and safety warrants the extra caution.

ASSEMBLYMAN FOY: Greater with a nuclear worker than a dealer at the casino?

MR. ROCHE: Okay. I'll accept that.

MR. BATES: Tom, not only -- or, Assemblyman, not only with nuclear workers, but also with our linemen, who handle very high voltages and could not only injure themselves but other individuals as well -- co-workers and the public.

ASSEMBLYMAN FOY: So then, where do you draw the line? What do you do about trainmen who operate trains, or people who drive buses, or -- you know -- lift operators at a construction site? I mean, everybody could make a pitch for having an exempt category. But a bill that allows you to do tests based upon probable cause or a reasonable suspicion enables -- it places a burden on your supervisors, does it not? They've got to know their work crews if they want to administer one of these tests, or require one of these tests.

MR. BATES: It may be too late once they determine that there's abnormal behavior. It may be too late.

MR. ROCHE: Toward the influence of drugs, the NRC has a study conducted of what is known as the impact of various substances -- drugs and alcohol -- various types of drugs, and cognitive skills, vigilance. There are a lot of characteristics that are affected by drugs, and those are the things that if you can relate those impacts to the potential for public safety and health--

ASSEMBLYMAN FOY: What about the argument that the ACLU makes, or that some of the other people make, that "I'm an occasional recreational user of marijuana. Saturday night

it's a party. I'm out with my girlfriend or boyfriend, or what have you, and I smoke a few joints and I come and you decide for some reason you want to test me on a Tuesday and I come up with those traces?

MR. ROCHE: In our--

ASSEMBLYMAN MILLER: Fire them.

ASSEMBLYMAN FOY: That's what they're going to do.

ASSEMBLYMAN MILLER: There are company--

ASSEMBLYMAN FOY: But it hasn't impaired my work or anything like that. It just-- They just decided to do it to me.

ASSEMBLYMAN MILLER: They could become a heavy user -- go to cocaine or something else later on.

You know, let me say it just gets to me that nobody wants to accept the responsibility for their actions. Everybody else has to accept my responsibility for my actions. We have a social welfare program going -- everything it surrounds, including this. This is social welfare. We have to take care of these people. We have to rehabilitate them. We can't get at the bottom of it because it's such a complex situation.

But, "Okay, you go ahead and use it, and maybe we'll test you; maybe we won't be allowed to test you. But you go ahead and use it and if you really get in trouble, we'll take care of you." Come on, it's got to stop someplace, and we've got to do something to try to prevent it, Tom, and to prevent it is this taking a test -- taking a shot when they least expect it to keep them on their toes. It's part of the program.

MR. ROCHE: Could I just respond to Assemblyman Foy?

ASSEMBLYMAN LITTELL: Go ahead.

ASSEMBLYMAN FOY: What do you do in those circumstances?

MR. ROCHE: We have, in both nuclear and non-nuclear

utility business, emergencies. They may be created by weather. They may be created by equipment failures. In our plant we have people who are on emergency duty. They are on emergency call. Our policy says that we expect the people who work for our company to not indulge in that kind of activity, and, admittedly -- as we've heard -- that is an infringement for off-the-job work; however, there are special responsibilities and duties that these -- I and all my co-workers have, that we have to deal with.

ASSEMBLYMAN FOY: So, to your job applicants it's a condition of employment?

MR. ROCHE: Yes.

ASSEMBLYMAN FOY: That they have to have a more circumspect personal life to work for GPU Nuclear because of the nature of the job?

MR. ROCHE: Yes.

ASSEMBLYMAN FOY: And what's the compensating balance for that fact? They are paid well? They have a chance to call in the guards, or-- (laughs)

MR. BATES: Satisfaction. They have a safe job.

ASSEMBLYMAN LITTELL: Mr. Roche?

MR. ROCHE: Yes?

ASSEMBLYMAN LITTELL: I don't know which employees -- whether you would just want the nuclear and the guys that handle 440 or 220 -- you know, where you would draw the line.

But if we did come to some sort of agreement for at least people that work in the nuclear phase, would you be satisfied if they were put in the public service section which deals with policemen and firemen, and would be under the control of the Attorney General?

MR. ROCHE: The proposed amendment that I saw, that has that, I think is a good start; that would help. If we could broaden that to the public health and safety, that would be fine.

As I say, I applaud the effort to standardize the administrative aspects. We deal in Pennsylvania, and Pennsylvania has a licensing procedure for laboratories -- the labs that we use are licensed. That rigorous approach to the laboratory control is mandatory, and when we started the testing that we've done, we've done our own blind testing of the lab. So, I think that is a good start.

ASSEMBLYMAN LITTELL: I don't know. That's something we have to-- I just wanted to know how you would feel. Rather than exempt them, I would think what we have to do is find a way to maybe focus some special attention on somebody that's handling a nuclear reactor. We don't want a Chernobyl here.

ASSEMBLYMAN FOY: Can the State regulate nuclear workers?

MR. ROCHE: There is a substantial question about Federal preemption. The NRC is establishing policy that has implications on what we do, and we haven't -- having the policy issued on August 4th, we're not exactly sure of that Federal preemption.

JIM HARKNESS: It may be that we don't have the (indiscernible).

MR. ROCHE: It could be there'd be no jurisdiction.

ASSEMBLYMAN FOY: I don't think we have jurisdiction to regulate that. In so many different areas-- I mean, I represent workers in the nuclear industry in my capacity as an attorney, and in so many areas where we try to deal through the State court system on issues that affect them, the preemption issue comes up and prevails. And I think that in this instance you may be preempted out of this bill as a result of the operation of Federal law.

We don't know yet, because we don't--

MR. ROCHE: I would encourage the concept of public health and safety, but that may be true. We'll provide

specific recommendations and comments on the amendments which we looked at the first time this morning.

ASSEMBLYMAN GENOVA: Is the A.G.'s office going to make recommendations as to which public employees, and critical employees be exempted?

ASSEMBLYMAN LITTELL: Yes, they are.

ASSEMBLYMAN GENOVA: Not just concerning his realm of responsibility?

ASSEMBLYMAN FOY: Right.

ASSEMBLYMAN GENOVA: Overall?

ASSEMBLYMAN LITTELL: Overall.

ASSEMBLYMAN FOY: Yeah, I think so. That may include people beyond just the 2C.

ASSEMBLYMAN GENOVA: The scope of law enforcement and public safety?

DR. FREEDMAN: Well, they will be related in some fashion -- the public safety as opposed to just law enforcement. Public safety may involve other things besides.

For example, bridge tenders may be people who apply in circumstances involving public safety -- bridges that cross over to the beach.

ASSEMBLYMAN LITTELL: We may have to specifically ask him if he has any jurisdiction or interest in this matter.

ASSEMBLYMAN GENOVA: Yeah. I would say that the Attorney General should be open to suggestions from interested parties, people who feel that they have employees, or people who are involved in their work force who should be exempt, and of course, present this to him, and as the chief law enforcement in the State we should take these recommendations and (indiscernible).

ASSEMBLYMAN FOY: What will happen is that the people who when they say exempt from this bill, that means exempt from the prohibition against random and routine. The Attorney General is basically going to promulgate regulations that are

going to authorize random and routine testing. So anybody who is exempted from this bill is going to be somebody who wants their employees to be tested for a peculiar nexus to law enforcement or public safety.

ASSEMBLYMAN GENOVA: Sure, and that would be certainly in line with their business. I think it's good.

ASSEMBLYMAN LITTELL: Is there anybody else in the audience to speak? PSE&G? Is there anyone else? He's the last one.

B I L L G. F E N I M O R E: Just a few comments. First of all, I'm Bill Fenimore, the Manager of State Governmental Affairs for PSE&G, and I won't belabor some of the issue that you've heard several times, if not 10 or 12 times today. But I did want to add some comments.

Number one, I think some of you may be aware that Public Service has had a drug screening plan now since 1983. We do not do random testing, but we do testing when we feel there's a reason, based on an employee's behavior.

You heard one of the horror stories today; I can give you four or five in the opposite direction, but that's not necessary. Those things happen when people are involved, people administering the program and people being subject to the program, and you're never going to eliminate that in its entirety.

I would also suspect that perhaps a couple of comments may have been left out of that story that may have given a little better light. I don't know. I'm not that familiar with the story.

But we've had the program now since 1983. In addition to that program, back in the early '70s we introduced what we call our personal guidance program which allows for rehabilitation, or assistance. We don't pay for it. We would object to being required to pay for a drug abuser's rehabilitation, since we do not feel we should be responsible

for it.

ASSEMBLYMAN FOY: Let me just stop you for a second. Does your medical plan call for it, like your Blue Cross and Blue Shield?

MR. FENIMORE: Yes.

ASSEMBLYMAN FOY: Okay, so when you say you don't--

MR. FENIMORE: Well, wait. I don't know that it covers drugs. I think there's some legislation flowing through now trying to get that incorporated into group insurance plans. It does include alcoholism. That is covered.

ASSEMBLYMAN FOY: So, you do pay for it indirectly?

MR. FENIMORE: Indirectly.

ASSEMBLYMAN FOY: By paying the premium for the policy.

MR. FENIMORE: Yeah. We pay part of the premium and the employee pays part. That's a negotiated figure, so that's reasonable. But to be mandated, we'd object to that, obviously.

But the program itself gives the employee the opportunity to go to a personal guidance person who does not work for us. Their concern is hired by us. It's purely confidential. Only when the medical director determines that the supervisor should know -- for example, if he's going to be absent, if he's going to be institutionalized, then the supervisor is made aware. If he's of the condition that he can work -- do some work, but perhaps not hazardous work -- then the supervisor would be made aware. But we try to keep the confidentiality to the extent that we can, within the obvious limits that you have to work with.

We do have some concerns with a couple of sections of the bill. One of the sections that I haven't heard anyone comment on today, unless I missed it somewhere along the way -- in section 4, the way that I read that, until such time as either the commission comes up with its ideas or the

commissioner determines his regulations, we would be forbidden to do any further testing until that point, and we are very concerned to try to keep the workplace drug-free as much as possible. A very significant part of that is to make sure we don't enter into the work force, drug addicts or abusers -- and we would want the right to continue testing applicants, regardless of what's finally developed here, during that period. We would not want to just open the doors and allow anybody to come in without the test, and find out later that we've got a problem.

ASSEMBLYMAN LITTELL: How about-- Would you be willing to submit records of any tests that you conducted during that period of time to the commissioner?

MR. FENIMORE: Sure.

ASSEMBLYMAN LITTELL: So that we can at least monitor what's going on?

MR. FENIMORE: No problem. Those of us that have programs now, this bill looks like it would stop them in that interim period, and we would rather not do that.

ASSEMBLYMAN FOY: Yeah, the way the bill's written in section 4, you're quite correct. It would indicate that there would be a moratorium on these until the regulations were promulgated.

When the bill was originally drafted, you have to understand, the bill was drafted as a skeleton to pass the ball to the Commissioner of Labor. Quite obviously, in the time the bill was originally drafted until now, the dimensions of the issue have been brought to the attention of everyone involved, and it's obviously not something that's going to happen overnight. So, that--

MR. FENIMORE: I realize that, but I just wanted to point it out because I hadn't heard that.

ASSEMBLYMAN FOY: Yeah, I think we need to address that issue, and I appreciate your raising it. No question

about that.

MR. FENIMORE: It's a question that we have. You've heard the nuclear side of the story. We, obviously, concur with them. I'm not so sure that we would be exempted under the existing regulations.

The reason I say that is, NRC policy doesn't require drug testing, but it does say what will happen if you're found to have drug abusers working in the areas unescorted. I'm not sure, Tom, but this is what I'm told. In reading the regulations, they don't dictate drug tests, but they dictate fitness for duty. They don't say you must test for drugs to make sure that they are; they say you must be sure they're fit for duty, the way I understand it.

ASSEMBLYMAN FOY: Right. The way I interpret it is: You have a Federal authorization to conduct drug tests in your judgment.

ASSEMBLYMAN GENOVA: No.

ASSEMBLYMAN FOY: Yes.

ASSEMBLYMAN GENOVA: Now?

ASSEMBLYMAN FOY: Yes.

ASSEMBLYMAN GENOVA: PSE&G?

ASSEMBLYMAN FOY: Yes.

MR. FENIMORE: I think he's talking about nuclear.

ASSEMBLYMAN GENOVA: Oh, I'm sorry. Okay.

ASSEMBLYMAN FOY: The NRC's policy is that it is within their discretion and authority to conduct drug tests. And that may be the preemptive mechanism.

MR. FENIMORE: Okay. But it's within our discretion is what I mean. They don't mandate.

ASSEMBLYMAN FOY: Yes. They don't mandate that you conduct them, but they authorize you to do it if you so choose.

MR. FENIMORE: Yes. And they do mandate an annual physical, which is the time we do it -- unless there's some unusual circumstance where we feel an employee is, you know,

doing something that there's obviously something wrong with, and then we may require the test. That's the gist of the program now. You have an option.

ASSEMBLYMAN LITTELL: Excuse me. You do it when they're getting their physical. Do they know they're having a test taken?

MR. FENIMORE: Oh, yes. Every employee knows. It's a public policy. The whole program is issued to any new employee that comes in, and all the employees that were there when the program came into existence.

ASSEMBLYMAN FOY: But do you see the wide divergence in policies now? Some places -- I think Bob mentioned it -- never even told you. They may well have done it, and that could have been the reason he had a false positive. Again, it brings to the fore the need for some uniformity as far as this goes.

You know, the rudiments of due process in anything under the Constitution are noticed, and the opportunity to be heard, and there's a lot of that due process missing in what we've heard today about the administration of drug tests.

ASSEMBLYMAN GENOVA: I have to sympathize with your concerns about section 4 of this bill. It will no longer allow you people to conduct it. How long have you been conducting this test?

MR. FENIMORE: We've had a drug test since 1983 -- drug screening. We've done the physicals on all new applicants. I know I had mine back in -- 30 years ago. But the drug part has been introduced as of 1983.

ASSEMBLYMAN GENOVA: So it's section 4 in this bill.

ASSEMBLYMAN LITTELL: We made a note of that. If we have a grandfather clause which says a company that has a policy may continue to implement that policy, and we'll put a section in there that says that during the interim period, when it's signed into law and before it's implemented, that

once a month they would send a report on all tests that they do to the commissioner so that he at least is aware of what's going on.

MR. FENIMORE: The nature of the program that we have is, if the supervisor -- and we have to trust in his judgment to some extent -- determines that an employee has exhibited some form of behavioral problem, that he should be tested, the employee is told that the supervisor has come to that conclusion and that he's ordering him to go with him to the medical -- wherever it may be in that particular location -- and have the test administered. The employee is also told that if he refuses the test, he will be suspended until further discussion. If he accepts the test and he's found positive, no disciplinary action will be taken; he'll be then referred to some form of a rehabilitative program. That's the purpose of it, not to discipline.

If he turns us down, and refuses to go, you're left with no option except an insubordinate employee, in a sense, who may or may not be a drug abuser.

ASSEMBLYMAN FOY: Is that suspension and discipline grievable under your contract?

MR. FENIMORE: Yes.

ASSEMBLYMAN FOY: Okay. So, they have the protection of the collective bargaining agreement regarding potential abuse by supervisors with respect to that?

MR. FENIMORE: Yes. Oh, yes.

ASSEMBLYMAN FOY: An employee can say, "I don't want to take the test because he or she doesn't think that I'm on drugs; he's mad because he saw me in the bar with his wife one Saturday."

MR. FENIMORE: Could be.

ASSEMBLYMAN FOY: Okay? But the collective bargaining agreement protects him, that's the important thing.

MR. FENIMORE: He would be suspended and then the

grievance would be instituted by the union, and that would be carried forth on that point as to whether or not the suspension was or was not appropriate.

ASSEMBLYMAN GENOVA: With or without pay?

MR. FENIMORE: With pay suspension. Now that doesn't mean that at the end of the grievance procedure he may not be reinstated with pay; that frequently happens. Sometimes we think they're mediators instead of arbitrators. At times they give both of us a little bit, and sometimes we give a guy 10 days, and he gets five days with pay and five days without -- you know?

But, basically, the purpose of it is not for discipline, and none of the PGB programs are for discipline. The alcoholic program, which has been in effect for quite a few years, PGB was brought into effect in the early '70s just for alcoholism at that time, and any other emotional problems you may have.

ASSEMBLYMAN FOY: Would it be possible for you to disclose to us a copy of your policy -- what that program is so we can see what an existing program is?

MR. FENIMORE: Sure, it's public knowledge. Sure, I can get you a copy of it.

ASSEMBLYMAN FOY: If you could, make those copies available to the Committee because I'd like to see just how yours works, because I'm sure it involves a lot of the aspects that we've heard about today from both sides of the issue.

MR. FENIMORE: But we still have some problems in the sense that we don't feel that we should have to have any definition of what is reasonable cause because of the nature of our business, as you've heard talk.

And I recognize that you have concern: Where do you draw the line? But if you think about 24 million visits to customer's homes, just by meter readers alone, I think the public has some right to know that an individual who they

must, in some sense, give access to -- because if the meter is inside, sooner or later we've got to get in; if we don't we've got to do something that's unhappy for both of us -- should have the ability to have the ease of mind that these employees coming in and out of their homes, which is all of our business, are free of drugs and not in any sense going to endanger them as a result of us permitting these people on the street.

That's why we talk about, and we've had some comments about why we feel utilities, period, should be exempted for at least those who have any contact with customers. They have the right to deserve that. And we've heard some comments today -- Newt's made quite a few -- and aside from the general company position, I think we have to give some thought to the rest of the public and the protection that they deserve to have from drug abusers. Whatever that situation may be, we've got to take some action; there's no question about that.

I'd be glad to answer any other questions if you have them.

ASSEMBLYMAN LITTELL: We have a question from staff.

MR. FENIMORE: Sure.

MR. DEVANEY: On the interim period, could you tell us a little bit about what kind of safeguards there would be available for PSE&G employees, such as, would there be a second test if a positive comes up?

MR. FENIMORE: That's the normal.

MR. DEVANEY: That's normal?

MR. FENIMORE: I can verify that for you.

MR. DEVANEY: So you would have no objection to--

MR. FENIMORE: But as I understand it, those positives that come up, there is an attempt to be sure.

MR. DEVANEY: Okay, then you would have no objection to certain safeguards in the amendment for the interim period that would allow you to continue testing with perhaps

confirmation, written policy statements, and confidentiality?

MR. FENIMORE: No. We, in essence, support that part of the bill. We don't see any problem in regulations and safeguards in how the tests are administered in the form of medical, etc. It's just that who gets tested is where we have a concern, not so much how. We support that part of the bill, no question about that. We've been doing it for years, and we've been doing it with the advice of medical professionals, etc., to try to do it the right way. But we haven't gone to random testing at this point, and we have no intention to at this stage. But that may change, depending on what we find under normal circumstances.

ASSEMBLYMAN LITTELL: Thank you very much.

MR. FENIMORE: Okay. Thank you.

ASSEMBLYMAN LITTELL: I want to say thank you to everybody. I think it's been an excellent hearing today. We're going to take all these ideas and put them together and we'll have a bill tomorrow morning. (laughter)

(HEARING CONCLUDED)

Appendix

HLR SERVICE CORPORATION

A Subsidiary of Hoffmann-La Roche Inc. Nutley, New Jersey 07110

August 19, 1986

Mr. James Harkness
Deputy Counsel
Republican General Assembly Majority Office
State House Annex
CN 001
Trenton, New Jersey 08625

Dear Jim:

This is to confirm that Dr. Mark Powell, Director of the Department of Pharmaceutical and Toxicological Testing for Roche Biomedical Laboratories in Raritan, New Jersey, will accompany me for the hearing on Assembly Bill 2850, a bill which would authorize the Department of Labor to establish uniform standards for the use of drug abuse tests in the workplace. I have attached some biographical information about Dr. Powell.

As I mentioned in our phone conversation last week, I am attaching a copy of a letter which I wrote to Assemblyman Willie Brown addressing his concerns about drug abuse testing in the workplace as a result of various reports that blacks may show greater sensitivity to the drug abuse test for marijuana because they have circulating blood levels of the skin pigment melanin in their blood. The attachments to the letter to Mr. Brown are also enclosed for your information.

We are looking forward to participating in your hearing on September 4 at 1:00 p.m. Please don't hesitate to contact me in advance if we can be of further assistance with your planning for the hearing.

Sincerely,



John B. Dalton
Regional Manager
State Government Affairs

JBD/sf

Enclosures

cc: Dr. Mark Powell



Roche Biomedical Laboratories, Inc.

1 Roche Drive • P.O. Box 500 • Raritan, New Jersey 08869
(201) 526-2400 (N.J.)
(800) 631-5250
(800) 352-4853 (N.J. only)

Roche Biomedical Laboratories recently announced the appointment of Dr. Mark L. Powell to Director of the Department of Pharmaceutical and Toxicological Testing in Raritan, New Jersey. The new department will be involved in bioanalytical testing for therapeutic drugs under development, as well as the expanding area of toxicology testing for drugs of abuse.

Dr. Powell received his Ph.D. in Medicinal Chemistry from the University of Washington in Seattle. He joins Roche from Sphering Corporation where he worked for five years as a Principal Scientist in the Drug Metabolism department. He has published numerous articles in various scientific journals and books. It is a reunion of sorts, since Dr. Powell worked at Hoffmann-La Roche in 1980 where he completed his Post-Doctoral Fellow in the department of Biochemistry and Drug Metabolism.

For the past two years, Dr. Powell has served on the steering committee of the North Jersey Drug Metabolism Discussion Group, American Chemical Society. In addition, he is a member of the American Society for Mass Spectrometry, American Association for the Advancement of Science, American Chemical Society, and was recently appointed to the board of directors of The Epilepsy Institute.

Mark and his wife, Mariann, reside in Upper Montclair, New Jersey. They have three children.

HLR SERVICE CORPORATION

A Subsidiary of Hoffmann-La Roche Inc. Nutley, New Jersey 07110

July 31, 1986

The Honorable Willie B. Brown
375 Wainwright Street
Newark, New Jersey 07112

Dear Mr. Brown:

When we met recently in Trenton at a legislative session, you indicated that one of your concerns about drug abuse testing in the workplace resulted from various reports that blacks may show greater sensitivity to the drug abuse test for marijuana because they, like hispanics, have higher circulating blood levels of the skin pigment melanin in their blood. I have learned that this is not the case and have attached articles which discuss this matter.

In an article which appeared in Chemical and Engineering News on June 2, 1986, on page 11, Richard L. Hawks of the Research Technology Branch of the National Institute on Drug Abuse, states "There is no substance to the melanin issue." Mr. Hawks refers to research done at the University of Mississippi which concluded there is no interference from melanin in the marijuana drug abuse test. I have also attached a copy of a letter to the editor of the Journal of Analytical Toxicology of July/August 1986 in which the University of Mississippi researchers concluded that the concern about melanin interfering in the screening or confirmation of the test for marijuana is totally unjustified. I would hope that this information leads you to conclude that blacks should not have a problem with false positives to the marijuana tests because of higher melanin blood levels.

On Tuesday, July 22, as part of a site visit at Hoffmann-La Roche, we hosted legislators and others attending the Council of State Governments' Eastern Regional Conference annual meeting. During the site visit a seminar was conducted on drug abuse testing in the workplace which discussed the bill entered by Assemblyman Foy and Littell (A-2850) on this subject. Personnel from our Diagnostic Dimensions and Roche Biomedical Laboratories divisions participated in that seminar to share their perspectives on this subject. You may be interested in discussing that seminar with Assemblyman Foy and in reviewing his bill.

Please don't hesitate to contact me if you have any further questions on this matter, or if there is any other way in which I can assist you.

Sincerely,

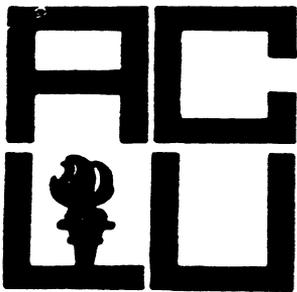


John B. Dalton
Regional Manager
State Government Affairs

JBD/sf
Attachments

cc: The Honorable Thomas Foy

3x



AMERICAN CIVIL LIBERTIES UNION OF NEW JERSEY

38 WALNUT STREET
NEWARK, NEW JERSEY 07102
(201) 642-2084

JEFFREY E. FOGEL
Executive Director

Stephen Latimer
President

August 26, 1986

Hon. Robert E. Littell
Box 328 Church Street
Franklin, New Jersey 07416

Re: A.2850

Dear Assemblyman Littell:

First let me commend you again for your serious endeavors to bring some rationality to the hysteria of drug testing on the job.

We are opposed to urine testing both because of the invasion of privacy inherent in such programs and because of the misuse of results. Urine tests do not demonstrate on-the-job intoxication or impairment and employees should not be fired for conduct with no demonstrable relationship with their job performance.

A.2850 is an effort to limit testing programs to "reasonable suspicion" and to set standards for such testing, and as such would provide legal protections to some workers currently subject to arbitrary and capricious programs. However, as presently written we cannot support this positive effort without addressing the following concerns:

1. The definition of "reasonable suspicion" is much too broad and thus subject of abuse. We believe that legalistic phrases and buzz words like "suspicion" should be avoided and suggest that tests only be allowed where there are "trustworthy grounds to believe that the employee is under the influence of a controlled dangerous substance on the job."
2. The Commissioner of Labor should be required to identify the most reliable methodology and the bill should prohibit punitive job action unless that methodology is utilized.
3. The bill should provide for absolute confidentiality regarding the records of any employee's drug abuse test.

Hon. Robert E. Littell

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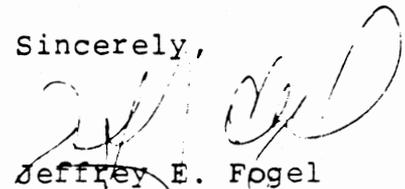
August 26, 1986

4. The employee should have the right to challenge the results of any drug abuse test as not in compliance with the statute and regulations promulgated under it with the remedy (administrative or judicial) of keeping his/her job

There are a number of other provisions which would help effectuate the spirit of A.2850 but which may be more appropriate to be dealt with by way of administrative regulation.

We are anxious to work with you and the Committee to produce a bill consistent with the spirit reflected in A.2850.

Sincerely,



Jeffrey E. Fogel
Executive Director

JEF/th

cc: Joe Devaney
Assembly Labor Committee

Assemblyman Thomas Foy



STATE OF NEW JERSEY
DEPARTMENT OF LABOR

CHARLES SERRAINO
Commissioner

CN 110
TRENTON, NEW JERSEY 08625-011

August 22, 1986

Honorable Robert Littell
Chairman, Assembly Labor Committee
47 Church Street
P.O. Box 277
Franklin, New Jersey 07416

Dear Assemblyman Littell:

This letter is regarding your legislation, A-2850, the "Workplace Drug Abuse Testing Act." The Department of Labor feels that it is incumbent to express to you its concerns regarding A-2850.

The fundamental objection to this bill is that it is an intrusion on the collective bargaining process. Except for the standards set by the bill, any agreements reached during collective bargaining could only create tighter restrictions on drug testing (making it more difficult to test employees for drugs) or eliminate drug testing entirely. For example, some unions, where members depend on their colleagues for personal safety, may want to enact tougher drug testing polices. This would not be permissible under the bill.

Another difficulty is that while drug testing is necessary in some instances to insure public safety, this bill would restrict drug testing to the potential detriment of the public. The public has the right to expect that such professionals as health care practitioners, air traffic controllers, and law enforcement personnel are not under the influence of narcotics. These employees cannot be tested under this legislation prior to the employer discovering a "reasonable suspicion" to administer a drug test. Often, the public, the employer, and fellow employees, feel that, particularly in dangerous occupations, waiting for a "reasonable suspicion" might endanger the health and well-being of anyone coming into contact with such employees.

It is estimated that between 25-30% of the Fortune 500 have some type of drug testing program. Since this legislation will curtail the availability of drug testing, it might have a negative impact on the efforts to attract new business or for existing business to expand in New Jersey.

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New Jersey Is An Equal Opportunity Employer

The legislation also calls for the bill to take effect 90 days after enactment. Given the highly technical procedures which will have to be regulated, as well as the large number of agencies, both public and private who will desire input into the regulations, it is anticipated that a more realistic effective date would be one year from enactment. This will enable time for regulations to be promulgated since, as written, the legislation allows for no drug testing until these regulations are put into effect and would terminate all drug testing in New Jersey from the effective date until the regulations were issued.

Furthermore, the bill would not permit voluntary testing, which President Reagan supports.

The Department of Labor has obtained Assemblyman Foy's amendments to A-2850 which are to be offered at the September 4 meeting. One of these amendments would establish an Advisory Commission to look at the drug testing procedures. The Department of Labor is concerned that as the legislation is written, the Advisory Commission will be reviewing this issue at the same time the Commissioner is preparing regulations. It is unclear as to whether or not the Commissioner of Labor must wait for the recommendations of the Advisory Commission, in which case, since the Commission has 15 months to report and since no drug testing can take place until regulations have been promulgated, drug testing will be entirely suspended for, at minimum, 15 months.

Another technical concern with the Advisory Committee is that the representative from the Public Employment Relations Commission (PERC) be removed from the Advisory Commission in order that PERC retain its impartiality since they may, in the future, be required to adjudicate a dispute arising out of an Advisory Commission recommendation. As a rule, PERC does not participate on such Commissions.

As an alternative to the current legislation, and in the interest of securing a drug testing policy more quickly, the Department of Labor suggests that the Advisory Commission be established to look at the entire issue of drug testing without any change in the status quo until the Commission issues its report. In this regard, it is suggested that the time for the Advisory Commission to report be shortened to one year and that the report be filed with the Governor rather than the Commissioner of Labor. Only in this manner can a drug testing policy, with a broad enough consensus to be effective, be established.

I hope this information proves beneficial to you. I would be happy to discuss this further with you.

Sincerely,


Irene von Dohlen, Director
Legislative Services

cc: Honorable Joseph Azzolina
Honorable Thomas Foy
Honorable Peter Genova
Honorable Newton Miller
Honorable Vincent Pellecchia
Honorable Gerald Zecker

Statement by the AFL-CIO Executive Council

on

Mandatory Drug and Alcohol Tests

May 21, 1986
Washington, D.C.

Drug addiction and alcoholism are illnesses. Those suffering from these diseases need treatment, not punishment. At the same time, addicted individuals can pose health and safety hazards on the job if they come to work in an impaired state. Accordingly, the problem of substance abuse ought to be addressed squarely and cooperatively by employers and unions.

The AFL-CIO and its affiliates have long promoted prevention and rehabilitation programs in the workplace and the community. Labor unions have sponsored institutes on alcoholism and drug use, trained union volunteer counselors to offer guidance and referrals to those with drug- and alcohol-related problems, supported community facilities for treating victims of drug and alcohol addiction, and established on-the-job treatment programs.

In recent years, however, it has become increasingly fashionable for employers-- public and private alike--to use drug tests to screen all job applicants and all employees or to force applicants and employees to submit to such tests on a random basis.

Many of the tests companies use to screen workers for drugs and alcohol are very inaccurate, especially the ones companies use in volume. False positives--showing drug usage even though a person has not used illegal drugs--are 25 percent or higher for many tests, and the results of tests which purportedly screen for illegal drugs can be affected by the use of such common substances as cough syrup, caffeine, asthma medicine and other common chemicals.

In addition, the laboratories which perform drug and alcohol screening tests often have very high false-positive error rates. According to the Centers for Disease Control (CDC), some labs have false-positive error rates as high as 66 percent. As a result,

workers or job applicants may lose a job either because accurate tests are not available or because companies prefer to use less accurate, inexpensive tests in mass screening programs.

Even if such drug tests were reliable, the tests would reveal only which individuals had taken a drug during a prior interval of time, often encompassing a large amount of off-duty hours. Such tests cannot determine whether an individual is currently addicted to a drug, under the influence of a drug, or unable to perform job functions because of drug use. The employer's only legitimate interest is in judging an employee's ability to work.

Tests for drug and alcohol usage are thus of dubious value in dealing with the problem of impairment in the workplace. Few testing programs include procedures for workers to challenge inaccurate findings or secure relief from the results of error. The test results are too often used to discharge competent employees. Perhaps most important, the administration of these tests on a random or across-the-board basis is degrading to, and invades the privacy and physical integrity of, those tested, the vast majority of whom use no illegal drugs at all.

In addition, mandatory drug and alcohol testing programs raise serious legal questions. In many states, there are laws to protect personal privacy, laws which should be interpreted to prohibit overbroad testing programs. In addition, under federal law and the laws of many states, persons suffering from addiction, like persons suffering from other disabling conditions, are classified as handicapped and are protected from discrimination in employment based on their condition. To the extent drug and alcohol tests are aimed at disciplining addicted individuals without regard to whether the individual's impairment interferes with job performance or directly threatens harm to others, such tests may run afoul of the laws on discrimination against the handicapped.

The process of collective bargaining holds the best hope of developing lawful solutions which reconcile the sometimes competing interests of the addicted individuals

Mandatory Drug and Alcohol Tests

with those of workers who do not use drugs and who wish to avoid the degradation of drug testing, yet at the same time do not want to be endangered by a co-worker who is impaired.

Through collective bargaining, unions and employers can develop carefully tailored and balanced programs which stress education and prevention of addiction and which also:

- * place appropriate limits and conditions for the use of tests for alcohol and drugs, including focusing only on workers who exhibit symptoms of job-related impairment;
- * establish safeguards for those who test positively, including guarantees of workers' rights to privacy and confidentiality;
- * fully inform workers and their representatives of the testing methodology an employer administers;
- * provide non-punitive, on-the-job responses and helpful treatment for those who are, in fact, unable to perform their jobs because of drug addiction or alcoholism.

The AFL-CIO urges its affiliates, through the collective bargaining process, to continue to develop constructive solutions to the addiction problem, solutions responsive to the legitimate needs of all parties.

We deplore the recent efforts by many employers, in the hysteria of the moment, to bypass the collective bargaining process and require mandatory screening or impose punitive programs which ride roughshod over the rights and dignity of workers and are unnecessary to secure a safe and efficient workforce.

The AFL-CIO urges its affiliates to vigorously resist these harsh and unjustifiable programs and to assist union members who are injured by such employer-imposed programs to invoke their rights under federal and state law. We call upon Congress and the state legislatures to strengthen the legal protection afforded the addicted and to ban testing that unnecessarily infringes on the privacy and dignity of workers.

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**New Jersey
Business & Industry
Association**

102 West State Street • Trenton, New Jersey 08608 • 609-393-7707

August 13, 1986

The Honorable Robert E. Littell
47 Church Street
P.O. Box 328
Franklin, NJ 07416

Dear Assemblyman Littell:

In reply to your letter of August 11, 1986, New Jersey Business and Industry Association welcomes your invitation to testify before the Assembly Labor Committee on September 4 concerning A-2850 which in effect restricts an employer's ability to achieve a drug free workplace.

Federal law (OSHA) requires that every employer provide to each of his employees a place of work which is free from recognized hazards that are likely to cause death or serious physical harm to his employees. In an attempt to comply with the federal law, barriers should not be imposed on employers who seek to provide a safe workplace for their employees.

I am enclosing herewith a draft copy of the testimony that NJBIA will present to the Labor Committee on September 4.

Sincerely,

A handwritten signature in cursive script that reads 'Lester Kurtz'.

Lester Kurtz
Assistant Vice President

jk
Enclosure

New Jersey State Library

STATEMENT OF THE
NEW JERSEY BUSINESS AND INDUSTRY ASSOCIATION
TO THE
NEW JERSEY GENERAL ASSEMBLY
ON
ASSEMBLY BILL 2850

New Jersey Business and Industry Association, the largest association of employers in the state, takes this opportunity to express its OPPOSITION to Assembly Bill 2850 (Littell) in its present form. This bill authorizes the Department of Labor to establish rules and regulations creating a uniform standard for drug abuse testing. The bill would also prohibit an employer from administering a drug abuse test to any employee or applicant for employment without first having a reasonable suspicion that the employee is under the influence of drugs. The employer's suspicion must be based upon visible evidence of erratic job behavior.

Business Supports

NJBIA supports a uniform standard for drug abuse testing. We favor uniform guidelines for the taking of blood or urine samples; the methodology and procedure used to evaluate the contents of samples. Business would welcome the opportunity to provide input into the establishment of the criteria for the drug testing program.

Business Against

At the same time NJBIA is OPPOSED to any law which, in any way, restricts an employer's right and obligation to determine when a job applicant or employee may be requested to submit to a drug test. We feel that there should be no limitation on an employer's selection of employees to be tested. Drug abusers do not always exhibit visible evidence of erratic behavior as required by A-2850. Business seeks a drug free workplace to protect all working people and the public and to increase the productivity of our economy.

NJBIA is OPPOSED to A-2850 because:

- o Pervasive In Workplace.
- o Reduces Productivity.
- o Costs Lives.
- o Used At All Levels.
- o Financial Burden.

Pervasive in Workplace

The use of illegal drugs has reached epidemic proportions in this country. It has affected all age and socio-economic groups. Illegal drugs have become so pervasive in the workplace that they are used in almost every industry by blue and white collar workers alike. Their presence on the job is sapping the energy, honesty and reliability of the American labor force.

measure of the inroads drugs have made on the workplace is seen in the President's Commission on Organized Crime's proposal of March 1986, asking all U.S. companies to consider testing their employees for drug use. The Commission noted that "drug trafficking is the most serious organized-crime problem in the world today" and that government and private companies can play a role in curbing the demand for drugs.

Last year, in a typical example, reported by the Research Triangle Institute, a computer operator high on marijuana failed to load a crucial tape into an American Airlines computer reservation system. The system was out of service for eight hours, costing the company some \$19 million.

Reduces Productivity

Other studies have found that drug abusers are far less productive than their co-workers. They miss ten times as many workdays and are three times as likely to injure themselves or someone else. Addicts with expensive habits are also more likely to steal cash from a company safe, products from a warehouse, equipment from a factory or secrets from a defense contractor.

The costs of drug abuse on the job are staggering. Consequences range from accidents and injuries to theft, bad decisions and ruined lives. Impaired workers involved in industries such as public transportation, trucking and continuous chemical operations, for example, could commit acts that result in injuries to the general public, co-workers, and also possible extensive property damage.

Costs Lives

Concern is greatest, of course, in industries where mistakes can cost lives. In the last ten years, about 50 train accidents have been attributed to drug or alcohol impaired workers. Resulting in 37 deaths, 80 injuries and \$34 million worth of property was destroyed. In 1983, at Newark Airport, a cargo flight skidded off the runway killing two crewmen. An autopsy showed that the pilot had been smoking marijuana, possibly while flying.

Federal experts estimate that between 10 and 23 percent of all U.S. workers use dangerous drugs on the job. Marijuana is the most common drug in the workplace, and the use of cocaine is increasing, because the intense high it generates often gives users the false feeling that they can do their jobs better and faster. Moreover, cocaine is easy to hide. In many offices, drugs are as easy to obtain as paper clips. Some dealers provide messenger services right to their customer's desk or workplace.

Used At All Levels

Dangerous drugs can be found at every level of industry, from the shop floor to the executive suite. Drugs are also used by multitudes of blue collar workers to relieve the deadening boredom of menial jobs. Employers with large blue-collar work forces have discovered that drug dealers offer virtually an alternative cafeteria service in their plants.

Once companies acknowledge and confront the drug threat, their first task is to establish a firm and fair policy. Usually, they dismiss workers caught taking or selling drugs on the job, while offering assistance to users who voluntarily admit their problem.

Financial Burden

To help put impaired workers on the road to rehabilitation some 50% of the Fortune 500 industrial corporations have established in -- house employee -- assistance programs. Supervisors who spot unusual behavior can encourage workers to seek counseling.

The cost to an employer for employee drug abuse treatment can exceed \$30,000 annually. Small employers can not afford this financial burden. This legislature must not place obstacles in the path of employers seeking to avoid this financial burden.

Conclusion

The corporate campaign against drugs may do more, however, than create safer, more productive workplaces. It may also begin to stem the plague of drug use in the United States. As more companies require job applicants to prove that they are drug free, it will become increasingly difficult to use drugs and make a living. Thus the economic deterrent may succeed, where the legal deterrent has failed.

While it is still too early to measure the success of the corporate war against drugs, some companies already cite impressive results. If companies can help employees kick the drug habit, the effort will pay dividends to business -- and society -- that can not be measured in dollars and cents. Enactment of A-2850 would be counterproducts to employer efforts to secure a drug free workplace, but also to the President's call for a "drug free workplace for all Americans" as part of a program in a "National crusade against drugs."

NJBIA submits that because drug use by workers can result in shoddy, unsafe products and accidents in the workplace, individual rights must be subordinated to the broader welfare of fellow employees, customers and the public. We strongly urge that you OPPOSE A-2850.

THOMAS P. FOY

EXECUTIVE BOARD MEMBERS



"The world is divided into those who want to become someone and those who want to accomplish something. There is less competition in the second category."

Jean Monnett 1888-1979

- | | | | |
|-----------------|-----------------|-------------------|---------------------|
| IN AGATHOS | JAMES DILLON | JAMES KIRK | JOHN PIERSON, SR. |
| RY ANNUCCI | PETER DONATELLO | RALPH LOMBARDI | JOSEPH REED |
| TOR BONTEMPO | FRANK ESPOSITO | LEW MALLET | ANTHONY SANTO |
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| ANK DEVITO | CHRIS JACKMAN | | |

NEW JERSEY STATE AFL-CIO

106 West State Street
Trenton, New Jersey 08608
(609) 989-8730

TESTIMONY
of
N. J. STATE AFL-CIO
before the
ASSEMBLY LABOR COMMITTEE
on
ASSEMBLY BILL 2850
SEPTEMBER 4, 1986

The indiscriminate and random use of dangerous drugs in our society has become the scourge of the 1980s. It is creating havoc and untold human suffering in our homes, schools and the workplace. It is no longer a question of whether tough measures should be instituted to stem this creeping and prevading menace, but rather when and what form these measures will take.

In the workplace, some of our largest public and private employers have already implemented various drug testing programs for their employees, and we believe it is safe to say drug testing will only increase and intensify in the years ahead. New Jersey currently has no uniform regulations or standards for the drug testing of workers, and the courts have been anything but consistent in ruling about the constitutionality of testing. Such an unstructured environment does not bode well for the continued maintenance of civil rights and liberties.

With this in mind, the New Jersey State AFL-CIO supports - with reservations - enactment of Assembly Bill 2850, legislation designed to establish uniform, statewide drug-testing standards and regulations and stringently define conditions under which the tests may be conducted.

Basically, the State AFL-CIO supports the concept of drug testing and rehabilitation as a means of protecting those not on drugs from becoming the innocent victims of drug-related accidents or mistakes,

and as a means of fulfilling society's obligation to those already reliant on drugs. In the workplace, drug abuse by employees reduces efficiency and productivity, lessens the quality of goods and services, and increases the risks to the public and fellow employees through unsafe operating procedures and poor workmanship.

However, organized labor can only support drug testing so long as it does not erode basic worker rights and become as much a threat to our society as that posed by drug abuse itself. We cannot overemphasize the need to enact guidelines and testing procedures that promote rehabilitation, not discipline, and insure that the tests are equitable and the results are valid. You must guarantee as much as humanly possible that no careers or reputations will be jeopardized by "false positive" results.

While we agree with the overall thrust of A.2850, the State AFL-CIO would urge this committee to consider and adopt several amending provisions that further address the legitimate rights and concerns of workers, specifically:

1) The quality and type of permissible testing should be rigidly defined in this Act to prevent the possibility of inaccurate tests being used. We have read reports that up to 66 percent of the tests administered nationwide are returned with "false positive" results, a situation that is totally unacceptable.

2) If a first test on a workers shows positive, a second test should automatically be administered for verification. If the second test is also positive, the employee should then be referred to rehabilitation without disciplinary action, unless he or she refuses the treatment or fails to complete the assigned course of action.

3) Section 5 should be amended and revised to read "probable cause" instead of "reasonable suspicion" in order to comply with Section 2C of the state's Criminal Code.

4) Any and all mandatory drug testing should be prohibited in New Jersey until minimum standards, as promulgated by the state (and this legislation), are firmly in place.

5) Strict confidentiality must be maintained in all aspects of the drug testing process.

6) We ask that the proposed Advisory Committee on Employee Drug Testing be instructed to make a final report to the Commissioner of Labor within nine months instead of 15 months as presently suggested. We are facing a crisis situation both in New Jersey and throughout the

entire nation and action must be expedited concerning this matter. New Jersey has the opportunity to take the lead nationally in establishing adequate and accurate standards for drug abuse testing in the workplace.

We believe that these amendments, along with existing provisions in the bill to allow employees and unions to establish collective bargaining agreements to either strengthen standards or prohibit drug testing altogether, will provide sufficient civil liberties protections while creating a viable anti-drug instrument to benefit society and the workplace. Thank you.

September 4, 1986

A-2850
WORKPLACE DRUG ABUSE TESTING ACT

STATEMENT OF G. DONALD BATES
PUBLIC AFFAIRS ASSISTANT MANAGER
JERSEY CENTRAL POWER & LIGHT COMPANY

JERSEY CENTRAL POWER AND LIGHT COMPANY GENERALLY SUPPORTS THE ESTABLISHMENT OF STANDARD RULES AND REGULATIONS RELATING TO THE ADMINISTRATION OF DRUG ABUSE TESTS. HOWEVER, WE STRONGLY FEEL THAT ANY GUIDELINES, RULES OR REGULATIONS, SHOULD NOT BE ADOPTED WITHOUT THE DETAILED INPUT OF THE BUSINESS COMMUNITY. WITH RESPECT TO ASSEMBLY BILL 2850, WE TAKE EXCEPTION TO SECTION 5 WHICH STATES IT SHALL BE UNLAWFUL FOR AN EMPLOYER TO ADMINISTER DRUG TESTS TO ANY EMPLOYEE WITHOUT FIRST HAVING REASONABLE SUSPICION.

WE FEEL IT IS OUR OBLIGATION TO DO EVERYTHING WE CAN TO ASSURE THAT EMPLOYEES ARE OF SOUND MIND WHEN ON THE JOB, WHETHER IT BE METER READERS WHO GO FROM HOME TO HOME OR LINEMEN/LINEWOMEN WHOSE NEGLIGENCE COULD SEVERELY INJURE THEMSELVES, OTHER WORKERS OR CUT SERVICE TO OUR CUSTOMERS.

PRESENTLY JERSEY CENTRAL POWER AND LIGHT DOES NOT HAVE A RANDOM DRUG SCREENING PROGRAM BUT WE WOULD LIKE THAT OPTION AVAILABLE TO US IF WE DETERMINED IT WOULD BE IN THE BEST INTEREST OF OUR EMPLOYEES AND CUSTOMERS.

AT OUR OYSTER CREEK NUCLEAR POWER PLANT, THE IMPLEMENTATION OF A RANDOM DRUG SCREENING PROGRAM IS BEING CONSIDERED. WITH ME TODAY IS MIKE ROCHE FROM GPU NUCLEAR CORPORATION, THE OPERATORS OF OUR PLANT, WHO WILL DISCUSS THE REASONS AND METHODS FOR SUCH A PROGRAM.

Mike Reem

TESTIMONY OF GPU NUCLEAR CORPORATION
ON A2850 - WORK PLACE DRUG ABUSE TESTING ACT

NEW JERSEY ASSEMBLY LABOR COMMITTEE
SEPTEMBER 4, 1986

The Assembly Labor Committee should be congratulated for its effort to establish a statewide policy for drug testing in New Jersey work places. We applaud the idea of uniform standards for the administration of drug testing.

As committee members themselves have stated, the issue of testing employees for drug and alcohol abuse so far has led only to an uncharted area where employers' well-intended efforts are challenged by individual rights to privacy.

Our purpose here today is to focus attention on the paramount need to safeguard public health and safety by use of a random and periodic drug screening program. As proposed, the Workplace Drug Abuse Testing Act would preclude random and periodic drug testing.

We are all aware of drug and alcohol abuse as a major problem throughout our society and the growing need for corrective action. Research on drug use in our country has revealed that 12 to 20% of adults abuse one or more drug.

As written, the bill does little to assure the fitness of workers in occupations which can affect the health and safety of the public and to ease doubt in the public mind.

--more--

There should be no unnecessary doubt about worker fitness for duty in any endeavor, with the potential to significantly affect public health and safety in New Jersey, where the margin of error is small.

A recent, national public opinion poll conducted by the Gallup Organization for Newsweek showed that a substantial margin of the public believes required, periodic drug screening tests are a "good idea." Of those sampled, 85 percent favored drug screening for police officers, 84 percent for airline pilots, and 72 percent for government workers. No less than 50 percent of the poll respondents said periodic drug screening would be a good idea for all workers.

Drug screening and random testing is not a novel or untried approach. As you know, harness drivers and jockeys at New Jersey tracks submit to post race testing. It's routine for boxers after they leave the ring. Numerous utilities conduct random and periodic drug testing and the U. S. Navy has been doing random and periodic drug testing for over ten years. Some states, including New Jersey, employ random testing--spot highway checks--as the primary tool to enforce their vehicle inspection standards.

The sensitivities of the of drug and alcohol abuse problem are especially acute in the nuclear industry where a primary responsibility is protecting the health and safety of the public and employees.

--more--

The GPU Nuclear Corporation is the operator of Jersey Central Power & Light's Oyster Creek Nuclear Generating Station at Forked River in Ocean County. Our primary objectives are the safety of employees and the public, fulfilling our obligations to GPU System customers, the protection of public and private property, and the preservation of public confidence placed upon us.

The company has a firm commitment to a work environment free from substances that may alter mental or physical capacity, and free from possible adverse effects of such substances.

We have been carefully considering on a continuing basis how best to fulfill these responsibilities. We have been monitoring nuclear industry activities dealing with fitness for duty and the requirements and intent of the U.S. Nuclear Regulatory Commission. The U.S. Nuclear Regulatory Commission has the responsibility for ensuring the safe operation of nuclear generating in the United States.

In its "Policy Statement on Fitness for Duty of Nuclear Power Plant Personnel" issued last month, the NRC outlined minimum acceptable standards for licensee programs. Included among the standards for an acceptable fitness for duty program are the following elements:

- (1) "A provision that the sale, use, or possession of illegal drugs within the protected area will result in immediate revocation of access to vital areas and discharge from nuclear power plant activities. The use of alcohol or abuse of legal drugs within the protected area will result in immediate revocation of access to vital areas and possible discharge from nuclear power plant activities."

- (2) "A provision that any other sale, possession, or use of illegal drugs will result in immediate revocation of access to vital areas, mandatory rehabilitation prior to reinstatement of access, and possible discharge from nuclear power plant activities."

- (3) "Effective monitoring and testing procedures to provide reasonable assurance that nuclear power plant personnel with access to vital areas are fit for duty."

The NRC is closely monitoring industry initiatives in the area of fitness for duty.

A corporate fitness for duty policy, in effect since 1982, prohibits possession or use of illegal and non-prescription drugs or alcoholic beverages on site and prohibits reporting for work under the influence of drugs or alcohol. Use of illegal and non-prescription drugs or the consumption of alcoholic beverages during working hours and during meals prior to scheduled work hours, also is prohibited by the policy. Supervisors have been trained to recognize aberrant behavior and an employee assistance program has been implemented.

This summer the company decided that it could significantly increase the assurance for itself and the public that its employees are fit for duty by instituting augmented testing for drug and alcohol in preemployment screening, when there are reasonable grounds for suspicion of usage, as part of routine company-required physical examinations, as a follow-up to a rehabilitation program and on a random basis.

The augmented program is consistent with the commitment of the industry and the NRC to a drug-free environment at plant sites. It is important to note that the company's purpose is to prevent and discourage drug and alcohol abuse.

Confirmed positive test results, or refusal to take the test, will result in immediate denial of access to company facilities and could result in dismissal. The policy also involves an opportunity for rehabilitation in certain cases through company medical and counseling programs.

A program which only tests people suspected of being under the influence of drugs does not provide sufficient incentive to workers to refrain from using illegal substances. This fact has been recognized by the U. S. Nuclear Regulatory Commission in that it has announced it is establishing a program of random testing for its own employees.

The company has proceeded very carefully to ensure all employees are aware of its plans. It has emphasized the availability of company supported rehabilitation programs and encouraged employees who have a drug or alcohol related problem to seek help.

In summary, the use of random and periodic screening provides a meaningful increase in the assurance that employees are fit for duty. It is appropriate where it contributes to public health and safety. Legislation, which is enacted for the common good, should do no less.

hjl1039c82856

/0421



New Jersey Pharmaceutical Association

118 WEST STATE STREET, TRENTON, NEW JERSEY 08608-1184

PHONE: 609/394-1184

Dedicated To Public Service Through Pharmacy Since 1870

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FREDERIC A. BECKER

September 5, 1986

Assemblyman Robert E. Littell
47 Church Street
Box 328
Franklin, NJ 07416

RE: Assembly Bill 2850

Dear Mr. Littell:

I had occasion yesterday to sit in on almost all of the public hearing on A-2850, although I had not asked to speak on the bill. I would like you to know the position of the New Jersey Pharmaceutical Association, representing 3500 practicing pharmacists. Basically, we have no position on whether testing for drugs in the work place should be allowed or not allowed. That is a public policy that should be determined by the legislature. We do have a position on the type of drug testing that should be mandated, if drug testing is to be allowed. In an effort to protect innocent parties, the most accurate tests available should be utilized and the cost of the various tests available should not be taken into consideration. We suggest that your committee get some input from personnel at the State Police Forensic Laboratory regarding the accuracy of the various tests available, and perhaps lock in through legislation the most accurate testing method available, whether it be urine testing or blood analysis.

However, my main reason for writing this letter is the fact that I noticed yesterday that no one spoke on behalf of the large number of New Jersey residents who, because of their medical condition, are taking Controlled Dangerous Substances which have been legally prescribed for them. The facts are that three of the top 10 drugs prescribed in this country today are considered as Controlled Dangerous Substances. Of the top 100 drugs, approximately 35 are Controlled Dangerous Substances. This means that there are large numbers of employees out there right now who will test positive for Controlled Dangerous Substances if they are exposed to that testing requirement.

There was no discussion on their rights, including their rights to privacy regarding their medical condition. Many questions arise regarding the widespread use of legitimate Controlled Dangerous Substances. Some of those questions are:

1. Do employers currently, or should they be required to take a full medical history, including legal drug usage, when interviewing job applicants?
2. Do employers ask for a current medical update of employees prior to asking them to submit a sample of body fluids for drug testing?
3. If a tranquilizer, which is a Controlled Dangerous Substance, is being taken by an employee because his wife left him and took their two children and he doesn't know where any of them are, does the employee have to explain his whole personal problem to his employer?
4. If the employer becomes aware that an employee, or potential employee is taking a legal Controlled Dangerous Substance, will that knowledge have an adverse effect on the person's employability?

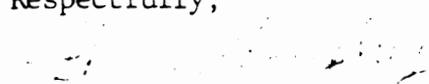
The list of questions regarding the relationship between the employer and the employee when the employee is taking a legitimately prescribed Controlled Dangerous Substance, can go on ad infinitum.

There are other situations that might arise whereby an employee might not know he is taking a Controlled Dangerous Substance; might not know that a Controlled Dangerous Substance was administered to him, perhaps in a physicians office; and obviously no lay person would have the slightest idea how long a drug residue might remain in the body even if they have discontinued their medication.

We do believe that the relationship between employer and employee regarding the legitimate use of prescribed Controlled Dangerous Substances should be thoroughly reviewed by the committee at its scheduled October hearing on A-2850.

These comments are not meant to infringe on the committees efforts in any respect but, however, should be interpreted as a request to broaden your examination of the serious drug abuse problem into the area of the legitimate use of Controlled Dangerous Substances, which encompasses probably 90 - 95% of the Controlled Dangerous Substances consumed in this country today.

Respectfully,


Leon R. Langley, Pharmacist
Director of Government Affairs

LRL/jel

cc: Assemblyman Joseph Azzolina
Assemblyman Thomas P. Foy
Assemblyman Peter J. Genova
Assemblyman Newton E. Miller
Assemblyman Vincent Pellicchia
Assemblyman Gerald Zecker
John Devaney, Aide, Assembly Labor Committee

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Chester Wierzbowski, URV

Attorney:
Ted Lieberman

TESTIMONY BEFORE THE ASSEMBLY LABOR COMMITTEE ON DRUG AND ALCOHOL TESTING IN THE WORKPLACE

Thursday, September 4, 1986

Trenton, New Jersey

Submitted by:

Philadelphia Area Project on Occupational Safety & Health

Jim Moran, Associate Director

We wish to thank Assemblyman Robert Littell and the Assembly Labor Committee for holding these important hearings on what we feel is the latest state-wide and national assault on the rights of American workers.

My name is Jim Moran, and I am Associate Director of the Philadelphia Area Project on Occupational Safety and Health. PHILAPOSH is a non-profit coalition of 130 local unions, workers, health, legal and other professionals concerned about job safety and health. We provide technical assistance and education to workers and unions on various aspects of health and safety at work. I am also a member of the Newspaper Guild Local 10, Philadelphia.

Let me begin by describing a scene probably taking place somewhere in the American workplace this very moment. Picture a 64 year old woman worker sitting in the bathroom at work; skirt up and pants down, in her right hand a plastic container. A woman from the personnel department stands guard over her with keen interest, telling her to hold her left hand high above her head so there can be no tricks while she urinates in the plastic container. This kind of complaint has come into our office. I submit to you that this kind of treatment of workers is beneath human dignity and runs counter to everything our country allegedly stands for. We would condemn this human rights violation were it to occur in any other country.

Random alcohol and drug testing of workers has become the most popular activity among American employers second only to union busting. Random alcohol and drug testing without probable cause is strongly opposed by the AFL-CIO. We have begun to win cases

against employers in arbitration and in the courts, but we think that strong legislation is also needed to curb employer excesses in this area; excesses that include discrimination against union representatives of which you'll hear testimony about today.

We will also submit for the record, documentation that reveals that lab studies done by the Center for Disease Control prove some labs have an accuracy record of less than 75%. These cheap "bathtub gin" type of "do-it-yourself" urine test kits are being aggressively marketed by corporations capitalizing on the unfortunate deaths of professional athletes and the equally unfortunate panic stricken news coverage that the public has been bombarded with for many months.

Based on these kinds of tests workers are receiving "capitol punishment" or "economic assassination. That's what it means in the labor movement when a worker is fired. This anti-worker political climate sets the stage for a myriad of employer abuses that are now rampant in the workplace.

But it does another thing that is more insidious. Since the industrial revolution in this country employers have been routinely killing and maiming American workers with virtual impunity from any real penalties for their often criminal behavior. Aside from having all the money, high priced law firms, the White House, U.S. Senate and the Supreme Court protecting their profit interests, they have a long history of inventing schemes that would help them escape responsibility for workplace carnage.

We're all too familiar with the old method of firing workers for being "accident prone", which is nothing more than blaming the victim. Then there's the scam about rewarding workers for not

reporting their injuries. Everything from Honda motorcycles to cash to VCR's have been offered in these programs. Often, injured workers will suffer in silence in the army of the working wounded rather than spoil their department's safety record by reporting the injury. They pay their own doctors and never file a workers compensation claim. This aids the company in keeping down workers compensation claims and allows them to hang a sign outside the factory that claims "no lost time injuries in the last 5, 10, or a thousand years".

Injuries and illnesses reported by America's bosses equal a staggering average of 5,000 killed outright on the job each year, 100,000 dead from work-related diseases each year, and more than 5 million injured seriously enough to loose time at work each year. Again, this only represents injuries, illnesses and deaths that are reported. Often the boss simply doesn't report.

All of these statistics are rapidly rising, with 1984's numbers up 11.7 per cent--the highest increase since statistics have been kept. This is a result of the national speed-up of American workplaces in the race for productivity and profit. Work speed-up is a contributing factor to why drugs and alcohol are being used by workers.

To mask the boss's responsibility for these numbers in recent years great emphasis has been placed on what is called the "life style" argument. This scheme focuses on personal life style as the reason for injuries and illnesses, mostly illnesses and cancers. What we eat, drink, and smoke as well as the manner in which we conduct our sex lives is cited as the reason we have various cancers, etc. The workplace is found not guilty for having caused our health problems.

The new extension of this argument is what brings us here today. The DuPont Company recently boldly announced a new plan to make the workplace safe. They will give alcohol and drug tests to every worker so that no injury will result from an accident caused by a fellow drug impaired worker. This misguided, alleged attempt to make jobs safe is a wonderful smoke screen focusing attention once again on the life style of workers instead of the real causes of workplace injury, illness and death.

Unsafe machinery need not be repaired in this scenario. Workplace chemicals need no controls or regulation. It's more important that the boss have the right to know what chemicals we bring to work in our bodies than it is for us to have the right to know what chemicals are being force fed to us on the job.

Corporate America is in the process of reversing the entire Right-to-Know concept on us as a side effect of the drug test mania that prevails among employers today. While they're checking our urine they could at least have the decency to check for mercury, lead, trichloroethylene or any of the more than 600,000 chemicals showered on workers daily in this country.

Roughly 2,000 new chemicals are introduced into the workplace each year. They don't monitor workers for those chemicals and in fact have no idea what harmful health effects will ensue. Only after Bhopal-type massacres kill thousands of workers does the media give any attention to the real substance abuse that occurs as a fact of dialy life to workers--exposure to toxic chemicals on the job. Over 400,000 people will die from cancer this year, much of it work-related.

Where is the government's war on work-related cancer? Where are the employers whose mock concern for worker safety has them drug testing all workers? We can tell you where they are at. They're in the 3rd circuit court of appeals fighting like hell against New Jersey's and Pennsylvania's Right-to-Know Laws. They're in Washington destroying the Occupational Safety and Health Act. They're in the workplace denying workers the right to a safe job and at the bargaining table denying us decent contract language for these same rights.

What do we get as a substitute for safe jobs? Drug tests and a firing if a trace amount of P.C.P. is found in our urine.

Random alcohol and drug testing is a witch hunt that is bringing fascism to the American workplace. We aim to stamp it out once and for all and PHILAPOSH will be in the forefront of the fight to accomplish that end.

We recognize the fact that there is a drug problem in America. But trampling on the rights of the entire working class is not the solution. It is also not the solution to unsafe workplaces and to claim it is is an insult to all workers, their unions and health and safety coalitions like PHILAPOSH.

If employers are really concerned about the health of their workers they should try humanizing the workplace, the work pace and working conditions generally and offer rehabilitation to any workers who exhibit alcohol or drug related problems.

There is no place in American life for McCarthy-era type witch-hunts. We demand an end to such practices.

Thank you again.



AFSCME

American Federation of State, County, and Municipal Employees

Administrative Council 1, New Jersey

3635 Quakerbridge Road, Suite 1

Trenton, New Jersey 08619

Telephone: 609-587-5000

Sept. 4, 1986

Robert Angelo
Executive Director

STATEMENT OF ROBERT ANGELO, AFSCME COUNCIL #1 EXECUTIVE DIRECTOR ON ASSEMBLY BILL 2850

AFSCME does not encourage or condone the use of drugs. Drug abuse in our society is clearly a problem to which a solution must be found. However drug testing is certainly not the solution that we seek. AFSCME as a union is concerned about safe working conditions and the well-being of our members. We want any worker suffering from drug abuse to get needed help, not be subject to indiscriminate testing.

A-2850 seems to be a "knee jerk" reaction to a problem currently receiving a lot of media attention. There seems to be a rush to judgement being made that permits private and public employers to require testing of current and future employees as a means of achieving a drug free workplace. A-2850, by establishing standards for the use of drug testing in the workplace, simply adds fuel to the fire of public attention focusing on catching workers that may or may not abuse drugs.

A-2850 encourages the issue of drug testing to be the subject of collective bargaining between employers and labor organizations. This legislative encouragement puts workers in the position of sacrificing wage increases or other benefits in order to prevent mandatory or random drug tests. As an example, this year our union in the township of Woodbridge was asked to choose between higher wages and mandatory drug testing or lower wages and no testing. This kind of bargaining situation in no way promotes labor/management relations and certainly in no way prevents drug abuse.

If there is a real desire on the part of the State Legislature to have an impact on drug abuse in the workplace, it should encourage education and counseling rather than testing and punishment. The State of New Jersey has a program, the Employee Advisory Service, which provides counseling and education to state workers however it is underfunded and understaffed.

A-2850 would spark widespread drug testing across the state which will subject thousands of workers to illegal, unreliable and unnecessary indignities. AFSCME is strongly opposed to employers relying on testing and therefore opposed to A-2850. Let's educate and rehabilitate, not punish and discipline.



407 WEST STATE STREET, TRENTON, N.J. 08618 :: (609) 695-3481
JOHN E. TRAFFORD, *Executive Director* WILLIAM G. DRESSEL, JR., *Asst. Executive Director*

August 13, 1986

Hon. Robert E. Littell
Assemblyman, District 24
Chairman, Assembly Labor Committee
State House Annex
CN-068
Trenton, NJ 08625

Re: Assembly 2850 - On drug testing
of public officials

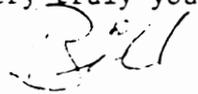
Dear Bob:

Thank you for your letter of August 11 regarding the posting of A-2850 before the Assembly Labor Committee on September 4th.

We have just received a copy of the printed version of Assembly 2850 and we plan to take it before our Legislative Committee for a policy determination shortly. Unfortunately, our Legislative Committee will not be meeting until after your September 4th meeting. Please be advised that we will communicate our position to you and to the Legislature as soon as our Committee has had an opportunity to review it.

I am enclosing herewith a copy of a letter we recently received from Mayor Richard L. Taylor of Plainfield, who has expressed some interest on the subject. I am sending a copy of your agenda to Mayor Taylor for his possible consideration.

Thank you very much for advising us of this meeting and we look forward to discussing this further with you.

Very truly yours,


William G. Dressel, Jr.
Assistant Executive Director

WGD:es
Enc.



OFFICE OF THE MAYOR
CITY OF PLAINFIELD

515 WATCHUNG AVENUE
PLAINFIELD, NEW JERSEY 07061
(201) 753-3310

RICHARD L. TAYLOR

August 6, 1986

Mr. William G. Dressel Jr.
Assistant Executive Director
NJ State League of Municipalities
407 West State Street
Trenton, New Jersey 08618

Dear Mr. Dressel:

The City of Plainfield has stepped to the forefront on the issue of mandatory testing of public safety personnel for drug abuse. My administration has chosen not to ignore the fact that there is a nationwide drug epidemic and that no city, including Plainfield, is immune from its devastating effects on the public's health, safety and economic well-being.

In May of this year, I supported and permitted my administration, in their efforts, to undertake the mandatory drug testing of all Plainfield police and fire personnel, in order to ensure the health and safety of our City's 46,000 residents. The results of this testing indicated that four police personnel and sixteen firefighters were drug abusers. Except for one individual, who resigned, all of those police and fire personnel who tested positive were suspended without pay, pending formal disciplinary hearings. Subsequently, the Firemen's Mutual Benevolent Association (FMBA), with support from the American Civil Liberties Union (ACLU), sued the City of Plainfield in the United States District Court on the basis that the City did not have the right to administer a mandatory drug testing program, because same was an unconstitutional invasion of privacy of the police and fire personnel. On July 31st, the United States District Court Judge, H. Lee Sarokin, supported the contentions of the FMBA and ACLU and through a temporary restraining Order, held that the suspended police and firemen be reinstated, pending an upcoming hearing in his court on September 15.

While I am compelled by court Order to reinstate the suspended police and fire personnel, I do not agree in any way, shape or form with the court's decision and the potentially devastating outcome which it will produce for the City of Plainfield. The residents of Plainfield will now be forced to rely upon some individual police and fire personnel who are drug abusers for the delivery of vital public safety services. I find such a situation to be unpalatable and reprehensible. No one has

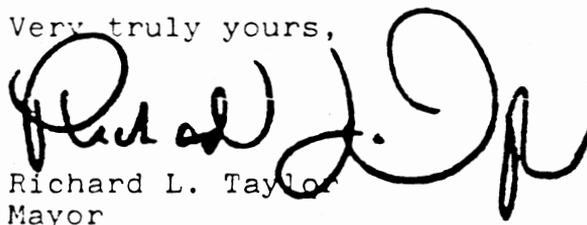
the right to violate the law, especially our police officers and firefighters who occupy extremely sensitive positions of public trust. Consequently, the City of Plainfield will press forward on all fronts, whether it be the judicial system, legislative or court of public opinion, in order ensure the health and safety of our residents, through the mandatory drug testing of police and fire personnel. If the courts are to ultimately rule that this type of drug testing is unconstitutional, then what safeguard will Plainfield and other cities around this nation have in protecting them from the menace at the "public safety" levels?

I have taken the same drug test that was administered to Plainfield's public safety personnel, in order to show my commitment to this issue. I urge all elected and appointed public officials to do likewise and show their support for this vital issue, not only by their words, but also example!

We, in Plainfield, are on the frontier of this issue of mandatory drug testing for police and fire personnel. I ask for your support in helping the City of Plainfield and other municipalities combat drug abuse especially within the ranks of their public safety personnel through mandatory testing programs. In order to do so, we need your help in proposing and passing legislation which would address and support this concept of mandatory drug testing. I will be contacting you personally in the near future, in order to further discuss this important issue.

In the interim, please feel free to contact me by phone or writing and let me know what your thoughts are on this issue. I look forward to speaking with you soon.

Very truly yours,

A handwritten signature in black ink, appearing to read "Richard L. Taylor". The signature is stylized and cursive, with a large initial "R" and "T".

Richard L. Taylor
Mayor

from the **NEW JERSEY STATE
INDUSTRIAL UNION COUNCIL, AFL-CIO**

ARCHER COLE
President

THOMAS FRICANO
Secretary-Treasurer

16 COMMERCE DRIVE • CRANFORD, NJ 07016
(201) 272-4200



LARRY COHEN
First Vice-President

CAROLE GRAVES
Vice-President
for Public Employees

TESTIMONY ON ASSEMBLY BILL 2850

REGARDING DRUG ABUSE TESTS IN THE WORKPLACE

Rick Engler
Director of Safety and Health
4 September 1986

THANK YOU FOR THE OPPORTUNITY TO TESTIFY ON ASSEMBLY BILL 2850. MY NAME IS RICK ENGLER AND I AM DIRECTOR OF OCCUPATIONAL SAFETY AND HEALTH FOR THE NEW JERSEY INDUSTRIAL UNION COUNCIL, AFL-CIO. TODAY I REPRESENT THE OFFICERS OF THE IUC; ARCHER COLE, PRESIDENT, AND THOMAS FRICANO, SECRETARY-TREASURER. THE IUC REPRESENTS OVER 200,000 WORKERS IN THE PUBLIC AND PRIVATE SECTORS.

THE IUC STARTS FROM THE PREMISE THAT DRUG ADDICTION AND ALCOHOLISM ARE ILLNESSES. THOSE SUFFERING FROM THESE DISEASES NEED TREATMENT, NOT PUNISHMENT.

LABOR UNIONS HAVE LONG PROMOTED PREVENTION AND REHABILITATION PROGRAMS IN THE WORKPLACE AND COMMUNITY. UNIONS HAVE SPONSORED INSTITUTES ON ALCOHOLISM AND DRUG USE, TRAINED UNION VOLUNTEER COUNSELORS TO OFFER GUIDANCE AND REFERRALS TO THOSE WITH DRUG AND ALCOHOL-RELATED PROBLEMS, SUPPORTED COMMUNITY FACILITIES FOR TREATING ADDICTION VICTIMS, AND ESTABLISHED ON THE JOB TREATMENT PROGRAMS.

WHILE DRUG ABUSE IS INDEED A SERIOUS NATIONAL PROBLEM, WE ARE DEEPLY CONCERNED ABOUT THE STEPPED UP EFFORTS OF EMPLOYERS--PUBLIC AND PRIVATE ALIKE--TO USE DRUG TESTS TO SCREEN ALL JOB APPLICANTS AND ALL EMPLOYEES OR TO FORCE APPLICANTS AND EMPLOYEES TO SUBMIT TO SUCH TESTS ON A RANDOM BASIS. THE IUC IS ABSOLUTELY OPPOSED TO SUCH TESTING WHICH CLEARLY VIOLATES HUMAN RIGHTS AND DIGNITY.

WE FIND IT MOST CURIOUS THAT WHEN WE TRY TO NEGOTIATE OBJECTIVE MEDICAL TESTING PROGRAMS TO DETERMINE HOW MUCH HARMFUL MERCURY, LEAD, ASBESTOS, OR OTHER CHEMICALS ARE IN OUR BODIES FROM EMPLOYER GENERATED WORKPLACE EXPOSURE, EMPLOYERS FREQUENTLY REFUSE TO PROVIDE SUCH TESTS. YET, EMPLOYERS ARE NOW ENTHUSIASTICALLY TESTING WORKERS FOR DRUGS WHERE THERE IS NO EVIDENCE OF ON-THE-JOB IMPAIRMENT.

WE CAN ONLY CONCLUDE FROM THIS EXPERIENCE THAT THE CURRENT WAVE OF EMPLOYER DRUG TESTING IS ESSENTIALLY A MEANS TO INCREASE MANAGEMENT CONTROL OF THE WORKFORCE AND TO REDUCE UNION ABILITY TO REPRESENT IT'S MEMBERSHIP.

WE HAVE THE FOLLOWING SPECIFIC COMMENTS ON ASSEMBLY BILL 2850:

1.] FUNDAMENTALLY, WE ARE CONCERNED THAT THE BILL SANCTIONS EMPLOYER DRUG TESTING THAT IS ENTIRELY INAPPROPRIATE. THEREFORE, SECTION 7 SHOULD BE AMENDED TO ADDITIONALLY REQUIRE THAT NO EMPLOYER MAY UTILIZE DRUG TESTING WITHOUT PRIOR AGREEMENT FROM THE COLLECTIVE BARGAINING REPRESENTATIVE ON THE OVERALL AND SPECIFIC NATURE OF THE DRUG TESTING PROGRAM.

THE IUC PROPOSES THAT IN ORDER FOR EMPLOYERS TO DO DRUG TESTING MANAGEMENT AND LABOR MUST FIRST AGREE IN WRITING ON THE BASIS FOR TESTING, TEST METHODOLOGY, PRIVACY CONCERNS, JOB AND INCOME PROTECTIONS AND REHABILITATION RESPONSIBILITIES.

2.] THE DEFINITION OF "REASONABLE SUSPICION" IN SECTION 5 IS FAR TOO BROAD.

WORK RELATED FATALITIES, INJURIES, AND DISEASES HAVE INCREASED SHARPLY IN RECENT YEARS ACCORDING TO EMPLOYER SUPPLIED GOVERNMENT STATISTICS. UNDER THE BILL'S DEFINITION OF REASONABLE SUSPICION, "HIGHER THAN AVERAGE ACCIDENT RATES ON THE JOB" IS A BASIS FOR TESTING. UNDER THIS CRITERIA THE ENTIRE U.S. WORKFORCE COULD BE TESTED AT ANYTIME!

"SENSORY OR MOTOR-SKILL MALFUNCTIONS" COULD MEAN VIRTUALLY ANYTHING, FROM DROPPING A PENCIL TO HAVING A COLD. DECLINE IN EMPLOYEE PRODUCTIVITY COULD EASILY RESULT FROM MANAGEMENT FAILURE TO INVEST IN NEW MACHINERY.

TESTS SHOULD ONLY BE ALLOWED WHERE THERE ARE "TRUSTWORTHY GROUNDS TO BELIEVE THAT THE EMPLOYEE IS UNDER THE INFLUENCE OF A CONTROLLED DANGEROUS SUBSTANCE ON THE JOB." AND AGAIN WE EMPHASIZE THAT TESTING SHOULD ONLY BE PERMITTED WHERE THERE IS A MUTUALLY AGREED UPON WRITTEN DRUG TESTING

PROGRAM THAT AT LEAST MEETS STATE MINIMUM STANDARDS.

3.] THE BILL SHOULD BE AMENDED TO REQUIRE COMMISSIONER OF LABOR AND THE COMMISSIONER OF HEALTH TO IDENTIFY THE MOST RELIABLE TESTING METHODOLOGY AND TO ISSUE REGULATIONS TO PROHIBIT OTHER METHODS FROM BEING USED.

SINCE THE PERCENTAGES OF FALSE POSITIVES FROM MANY TESTS IS LARGE, THIS IS ESSENTIAL.

4.] THE FOLLOWING MINIMUM EMPLOYEE RIGHTS SHOULD ALSO BE ESTABLISHED BY THIS STATUTE:

A. THE RIGHT TO CONFIDENTIALITY OF TEST RESULTS AND THE RIGHT TO PRIVACY REGARDING TESTS.

B. THE RIGHT TO CHALLENGE ANY TEST RESULTS AND THE RIGHT TO HAVE ADDITIONAL TESTS DONE AT EMPLOYER EXPENSE USING A MUTUALLY AGREED UPON INDEPENDENT LABORATORY.

C. THE RIGHT NOT TO BE FIRED OR OTHERWISE PUNISHED FOR HAVING A DISEASE. IF DRUG ADDICTION IS A DISEASE, ECONOMIC CAPITAL PUNISHMENT SHOULD NOT BE THE RESULT.

D. THE RIGHT TO ENTER A TREATMENT AND REHABILITATION PROGRAM.

SCIENTIFIC STUDIES HAVE SHOWN THAT ONE OF THE CAUSES OF SUBSTANCE ABUSE IS WORK-RELATED STRESSES. THESE STRESSES INCLUDE EXCESSIVE WORKLOAD AND HOURS OF WORK, ROTATING SHIFT WORK, ARBITRARY SUPERVISION, LACK OF POSSIBILITY FOR CAREER ADVANCEMENT, FEAR OF PLANT CLOSURE, AND UNSAFE WORKING CONDITIONS. IN OTHER WORDS, THE NATURE OF WORK IN THE UNITED STATES TODAY IS ONE OF THE MAJOR CAUSES OF SUBSTANCE ABUSE. THIS BEING THE CASE, EMPLOYERS SHOULD REDIRECT THEIR EFFORTS. INSTEAD OF USING DRUG TESTS TO BLAME THE VICTIM, MANAGEMENT SHOULD EXAMINE HOW MUCH OF THEIR OWN INVESTMENT POLICIES AND PERSONNEL PRACTICES IN THEIR QUEST FOR PRODUCTIVITY AND PROFITS CONTRIBUTE TO DRUG ABUSE.

IF EMPLOYERS ARE TRULY CONCERNED ABOUT WORKER HEALTH, THEY SHOULD HUMANIZE THE WORKPLACE AND WORKING CONDITIONS AND OFFER REHABILITATION.

THE IUC ALSO SUPPORTS BROAD EDUCATIONAL EFFORTS IN OUR SCHOOLS AND UNIVERSITIES TO ALERT YOUTH TO THE DANGER OF DRUGS. WE SUPPORT LAW ENFORCEMENT EFFORTS TO CURTAIL DRUG DISTRIBUTION.

AND WE SUPPORT NATIONAL PRIORITIES THAT COULD GO FAR TOWARD REDUCING DRUG ABUSE BY REDIRECTING FUNDS FROM FRAUDULENT MILITARY DEFENSES LIKE STAR WARS TO THE ELIMINATION OF POVERTY. ✓

THE IUC STANDS READY TO WORK WITH THE COMMITTEE TO PRODUCE A BILL THAT APPROPRIATELY ADDRESSES THIS SERIOUS NATIONAL PROBLEM. THANK YOU.



47th IFPTE CONVENTION

July 28 — August 1, 1986

BAL HARBOUR, FLORIDA

RESOLUTION No. 23

OPPOSITION TO MANDATORY DRUG AND ALCOHOL TESTING

7/31/86
Concur

- 1. WHEREAS,
- 2. Drug addiction and alcoholism are illnesses, and those suffering from
- 3. these diseases need treatment, not punishment, the problem of substance abuse
- 4. ought to be addressed squarely and cooperatively by employers and unions, and
- 5. WHEREAS,
- 6. The IFPTE has promoted prevention and rehabilitation programs in the
- 7. workplace and the community, and local unions have sponsored institutes on alco-
- 8. holism and drug use, with trained union volunteer counselors to offer guidance
- 9. and referrals to those with drug and alcohol-related problems, supported communit
- 10. facilities for treating victims of drug and alcohol addiction, and established on-
- 11. the-job treatment programs, and,
- 12. WHEREAS,
- 13. In recent years it has become increasingly fashionable for employers —
- 14. federal, public, and private — to use drug tests to screen all job applicants
- 15. and all employees, or to force applicants and employees to submit to such tests
- 16. on a random basis, and
- 17. WHEREAS,
- 18. Many of the tests companies use to screen workers for drugs and alcohol
- 19. are very inaccurate, especially the ones the companies use in volume, with the re-
- 20. sults of tests which purportedly screen for illegal drugs affected by the use of
- 21. such common substances as cough syrup, caffeine, asthma medicine, and other commo
- 22. chemicals, and
- 23. WHEREAS,
- 24. The laboratories which perform drug and alcohol screening tests often

SUBMITTED BY: POLICY COMMITTEE

COST:

Committee	Committee	Concur	Convention
Assignment _____	Recommendation _____	_____	Action _____

RESOLUTION No. 23

27. have very high false-positive error rates, and as a result, workers or job
28. applicants may lose a job either because accurate tests are not available
29. or because companies refer to use less accurate, inexpensive tests in mass
30. screening programs, and

31. WHEREAS,

32. Few testing programs include procedures for workers to challenge
33. inaccurate findings or secure relief from the result of error. The adminis-
34. tration of these tests on a random or across-the-board basis is degrading, and
35. WHEREAS,

36. Mandatory drug and alcohol testing progrms raise serious legal and
37. constitutional questions,

38. THEREFORE BE IT RESOLVED:

39. That the collective bargaining process be the vehicle through which
40. unions and employers can develop carefully tailored and balanced programs which
41. stress education and prevention of addiction, and

42. BE IT FURTHER RESOLVED:

43. That individual locals, through their collective bargaining process,
44. endeavor to:

- 45. * Place appropriate limits and conditions for the use of tests
- 46. for alcohol and drugs, including focusing only on workers who
- 47. exhibit symptoms of job-related impairments;
- 48. * Establish safeguards for those who test positively, including
- 49. guarantees of workers' rights to privacy and confidentiality;
- 50. * Fully inform workers and their respresentatives of the testing
- 51. methodology an employers administers, and;
- 52. * Provide non-punitive, on-the-job responses and helpful treat-
- 53. ments for those who are, in fact, unable to perform their jobs
- 54. because of drug addiction or alcoholism, and where contractually
- 55. possible may submit any adverse actions resulting from positive
- 56. tests to binding arbitration.

57. BE IT FINALLY RESOLVED:

58. That the IFPTE and its affiliates continue to develop constructive solu-
59. tions to the addiction problem, responsive to the legitimate needs of all parties,
60. with no random screening or imposition of punitive programs which ride roughshod
over the rights and dignity of workers and are unnecessary to secure a safe and
efficient workforce.

