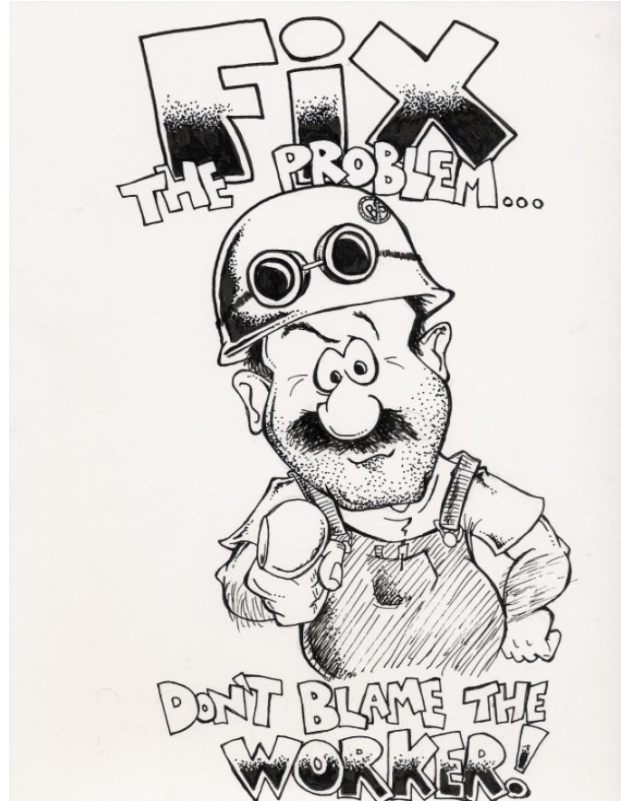# Strategies for Stopping Employers' "Blame-the-Worker" Safety Programs

Health, Safety and Environment Department

United Steelworkers International Union

safety@usw.org

February, 2012

What's happening in your workplace that's causing or contributing to your members being injured, made ill and/or stressed on the job?

Most Significant Health and Safety Concerns
(Responses from 2010 USW Health, Safety and Environment Conference Delegate Survey)

- Lack of or inadequate training

- Downsizing/understaffing

- Production pressures

- Increased work loads/intensification of work

- Discipline for Safety- blaming workers

- Equipment not properly maintained or repaired

- Job combinations

- Ergonomic hazards

- Heat

- Employer not addressing identified hazards

Are U.S. Workplaces Getting Healthier/Safer?

- BLS Data shows significant and steady decline in job injury/illness rates -- from **8.9 cases** per 100 full-time employees in 1992 to **3.5 cases** per 100 full-time employees in 2010

- This is a **60.7% decline in recordable injury rates** between 1992 and 2010;

"It is extremely unlikely that injury rates would plummet like this."

Susan Baker, Professor, Johns Hopkins Bloomberg School of Public Health

Government Accountability Office Report, 2009:

- More than 2/3's of injured workers feared employer discipline or losing their jobs if they reported their job injuries

- Over ½ of occupational health practitioners said they were pressured by employers to downplay an injury to avoid it being an OSHA recordable.

- 1/3 of occupational health practitioners said they were pressured by employers to provide insufficient treatment to injured workers

http://www.gao.gov/new.items/d1010.pdf

Dr. David Michaels, Asst. Secretary of Labor for OSHA, October 5, 2010:

"If accurate records are not compiled because workers believe they will be fired or disciplined for reporting an injury, or supervisors fear they will lose their bonuses if workers report injuries, real safety is not being achieved. Accurate workplace injury and illness records are vital tools for identifying hazards and protecting workers' health and safety."

ACCIDENT REPORT

The Accident: Worker was stung by a bee

Question on Employer's Accident Report Form:

"What did the affected employee do or not do that contributed to the accident? Why do you feel their actions contributed to the accident?"

The Answer:

"The employee should have been aware that a bee had landed on his shirt and taken the appropriate steps to remove the bee without being stung."

Behavior-Based Safety/Blame-the-Worker Programs, Policies and Practices

- Safety Incentive Programs
- Injury Discipline Policies
  - (e.g. Accident Repeater Programs)
- Post-injury Drug Testing
- Signs tracking lost-time or recordable injuries
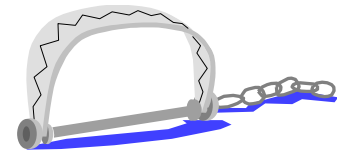- Behavioral Observation Programs

"The fact is, it is not easy for an individual to have a serious injury in today's workplace."

David Bradford,
American Society of Safety Engineers,
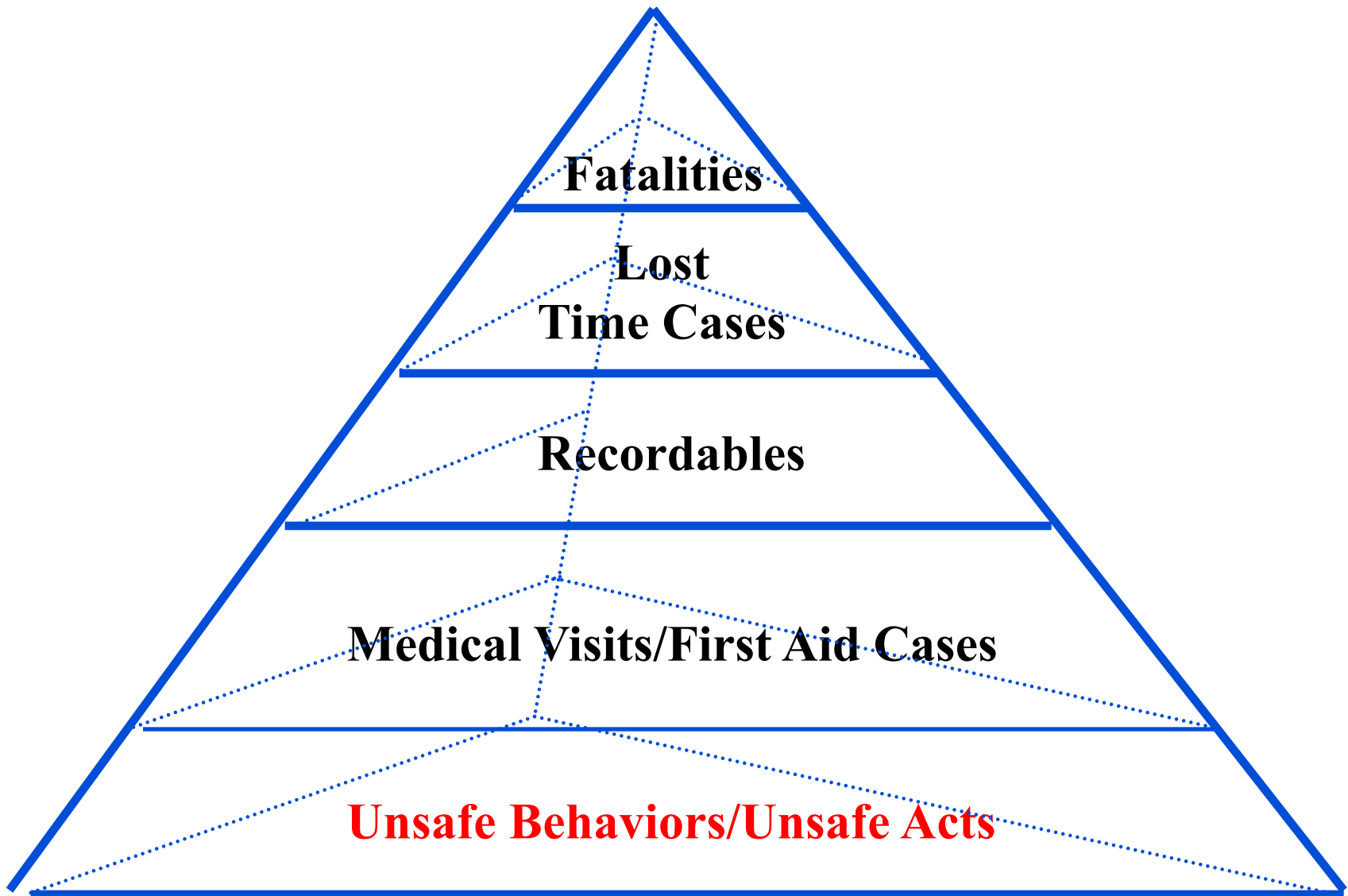Behavioral Safety Symposium 2001

88% of all injuries on the job are caused by workers' unsafe acts

- Originated from H.W. Heinrich

- Insurance investigator (Travelers Insurance Company)

- Studied supervisor accident reports (1931)

- Drew conclusions from supervisor-recommended corrective actions

1930's Safety Theory -- BST (80%-95%) and DuPont (96%) call it "leading edge"

It's a trap!

Fatalities

Lost Time Cases

Recordables

Medical Visits/First Aid Cases

Unsafe Behaviors/Unsafe Acts

1930's Safety Theory -- BST & DuPont call this "*Cutting-Edge Technology*" - we call it folk lore!

In order to have an "unsafe" or "at-risk" behavior, what must be present?

A HAZARD

<u>All</u> work-related injuries and illnesses are the result of exposure to hazards.

There are <u>no</u> exceptions!

Health and Safety Process Model

Identification → **Evaluation** → **Control**

Data Analysis
- **Injury/Illness Logs**
- **Medical Visits**

Surveys and Questionnaires

Interviews

Worker Complaints

Government Regulations

Inspections/Audits

Prioritize Hazards
Risk Analysis

Select Controls
Based Upon
Hierarchy

Hierarchy of Controls

Most Effective

Least Effective

1) **Elimination or Substitution**

2) **Engineering Controls
   (Safeguarding Technology)**

3) **Warnings**

4) **Training and Procedures
   (Administrative Controls)**

5) **Personal Protective Equipment**
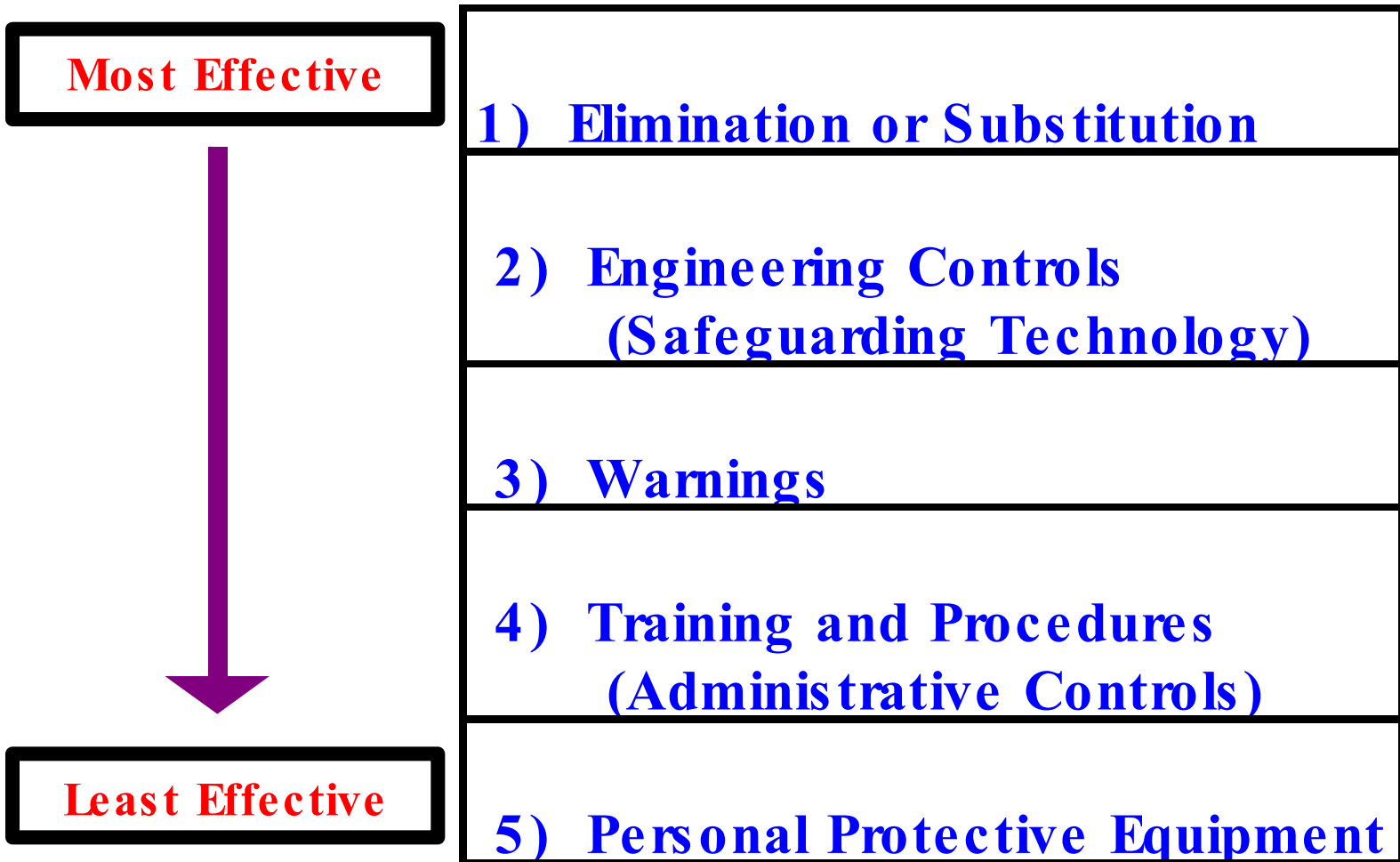
Behavior Based Process Model

Identification	→	Evaluation	→	Duck!

Data Analysis
Worker Observations
Interviews
Inspections/Audits

Risk Analysis

Duck
Dodge
Jump Out of the Way
Lift Safely
Wear PPE
Avoid "Line of Fire"
Eyes on task

Hierarchy of Health and Safety Controls

Most Effective	Elimination/Substitution
	Engineering Controls
	Warnings
	Training and Procedures
Least Effective	Personal Protective Equipment
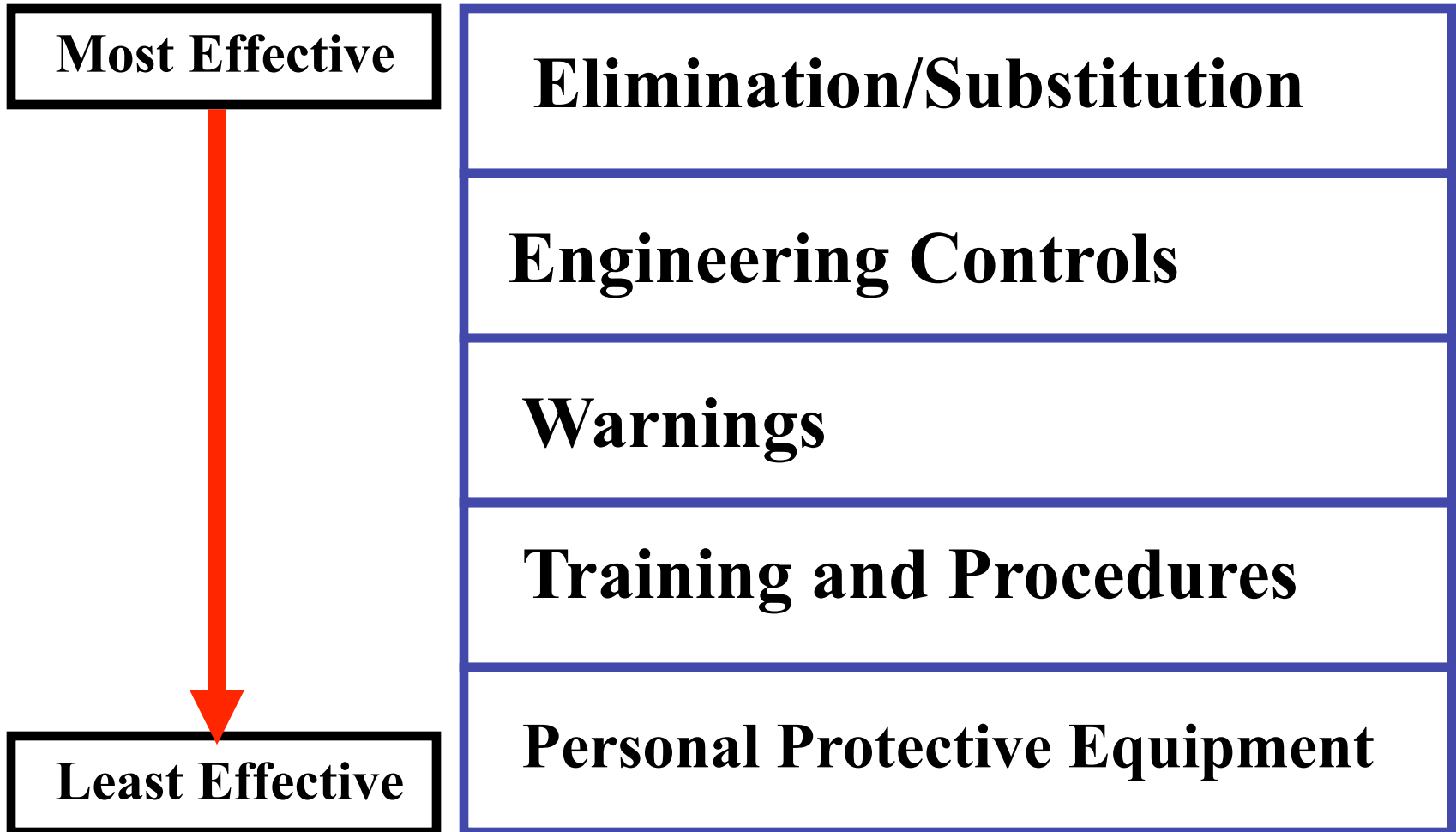
Consequences Of A Behavior Based Program Is To Turn The Hierarchy Upside Down

They Say, "Most Effective"	Personal Protective Equipment
	Training and Procedures
	Warnings
	Engineering Controls
Not even up for discussion…	Elimination &/or Substitution

"So putting up a guard might in fact encourage them (workers) to get closer to the hole that's being guarded, or encourage them to take more risks because of the extra perceived safety by that guard."

E. Scott Geller, NACOSH Meeting, Washington D.C. , April 9, 1997

Why eliminate the hazard when you can buy personal protective equipment?

Who Sells Behavioral Safety?

- "Behavioral Science Technology" (BST)
- DuPont "STOP"
- "SafeStart"
- E. Scott Geller's "Safety Performance Solutions"
- ProAct Safety/Lean BBS
- Terry McSween's "Quality Safety Edge"
- Michael Topf's "Safor Program"

- "Safety Pays"
- Aubrey Daniels (formerly "B-Safe Program" – now ADI)
- Liberty Mutual Insurance Co's "MVP Program"
- FDR Safety (Fred Rine, CEO; Jim Stanley, President)
- Bill Sims Safety Incentive Programs
- Structured Safety Process
- MoveSmart
- Latent Safety Analysis
- PTAS
- JMJ Associates

Common Behavioral Safety Observation Program Elements

- **Critical behavior lists**
- **Workers observe workers**
- **Training for observers**
- **Frequent observations of workers to identify at unsafe behaviors**
- **Heavy emphasis on PPE, "body position" and "line of fire"**
- **Commitment of resources**

Why Behavior-Based Programs Can Be Attractive

- New management commitment to health and safety

- Involves workers (and the union)

- Can give management authority to some workers

- Appears to address some fraction of injury and illness causation

- Many workers and victims believe this stuff –that injuries and illnesses are their fault

Management can provide *"PERKS"*

- Time off the job
- Access to management
- Management willing to correct some conditions that they would not correct for the union
- Union behavioral safety coordinators given office and status
- Employer-paid trips to behavioral safety conferences

Disincentives to Reporting Injuries and Illnesses

- Awards (prizes and money) for not have a recordable or lost time case (or having a low rate)
- Discipline and/or counseling issued after workers are injured
- Drug testing after every injury
- Peer pressure

INJURY DISCIPLINE
("Situation Awareness")

"Our manager likes to give out <u>written warnings</u> for employees who get hurt. The usual reason is 'not aware of your surroundings.' The latest one came for an employee who received a laceration on the finger while moving a piece of equipment. He had all of the required PPE. Even after a management investigation revealed that they did not have the proper device to make this equipment move, he received a written warning for 'not properly evaluating the situation.'"

WORK RULE #24

"You must work carefully."

Hazardous situations that we know about can be difficult to correct.

Hazardous situations that we <u>don't</u> know about are impossible to correct.

Taking on Behavior-Based Safety/"Blame the Worker" Safety Programs, Policies and Practices

Educate Union Leaders and Members:

Behavior-Based Safety is a Hazard – it must be Eliminated!

HIDDEN TRAGEDY:

Underreporting of Workplace Injuries and Illness

A MAJORITY STAFF REPORT BY
THE COMMITTEE ON EDUCATION AND LABOR
US HOUSE OF REPRESENTATIVES

THE HONORABLE GEORGE MILLER
CHAIRMAN

JUNE 2008

Use Mid-term Bargaining Rights

Use OSHA's Recordkeeping Rule: § 1904.36 –
Prohibition against discrimination

Section 11(c) of the Act prohibits you [the employer] from discriminating against an employee for reporting a work-related fatality, injury or illness. That provision of the Act also protects the employee who files a safety and health complaint, asks for access to the Part 1904 records, or otherwise exercises any rights afforded by the OSH Act.

3/12/2012 OSHA Memorandum: "Employer Safety Incentive and Disincentive Policies and Practices"

- "Reporting a work-related injury or illness is a core employee right, and retaliating against a worker for reporting an injury or illness is illegal discrimination."

- Which Employer Policies/Practices Could be Illegal?
    - Injury Discipline
    - Discipline for "Untimely" Reporting of Injuries
    - Discipline for "Violating a Safety Rule"
    - Safety Incentive Programs

- Violations can be of OSHA 11(c) or other whistleblower programs (e.g. FRSA); or OSHA's Recordkeeping Rule [29 CFR 1904.35(b)]

Use Grievance/Arbitration

- There are some arbitration awards that have reversed terminations for workers terminated in "safety discipline" cases

Negotiate Provisions in Collective Bargaining Agreements

"The employer shall not discriminate or retaliate in any way against an employee who reports a work-related injury or illness; reports a safety or health problem; files a health or safety complaint; requests access to health or safety records; **who violates a safety rule, absent malice or reckless intent**; and/or otherwise exercises any other health or safety right afforded by local, state or federal law and/or by this collective bargaining agreement."

Use a
"Continuous Bargaining"
Approach & Campaign

"Continuous Bargaining" Approach:

- **Research/Information Gathering**

- **Communicating with/Involving Members**

- **Developing Proposals/Demands**

- **Identifying/Exercising Leverage**

Exercising Leverage/Involving Members

- Distribute USW's "No BS/Eliminate Hazards Don't Blame Workers" and "Fix the Hazard, Don't Blame the Victim" Stickers and "Fix the Hazards Don't Blame Workers" Temporary Tatoos; make your own t-shirts, buttons

- Observe **HAZARDS** – Make and use your own checklist of hazards and hazardous conditions, not worker behaviors

- Use USW Safety & Health Complaint form booklets

- Use "Specifically Observe Bosses" Form

"If you are not at the table,

you *will* be on the menu."

The ORANGE VEST Strategy

SECURITY OFFICE

NOTICE
ALL VISITORS MUST REGISTER AT OFFICE

+ on the job +
SAFETY
begins here

OSHA RECORDABLE ACCIDENT IN THE LAST 24 HOURS

FIRST AID ACCIDENT IN THE LAST 24 HOURS

NO ACCIDENTS REPORTED

KELLEY

SAFETY IS...
- ATTITUDE
- AWARENESS
- ALERTNESS
- ACCOUNTABILITY

Phillips Chemical Company, Pasadena, Texas 1989

- Had just completed 5,000,000 hours without a lost time injury

- Explosion and fire

- 23 dead

- 232 injured

It has been 14 days since Local xxx told management to fix [insert name/description of hazard] and they still have not addressed this problem...

It has been 15 days since Local xxx told management to fix [name/description of hazard] and they still have not addressed this problem...

Measuring Success in Workplace Health and Safety

- How many hazards/hazardous conditions have been identified?

- How many hazards/hazardous conditions have been eliminated?

- How many hazards/hazardous conditions have been reduced (using the Hierarchy of Controls)

- How long did it take from when the hazard was identified to when it got addressed?

"Everyone, and that includes you and me, is at some time careless, complacent, overconfident, and stubborn. At times each of us becomes distracted, inattentive, bored, and fatigued. We occasionally take chances, we misunderstand, we misinterpret, and we misread. These are completely human characteristics."

Al Chapanis, Former Professor of Human Factors Engineering Department, Johns Hopkins University

"Because **we are human** and because all these traits are fundamental and built into each of us, **the equipment, machines and systems** that we construct for our use have to **be made to accommodate us** the way we are, and not vice versa."

Al Chapanis, Former Professor of Human Factors Engineering Department, Johns Hopkins University

Union View - Identify Hazards

*A hazard is a condition or set of circumstances that can cause harm*

- Crushing
- Shearing
- Noise, vibration
- Chemical, gases, fumes, mists, dusts
- Entanglement
- Pinch point
- High pressure
- Electrical

- Ergonomics-posture, force, repetition
- Lifting
- Slips, Trips, Fall
- Fire
- Radiation
- Excessive hours of work
- Inadequate staffing
- Production pressures

Union View: Critical Worker Behaviors

- **Identifying root causes of injuries and illnesses**
- **Communicating problems to Union health & safety committee**
- **Identifying potential health and safety grievances to file**
- **Refusing hazardous/unsafe work**
- **Reporting symptoms, injuries and illnesses**
- **Identifying management who are not addressing health and safety problems**

Why Not Accept Systems with Behavior-Based Safety (BBS)?

- BBS is not about safety
- BBS is about shifting blame and focus -- from employers (& hazardous conditions) to workers (& unsafe acts)
- BBS is about power and control (management will allow "freedom within fences")
- There is no room for unions' collective thinking & approach in BBS
- BBS is a long-term union-busting strategy
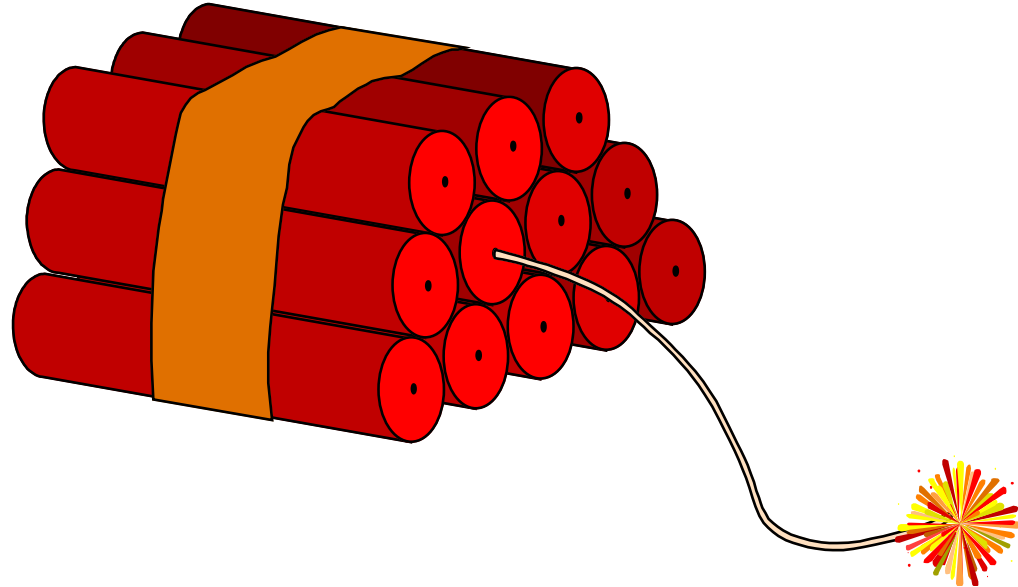
Caution – Behavioral Safety/"Blame the Worker" Programs Are Hazardous to **Health & Safety and to Solidarity!**

Whose behavior needs to be changed to improve health & safety in *your* workplace?

Some Additional Resources:

- www.usw.org

- www.uswtmc.org

- www.hazards.org/bs

- www.workrightspress.com

   (for more on mid-term bargaining rights, see "Legal Rights of Union Stewards" – Chapter 6)