

**Testimony before the Committee on Labor and Civil Service  
Philadelphia City Council, Room 400**

**Monday, October 23, 2006**

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Safety and Health)**

**Good Morning. I want to thank Councilman Juan Ramos and members of the Committee on Labor and Civil Service for the opportunity to speak to you today about my organization's experiences in dealing with health and safety issues for workers in construction.**

**I am the Executive Director of the Philadelphia Area Project on Occupational Safety and Health, better known as PhilaPOSH. Philaposh is a non-profit 501(3) C organization, sponsored by nearly one hundred local unions, whose sole purpose is to help protect the health and safety rights of all workers. Last year we celebrated our 30<sup>th</sup> anniversary. Although I have been the director for only a little over a year, Philaposh has participated in many public hearings over the years at City Hall. The first time was in the 1970's when the Philadelphia City Council was considering passage of what became the first "Right to Know" law in the United States. This Council has played an historic**

leadership role in the rights of workers' safety and health, and by holding these hearings is doing so again today.

I want to begin my remarks with a personal story. Five years ago I purchased a home in the Francisville section of the city. About a year after I moved in, an abandoned house next door to me collapsed, pulling down with it another unoccupied house. The city hired a contractor to bring both collapsed houses down to a safe level before I was allowed to re-enter my home. The contractor hired was the lowest bidder. He arrived with three workers. Their safety equipment consisted of wool knit hats and gloves. They used an extension ladder to scale the teetering front brick walls. They straddled the wall just below the third floor front windows and brought down the wall, brick by brick, with an ax. For two days I watched in horror, imagining what I would do if one of them fell. Although there were several close calls, the job was completed without any tragedies.

Almost as quickly as collapsed or collapsing houses are demolished, new single or multiple unit homes are being built, or houses are being gutted and renovated, by small developers and mostly non-union contractors in residential communities throughout the city. A survey of these construction sites will also reveal a total lack of fall

protections, of personal protective equipment, and other safe work practices at site after site. Many of the workers at these sites are day laborers who are paid in cash. Their injuries are not reported. If they get hurt, they simply don't get called back.

OSHA and the City both have a responsibility to get control of, and to remedy this situation. For example, if OSHA would just start enforcing fall standards at randomly inspected residential construction sites, it would not take long for all small developers and contractors doing business in the City to get the message. And the City must stop awarding construction contracts, including demolitions, to the lowest bidder unless they can show that they will be in full compliance with OSHA standards. And they should be inspected once the project has begun to ensure they have followed through with their safety system.

We in the City of Philadelphia must face the consequences of an economic system that values short term gain for a company over the safety and health of its workers, and face the reality that without *mandatory* safeguards and *meaningful* penalties, the behavior will not change and will continue to have tragic consequences.

I am simply outraged by a recent example of “tragic consequences” to this economic behavior. PhilaPOSH receives hundreds of calls each

**year from injured workers who are usually looking for information about Workers Compensation and their rights. Some are union members who were referred by their locals. Some are not in unions but got referred by a friend, or found our number through various searches.**

**The call we received last April was different. The person who called, named Calvin, was homeless and living in a shelter. Before he fell on hard times, he had a good job and had received health and safety training. He had no access to a phone at the shelter to call us, but his counselor next door at the human resource center let him use her phone.**

**He told me that he and other men at the shelter were being paid to go work at an old factory, probably textile, in North Philadelphia. They were being driven in a van to the site, where their job was to “clean it out.” They were given hand tools and gloves and sometimes throw away paper masks to cover their mouth and nose. The developer who had recently bought the factory was usually there. He was friends with one of the managers at the human resource center next to the shelter.**

**Calvin immediately knew it was a very bad, and possibly dangerous situation. He said there were all kinds of things they were picking up in the trash with their hands, like syringes. But what**

concerned him most was the “white stuff” hanging over them and laying on the ground that they were also having to remove. He wasn’t positive, but he thought he recognized it from his previous training—he thought it was asbestos. After his first day there, he knew he wasn’t going to go back. He took his clothes off when he got back to the shelter and put them in a plastic bag, just in case. No one else who was with him did the same. In fact, he told the others that he had worked with from the shelter that he didn’t think they should go back there. It could kill them. But they either didn’t believe him, or the small bit of money was more real in their lives than the risk of being exposed.

He told me all of this, and said he would help in any way he could but that somebody had to do something to stop people from working there unprotected. I couldn’t reach him back by phone, but was able to leave messages for him with his counselor.

I got in touch with OSHA, relayed all the information I had which included the location of the old factory and the only way to reach Calvin.

I have with me today the letter I received last week from OSHA with a description of their findings about this case, including one willful and one serious citation and proposed fines totaling \$13,500. Calvin

was correct. Samples collected from the floor contained 100% amosite asbestos. We will probably never know how many people were actually exposed, including others at the shelter from the clothing that the workers had on when they returned from work. I do know that even after OSHA was alerted to the situation, the homeless workers, minus Calvin, were back in there still working.

How many of these kinds of cases will we never know or hear about? In these less visible cases, the workers are seen as disposable, easily replaceable -- often homeless, undocumented, or young. No one will even notice what is going on.

I think we all would assume that we do know what is going on with worker safety at major construction sites. For instance we know that private sector employers are required to report to OSHA all injuries or illnesses that require medical attention or result in lost time, as well as fatalities. At PhilaPOSH we are seeing a growing trend among contractors at construction sites not to report injuries. Another recent call at PhilaPOSH came from an injured worker who worked for a sub-contractor on a construction job at the Sunoco Refinery in southwest Philadelphia. He was on workers compensation. He said his contractor was very uptight about any incidents that resulted in an

**injury, but not for the right reason. He told me that “everyone knows that if you are a sub-contractor at Sunoco, you will lose your contract if you have reported injuries, so the company just doesn’t report them.” Other similar calls we have received have been from workers who were not on workers compensation but were being paid directly by their employer while recovering from an injury, in order to avoid having to report the incident. When something as basic as mandatory reporting is so easily circumvented, we should not be surprised when other mandatory safety standards are also ignored.**

**Fatalities and large catastrophes cannot be hidden. The facts surrounding the accident get fully revealed and almost always there is a question of whether human error was involved. On April 3, 2006 scaffolding at a Boston, Massachusetts construction site collapsed, killing two workers and one pedestrian. A key issue was how a metal tie that had secured the platform to the building had been disconnected. A letter was published in the Boston Globe from Marcy Goldstein-Gelb and Ted Comick, the director and co-chair of MassCOSHA, our sister organization in Boston. Under the title “Asking wrong questions in probe of building accident,” they wrote:**

**“The science of worker health and safety and injury control anticipates error and builds in fail-safe mechanisms. Yes, equipment breaks and people make mistakes; this is predictable. Construction safety requires redundant systems so that equipment failure or human error does not cause death and injury. The frenzied push to complete construction without adequate protection puts workers at increased risk.”**

**On September 29<sup>th</sup> OSHA cited Bostonian Masonry for eight violations of safety standards (one willful and seven serious) and proposed fines totaling \$119,000.**

**In September Philadelphia “woke up” after a fatality at a construction site on N. Broad Street. Jeffrey Martin, who worked for Fabi Construction fell to his death after the perimeter safety protections had been compromised. Fabi Construction has a long history of safety violations that have resulted in the deaths and injuries to at least 30 workers: 1995 – 1 death; 2002 – 3 injured; 2003 – 4 deaths and 21 injured; 2006 – 1 death. The accident in 2003 involved the collapse of the garage at the Tropicana Casino in Atlantic City. Even though Fabi Construction was cited for willful safety violations (meaning ones committed with an intentional disregard of, or plain indifference to, the**

requirements of the OSH Act) and fined \$119,000 along with other contractors, OSHA and the Justice Department did not pursue criminal prosecution. The maximum penalty under criminal prosecution would be a fine of \$250,000 and a six-month jail term.

The Commonwealth of Massachusetts is aggressively responding to the tragic scaffolding accident at a construction site in Boston last April. A legislative panel began reviewing work site safety issues immediately following the accident. Then, after OSHA announced its multiple citations and proposed fines against Bostonian Masonry, the Legislature's Joint Committee on Public Safety and Homeland Security released a report this month recommending that construction company owners and officials should face criminal charges if they recklessly fail to protect workers killed on construction sites. "The prospect of criminal convictions and jail time send a powerful and necessary message to companies that might not be deterred by a fine," the report said. "People should not have to choose between earning a living and preserving their health and well-being."

The report says the state's law enforcement officials should be given a stronger hand to go after negligent contractors. "Criminal prosecutions may be one of the only solutions that the commonwealth's

**attorney general and district attorneys have available to them to permit action against willful violations.”**

**Just as the City Council of Philadelphia stepped up and passed the first Right to Know law in the United States, strong action is once again needed to stop contractors and business owners whose willful violations of health and safety standards result in deaths. Fines are not enough. The Commonwealth of Massachusetts has got it right by calling for criminal convictions with jail time. We must stop the abuse of vulnerable and disposable workers who are intentionally and unknowingly exposed to asbestos just to keep costs down. We must stop the repeated offenders like Fabi Construction from killing one more worker. We must step up. Workers lives are counting on it.**

**Thank you.**