

Labor in Focus by Mel Klenetsky

Drug tests: labor responds foolishly

The magnitude of the problem is such that there is no time for AFL-CIO nit-picking.

President Reagan's call for mandatory drug testing for those in sensitive jobs last September has provoked the expected reaction from the American Civil Liberties Union, which vehemently opposes these actions as a violation of individual civil liberties. Unfortunately the AFL-CIO has endorsed this ACLU approach.

On Nov. 12, the U.S. Customs Service was permanently enjoined from conducting urinalysis drug tests in the absence of probable cause. The decision was handed down by U.S. District Court Judge Robert Collins of New Orleans in a lawsuit brought against the Customs Union by the unaffiliated Treasury Employees Union and AFL-CIO affiliated unions, including Ken Blaylock's American Federation of Government Employees.

Judge Collins found that the Fourth Amendment guarantee against unwarranted search and seizure was violated by mandatory testing. Collins stated that the unreliability of the drug testing plan violated due process of law.

This court ruling is being challenged by the Department of Justice in a number of ways. The DOJ has filed a motion for a stay of the ruling pending appeal and filed a notice of appeal to the Fifth Circuit Court of Appeals. The DOJ has also filed an *amicus* brief in *Guiney v. Roache*, a Boston court case between the Patrolmen's Association and the Police Commissioner of Boston. The DOJ maintains that

unobserved drug testing doesn't trigger the Fourth Amendment and even if a Fourth Amendment interest is triggered, the reasonableness of testing in the work situation merits the tests.

The President's Executive Guidelines called for mandatory testing of individuals in sensitive areas, public health and trust positions, and law enforcement. On Nov. 28, the Office of Personnel Management of the White House issued guidelines for testing. The OPM order provides for unobserved testing and advance notice, which according to the DOJ are designed to set standards that preclude subjective and arbitrary harassment.

Labor's response to New Orleans Judge Collins' decision seems to be uniform. John Leyden, executive director of the federal-postal division of the AFL-CIO, was very pleased, AFGE President Blaylock described the directive as "totally unacceptable," and Gerald W. McEntee of the State, County, and Municipal Employees' Union applauded Collins' decision.

Last month, the Food and Allied Services Trade Department and the ACLU sponsored a conference at which FAST president Robert Harbrant proposed guidelines for drug testing. Harbrant called for full involvement of workers in implementing the programs, drug testing only for workers who exhibit symptoms (this is the issue of "probable cause"), worker access to the results, the use of

high-quality tests, and the right to be retested by a different lab, and finally workers' right to rehabilitation and job reinstatement without prejudice.

Harbrant's guidelines come not only in response to Reagan's call for drug screening, but in response to extensive use of drug testing in the private sector. Last year, 30% of the Fortune 500 companies tested more than 4.5 million workers.

Given the magnitude of the problem, the ACLU's approach is to avoid responsibility for those workers lives that could be ruined, from a health and safety standpoint, by drug use and abuse of their fellow workers.

National Institute of Drug Abuse (NIDA) studies for 1985 show that 20 million Americans were casual users of cocaine, with more than 4 million regular users. Last spring, NIDA held a conference of 125 representatives of industry and labor which concluded that alcohol and drug abuse resulted in more than \$100 billion lost in productivity each year. Stories abound about how drug use has permeated high schools and junior high schools destroying the concentration span and skill-level capabilities of the next generation of our workforce.

There are certain areas in the private and public sector where very strict edicts against drug abuse clearly have to be maintained. In these areas, random testing and strict policies of immediate removal, with no stipulations for rehiring and rehabilitation, seem absolutely appropriate. From air controllers to nuclear plant operators, these kinds of tenets clearly apply. In other areas, the AFL-CIO certainly is correct in establishing guidelines for rehabilitation and other types of protections for potential abusers. NIDA statistics, however, show that we are losing the war against drugs, which is why the negativistic nit-picking of the AFL-CIO is way out in left field.