The Politics of the Worker-Notification Bill

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Let me confess at the start, for it is undoubtedly the reason I have been invited to make this presentation, that General Electric is one of the few companies that is working for enactment of the High-Risk Disease Notification Bill of 1987. We are in the company of IBM, Digital Equipment, Crum & Forster Insurance Co., the Chemical Manufacturer's Association, and the National Paint and Coating Association. The rest of the business world is opposing enactment of this legislation. You will recognize that a company does not casually break ranks with most of industry. We decided about a year ago, however, that that is exactly what we would do. Let me briefly review the process we went through within General Electric and then make some comments on the politics of the worker-notification bills.

THE WORKER-NOTIFICATION BILL

In summary, S.79, which has been reported out of committee and is ready for floor action, and H.R.162, which has passed the House, have three basic components. They would (1) establish a Risk Assessment Board in the Department of Health and Human Services that would *identify* employee populations at high risk of occupational disease, (2) require that the Secretary *notify* members of identified populations, and (3) require employers to *monitor* the health of notified employees when the exposure occurred in the course of their current employment. The key words are "identify," "notify," and "monitor." The intent of the bill is to permit early medical intervention. As we at GE reviewed the bills, we agreed that they would fill a gap in our nation's effort to provide for the health and safety of its working people. We agreed that legislation promoting medical intervention between the time of workplace exposure and the occurrence of occupational disease might save thousands of lives and billions of dollars in health-care costs.

Conversely, we had serious problems with the bills as drafted. We therefore went to Senator Metzenbaum and Congressman Gaydos and asked them, among other things, (1) to redefine the factors to be used in identifying populations at risk in order to assure that Board determinations would be scientifically sound, (2) to permit judicial review of Board actions to assure that they would be supported by substantial evidence, (3) to establish a process of independent physician review of employee requests to be transferred to less hazardous jobs, as permitted by the bills, and (4) to prohibit use of Board findings or other actions taken under the Act, as a basis for, or as evidence in support of, a workers' compensation or tort claim. These changes, and many others, were agreed to and are reflected in S.79 as reported out of committee and H.R.162 as enacted by the House. I should add

that we were joined in these and subsequent requests by the Industrial Unions Department of the AFL-CIO, which has had a consistently open mind as we have continued to suggest improvements in the bills.

INDUSTRY OPPOSITION

The interesting question, I suppose, is why most of industry opposes these bills, as indeed they do most bitterly. Their coalition, in its printed handouts, regularly raises four objections. I suppose it is safe to assume they are the points made face-to-face to Congressional members and staffs. The bill, it is said, will: (1) create a new and unnecessary bureaucracy; (2) mandate employee benefits; (3) require transfer from hazardous jobs to less hazardous jobs at no loss of pay; and (4) trigger thousands of multimillion dollar lawsuits.

What these four objections come down to is a claim that costs will greatly outweigh benefits. It is never put that way, however, because opponents of the bills, for some odd reason, never discuss their benefits. In any event, our view is that while ignoring the substantial benefits of the bill, they are grossly overstating its costs. There will be no new bureaucracy; transfers will be permitted only when there are objective grounds for fearing impairment of employee health; total annual cost of the monitoring program will be well under $100 million per year.

FEAR OF A LITIGATION EXPLOSION

The principal ground on which the bill is opposed is the last one just mentioned: that it will produce a flood of workers' compensation claims and lawsuits that would not have been brought were it not for this legislation. Let me say, first, that I am not sure that is true. Notwithstanding statements to the contrary by opponents of the bill, it did not happen in two of the NIOSH pilot notification projects on which this legislation is based. It did happen in the Augusta, Georgia, pilot project, but the circumstances were very unusual. In that project, involving an employee population exposed to a potent bladder carcinogen, betanaphthylamine (BNA), 47 of 696 respondents were found to have bladder cancer or suggestive symptoms of bladder cancer; 171 of the 696 (25%) filed suit against their employer. The parties settled 120 of the claims for about $500,000. The Georgia Supreme Court later affirmed dismissal of the rest on the ground that workers' compensation was the employees' exclusive remedy.

The claim is made that the Augusta pilot project is typical of what will occur in implementing these bills. I submit that there is no reason to think this. BNA has been a suspected carcinogen since 1895 and a known carcinogen since the 1930s. I understand that it was banned in Great Britain and Switzerland in the 1950s. The Augusta company was the only American company producing and using BNA. The detected health effects (6.8% of screened employees with bladder cancer or "suggestive characteristics" of bladder cancer) were extreme. The Senate Labor Committee report on S.79 understates the case when it suggests that the number of claims filed in Augusta "may be attributable to certain unusual aspects of that situation"!

There were, however, two other pilot projects to which I already referred. The first, in 1978, involved a population of 854 glass and insulating-materials workers in Port Allegany, Pennsylvania. The second, in 1980, involved 12,000 employees

represented by the Pattern Makers League of North America. The diseases involved were, respectively, lung cancer and colon and rectal cancer. It has been reported that few, if any, personal injury claims were filed that would not have been filed except for those notification programs. Don't these give us a better basis for prediction than does the Augusta pilot project? I would suggest that they well might.

But if I am wrong, then what? There is a very basic fact that is ignored in most discussions of this issue: any new claims either will be meritorious or will not be meritorious. If they are not meritorious, the flood will turn into a droplet because, all rumors to the contrary notwithstanding, lawyers do not find it worthwhile to bring frivolous lawsuits. If they are meritorious, what is the problem? I am appalled by an argument that we should not tell workers that they are at exceptionally high risk of occupational disease because they might thereby be alerted to the fact that they have, or may someday have, legitimate claims for compensation. If we are concerned that today's workers' compensation systems and tort systems do not adequately discriminate between meritorious and nonmeritorious claims or that the amounts of compensation payable to holders of meritorious claims are inequitable, then that is ground for reforming these systems, not for opposing the worker-notification bill.

It seems to me, in any case, that the House and the Senate Labor Committee have done what they reasonably could do to meet these concerns. Both the House and the Senate bills provide that no state or federal claim for compensation may be based on an action taken by the Risk Assessment Board, by NIOSH, or by an employer pursuant to the Act. This substantive rule is then reinforced with a rule of evidence: no evidence of actions taken by the Board, by NIOSH, by the employer, or by others pursuant to the Act is to be admissible. Thus, to turn specifically to the most frequently expressed concern, claims seeking compensation for stress, fear of disease, or other emotional harm arising from the notification process itself would be barred. Anything more than that would be full-blown tort reform, which is not what these bills are about.

What I am suggesting is that, to the extent that explicit reasons are given for opposition to the bills, they have to do with compensation for occupational disease, not with the subjects directly addressed by the bills. I too am concerned with the adequacy and efficiency of our system for compensating victims of occupational disease. These systems cry out to heaven for reform. That is not, however, a reason to oppose the worker-notification bills.

THE LARGER POLITICAL CONTEXT

Although these are the reasons given for opposition to the worker-notification bills, they do not fully explain the violence of industry opposition to the bills. As anyone familiar with the public-policy process would expect, the debate over these bills is inevitably caught up in a larger clash between interest groups. Industry tends to view the worker-notification bills not on their merits but simply as one of many items on the ambitious agenda of the AFL-CIO. The worker-notification bills must be opposed, on this view, because to do otherwise would be to risk defeat on such unrelated issues as plant closings, parental leave, and mandated benefits. I can attest to the truth of this proposition from personal experience. The strongest criticism of our decision to support the worker-notification bills has been on this ground.

I make this point because it is so seldom said that it is often overlooked. What I am suggessting is that those who support the worker-notification bills are implicitly dissenting from the current majority opinion of what public-policy processes are about. We are dissenting from the very fashionable view that if industry strenuously pursues *its* selfish interests and workers strenuously pursue *their* selfish interests, the Invisible Hand made famous by Adam Smith will guide us to the common good. To put it affirmatively, we at General Electric are suggesting that it is appropriate for industry to examine issues one at a time and to take a stand for what it believes to be in the public interest, even if the AFL-CIO supports it!