DOE Liaisons Assist USW in Resolving Atomic Worker Issues

Members of the Atomic Energy Workers Council (AEWC) brought their Aug. 21-22 meeting to Carlsbad, N. M., where LU 12-9477 represented over 250 workers at the Waste Isolation Pilot Project (WIPP).

International Vice President Carol Landry highlighted some of our union’s main issues at the USW-represented nuclear facilities and the assistance we have received from Dave Foster and Natasha Campbell, senior advisors to Department of Energy (DOE) Secretary Ernest Moniz, in resolving some of them.

Foster and Campbell played a key role in organizing a high-level committee with USW representatives, DOE officials and Fluor, a multinational engineering and construction firm that is a DOE contractor at several USW-represented nuclear sites. The committee discusses policies, procedures and issues the participants bring to the table. No bargaining is done.

At the Aug. 10 committee meeting, Landry said discussion focused on the union contracts expiring simultaneously with the DOE-contractor agreements; the need for full-time local union officers to handle union business; and having the existing labor agreement with the major deactivation and decommission (D&D) contractor cover small bargaining units.

Also, the committee addressed federal cleanup money for sites like the former Portsmouth Gaseous Diffusion Plant (Portsmouth). LU 689, which represents workers at Portsmouth, joins with the community, our international and elected officials each year to lobby for cleanup money from the DOE and Congress. The funding uncertainty causes the contractors to issue layoff notices in case the money does not come through.

“It’s a travesty that every year our members at Portsmouth don’t know if they are going to have a job,” Landry said. “We committed to Fluor that our union would do whatever was needed to work together to obtain that funding.”

Contractor Transitions

Foster and Campbell also helped our union by ensuring all DOE Requests for Proposals (RFPs) contain union recognition language. The agency issues an RFP when it seeks bids from contractors to do work or perform services.

Lack of union recognition language in RFPs caused problems at the former Paducah Gaseous Diffusion Plant (Paducah) when contractors changed.

“DOE acknowledged that the transition at Paducah was greatly mishandled,” Landry said. “Our union has worked with DOE to establish a process of communication to avoid similar future transition challenges.”

Proud of USW

Assistant Legislative Director Roxanne Brown told the council that DOE Secretary Moniz likes to hold a labor roundtable with all the DOE labor unions each summer.

“Moniz was very proud of what the USW and DOE have been able to accomplish together,” Brown said.

After two years of discussing the problems with the Benefit-Value (BenVal) study, the USW attracted the Secretary’s attention, and he created a taskforce to examine the policy.

DOE contractors must submit a BenVal study every two years that is no more than 5% higher than the average value of assessed benefits packages of comparative organizations. Secretary Moniz said during the labor roundtable last summer that contractors should not use the study to determine the benefits they offer in their labor agreements.

“For the past eight years the Obama administration has respected our union for our substance, knowledge and ability to drive the message home, and because of that, and with continued input from the council, we can get things done,” Landry said.
USW Local 288 Members Testify at Department of Energy Hearing on Beryllium Standard

After 17 years, the Department of Energy (DOE) is proposing revisions to the Chronic Beryllium Prevention Program (10 CFR part 850).

Our union provided testimony at several hearings, urging the DOE to work with stakeholders to find a revision to the rule that benefits workers.

Six USW Local 288 members testified on the revision at a July 14, 2016 public hearing in Oak Ridge, Tenn.

“District 9 is proud of our members’ activism and work on such an important issue,” said District 9 Director Daniel Flippo. “Local 288 is to be commended for their efforts in assuring a safe and healthy work environment for their members.”

Some Concerns

“While there are some improvements included in the proposed revision, there are several elements in the proposal that cause great concern for our members at DOE-covered facilities,” said Ashlee Fitch of the USW Health, Safety and Environment (HSE) Department.

“Our union supports the reduced exposure limit, but has concerns with elements of the medical surveillance requirements and medical removal protections.

“The proposed revision includes requirements for certain workers to participate in mandatory medical removal based on one medical opinion; this differs greatly from the current prevention program,” Fitch added.

The DOE accepted public comments on the revision through September 6. For more information on the revision, please contact the USW Health, Safety and Environment Department at (412) 562-2581.

Moniz Visits Hanford to Address Tank Farm Exposure

U.S. Energy Secretary Ernest Moniz visited the Hanford site in August to hear health and safety concerns at the tank farm.

Our union and other labor representatives met with Moniz to discuss the potential exposure of tank farm workers to chemical vapors. The tanks contain radioactive waste generated from past production of plutonium for nuclear weapons.

“The USW expressed concerns about the tank farm exposures and stressed the need for workers and the union to be involved in the process to address these issues,” said USW Health, Safety and Environment (HSE) Assistant Director Jim Frederick.

The DOE collected the data, interviewed workers and looked at vapor sampling data and worker safety programs. Moniz said he intends to make the collected data and the agency’s conclusions public — although he did not say when this would occur.

For more information on the visit, please contact the USW Health, Safety and Environment Department at (412) 562-2581.
USW Atomic Locals Fight to Retain USW Work

The Atomic Energy Workers Council (AEWC) focused much of its Aug. 21-22 meeting on discussion of the loss of USW jobs to subcontracting and Department of Energy (DOE) interpretation of work jurisdiction.

This problem spreads across the entire DOE complex. Part of the problem is the federal government’s initiative to help small businesses get more federal contracts.

“An unintended consequence of the small business initiative is that we have lost some work,” said Council President Jim Key. “This requirement forces the DOE to choose small business contractors who are not union.”

Then, the USW-represented workers who had been performing the work for years get replaced by non-union personnel who do not have the experience, training or skills to do the job correctly.

For example, several years ago, the DOE awarded a contract to a small business to clean respirators from the former Paducah Gaseous Diffusion plant. Key said the small business returned respirators that were dirty and inoperable, and he said that some had a fixed contamination level which was higher than the site’s acceptable limits.

The DOE and our union had to inspect the vendor’s operations because of its poor performance.

Always Negotiating

Through perseverance USW officials, our atomic locals, and Dave Foster and Natasha Campbell, senior advisors to Department of Energy (DOE) Secretary Ernest Moniz, arranged for the agency to include a union recognition clause in its Request for Proposals (RFP) to contractors.

This helped our locals greatly, but instead of negotiating with one prime contractor, USW atomic locals have to bargain with several.

At each site, multiple contractors have their own work practices and procedures, resulting in redundant management systems that serve to pad the contractor’s revenue.

Additional costs accrue when each contractor negotiates a separate collective bargaining agreement and handles grievances, arbitrations and National Labor Relations Board (NLRB) complaints.

“Minimizing the use of multiple contractors to the extent allowable by law would achieve tremendous savings, improve productivity and increase workers’ morale across the DOE complex,” said Local 689 President Herman Potter from the former Portsmouth Gaseous Diffusion Plant.

Davis-Bacon

USW-represented employees lose their long-time jobs to the building trades when DOE contract officers determine a project falls under the Davis-Bacon Act (DBA).

The DBA applies to contracts in excess of $2,000 for the construction, alteration and/or repair of public buildings or public works where the federal government is a direct party to the contract. It requires employers to pay the area’s prevailing wage for a job.

“We spend a lot of time preparing and proving the work the contractor wants to subcontract out can be done by USW people,” said LU 12-652 Unit President Ryan Christensen, who works at Idaho National Laboratory (INL).

LU 12-652 President Matt Chavez has fought this transfer of work from USW members to the building trades at INL for several years. He asked why they are taking over his members’ process work.

“The amount of work for the building trades is decreasing, so they grab what work they can, even when it’s ours,” said USW International Vice President Carol Landry.

Long-Term Liability

While using contractors saves costs in the short term, it is offset by long-term liability.

The 2007 case study on nuclear contractor health and safety said that “there is an increased likelihood that local building trades workers, employed sequentially by several subcontractors but ‘owned’ by no one, will have deficiencies in training, medical surveillance, and protection.”

What Can Be Done

Landry said our union will review all the material received from the DOE concerning Davis-Bacon and meet with Foster and Campbell.

“Until we point out the inefficiencies to those who have the power to make changes, nothing will be different,” Key said. “We need to document every time we know of cost overruns, and know of injuries and violations by the building trades and contractors.”

(L-R) LU 652 Vice President Henry Littleford, LU 652 President Matt Chavez, and LU 652 Unit President Ryan Christensen. Photo: Mike Hancock
Use of Subcontractors Negatively Impacts Safety

Two researchers published in September 2007 a case study on contractor health and safety in the American Journal of Public Health that validates many of the comments Atomic Energy Workers Council (AEWC) members still make today.

They looked at what forces made contracting predominate in the hazardous waste remediation industry, and supported their analysis with personal observation accumulated over 25 years of studying the sector.

Politics Change Work Environment

After the 1994 election, the Department of Energy (DOE) shifted from one prime contractor operating an atomic site to multiple layers of subcontractors performing cleanup work, according to the case study.

Before the election the prime contractor conducted environmental management activities under a maintenance and operation contract. But, the new Republican majority elected to Congress in 1994 believed in corporatizing government.

The Republicans required federal agencies to act more like private corporations, without defining how this would work and without demonstrating how it would accelerate cleanup while reducing costs. This mentality is still present and embedded in DOE culture among the agency’s career staff.

Contractors Emphasize Cost Over Safety

Cost became more important than safety in DOE’s procurement process, said the study, which analyzed safety at the former Paducah Gaseous Diffusion Plant and the Savannah River site. Shortfalls in DOE cleanup funds and the agency’s contract incentives encouraged prime contractors to choose subcontractors on the basis of cost.

According to the contractor safety case study, subcon-tracting “has several pervasive negative effects on health and safety.”

Unlike those who had been employed by the site owner or operator, many contractors were new to the site and were unfamiliar with hazards or safety procedures.

It is more difficult for the prime contractor to track safety and document injuries for subcontractors and ensure they have the required health and safety training, medical services and protection, despite their contractual commitment to compliance.

Subcontractors are responsible for maintaining their OSHA logs, but there are no incentives to aggressively track safety and document injuries.

Safety Rule Ignored

The study found that despite the Worker Safety and Health Program Final Rule (10 CFR 851), which imposed protection against injury and exposure, the DOE, its contractors and subcontractors did not always implement it.

At Paducah, a contractor submitted a bid that described the proposed health and safety officer’s credentials as impeccable. But once the contractor secured the bid and work was underway, the onsite industrial hygienist was a technician without specialized training, according to the case study authors.

The study said DOE rewarded contractors for production, but did not provide disincentives for unsafe work practices that did not follow rule 10 CFR 851.

No Savings

In 2000 the US General Accounting Office reported that DOE’s privatization initiative failed to save costs, keep projects moving forward or get improvements in contractor performance.

Despite this study, subcontracting continues today. The study’s authors recommended that each tier of subcontractor and prime contractor report separately data on recordable events and occupational disease and injury to make them accountable for illnesses and injuries. Those responsible for procurement should also award contracts based on a contractor’s safety performance history.

“Contracting should not be viewed as a mechanism of distancing site owners, such as DOE or private industry, from the risks and liabilities of the work at the sites. Safety must be viewed as an asset, not just as a cost,” the authors concluded.

To read the entire article, go to: https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1963306/

USW Local 12-9477 Firefighters at Carlsbad, New Mexico Waste Isolation Pilot Project Accept a Grand Challenge

As if battling fires at the Department of Energy’s (DOE) nuclear disposal Waste Isolation Pilot Plant (WIPP) was not enough of a challenge, Local 12-9477 members of the WIPP Fire Department decided last year to start their own Firefighter Combat Challenge team to compete in “the toughest two minutes in sports” —the Scott’s Firefighter Combat Challenge.

Wearing “full bunker gear” and the Scott 5.5 Air-Pak breathing apparatus, pairs of competitors race head-to-head as they simulate the physical demands of real-life firefighting by performing a linked series of five tasks, including climbing the 5-story tower, hoisting, chopping, dragging hoses and rescuing a life-sized, 175-lb. “victim” as they race against themselves, their opponent and the clock.

Local 12-9477 members staff the WIPP fire department at this category II nuclear facility in Carlsbad, New Mexico. It is a fire department unlike any other.

The department is responsible for both surface fire/emergency medical response as well as underground rescue emergency medical service at the site. In March 2014, a truck fire and radiation leak closed the facility and it is scheduled to reopen in the next few months.

WIPP handles the permanent disposal of both radiologi-

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USW Firefighters Win Fourth Place in Tough Competition

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cal waste and transuranic waste from recycled spent fuel or plutonium used to fabricate nuclear weapons. AECOM and BWX Technologies, Inc. formed the Nuclear Waste Partnership, LLC to operate WIPP.

Why the Challenge?

“The creation and purpose of the combat team was to exemplify WIPP’s core values and promote firefighter fitness, while testing skills and creating unity among members of the fire department,” said Team Captain Freddy Garcia.

In the team’s first year of competition they finished (and are currently ranked) 37th in the world at the World’s Firefighter Combat Challenge Championships held in Montgomery, Ala., with a team best time of 1:26.5 minutes. ESPN3 aired the event live.

Qualifying for the world championships was an arduous task paved with hardships. The team’s first competition was held in Carlsbad late in the season. It was a rough competition in front of the home crowd. The WIPP team competed in worn handed-down, turn-out gear against teams with actual race speed gear.

In addition, the WIPP team did not have the chance to compete or properly train together leading up to the event. The members conducted training with self-made equipment or none at all. They were competing against other fire department combat challenge teams who had trained together and competed in Firefighter Combat Challenges the whole season.

 Nonetheless, the WIPP fire department combat team had a tremendous amount of support and a large following from fellow DOE, AECOM, and Nuclear Waste Partnership coworkers, and its USW brothers and sisters.

The WIPP team placed 4th overall at the Carlsbad Firefighter Combat Challenge, falling just short of medaling in 3rd place, with a final qualifying time of 1:38.7 minutes. The time needed to qualify for the Scott World Firefighter Championships was 1:40 minutes.

The WIPP Firefighter Combat Team began its 2016 season of competition in April at an event in Indianapolis, and Garcia said the team is looking to continuously improve as its training, unity and the Firefighter Combat Challenge race schedules come together.

(Thanks to Lucas Messer, WIPP firefighter/ emergency medical technician and USW Local 12-9477 member, for submitting this article and photo to The Nuclear Times.)

“The creation and purpose of the combat team was to exemplify WIPP’s core values and promote firefighter fitness, while testing skills and creating unity among members of the fire department,” said Team Captain Freddy Garcia.

The WIPP Fire Department Combat Challenge Team members, representing the USW, ended their successful first season by placing 2nd at the Kip Memorial held in El Paso, Texas. Pictured left from right are: Firefighter Blake Elliot, Firefighter AJ Madrid, Firefighter Freddy Garcia (Team Captain), Firefighter Mat Padilla, and Firefighter Lu Messer.
Local 12-652 at Idaho National Laboratory Wins Arbitration Over Subcontracting of USW Work

By Julie Ford, AEWC Counsel

Local 12-652 in Idaho Falls is celebrating an important victory in an arbitration case against Battelle Energy Alliance (BEA), the management contractor at the Idaho site. In an award issued at the end of July, arbitrator Paul Gordon ruled in the USW’s favor on a grievance over the company’s subcontracting of certain electrical work to an outside company.

BEA had not notified the union or given it an opportunity to discuss options to avoid the subcontracting, and the work was contracted out at a time when the number of employees in the relevant jobs was down due to attrition.

The case involved extensive preparation by the local union officers and detailed testimony and evidence from the employees about the nature of the work, the qualifications of the union members, the enormous hours and costs involved and, especially, the past practice for this type of work at the site.

The arbitrator ordered that the company make bargaining unit linemen and electricians whole for additional work they could have done that the contractors performed and for time off during the federal government “sequester” when they could have been doing some of the contracted work.

“The remedy will involve very substantial back pay to a number of employees, although the parties are still discussing the final amount and other specifics. If they cannot agree, the arbitrator will decide the back pay issue,” said Local 12-652 Unit President Ryan Christensen.

The work at issue was subcontracted to a local electrical company under an eight-year, “blanket master contract” that was not disclosed to the union. A project manager concluded there was insufficient BEA-owned equipment and not enough union-represented employees available to do the project. Then the manager assigned the work to a contractor without consulting labor relations for a review of whether the work was covered by the Davis-Bacon Act, collective bargaining agreement, or could or should have been performed by USW members.

During this time there were job losses in the electrician and lineman groups due to attrition. The specific work related to the installation and removal of approximately 17 miles of a temporary under built associated with a 138 kv (138000 volt) transmission line. The job consisted of installation of conductors, poles, guy wires, cross arms and all related apparatus associated with high voltage electrical work.

The contract between BEA and Local 12-652 does not prohibit subcontracting of any work, but does require the company to notify the union before it subcontracts “work that normally would be performed by USW-represented employees” and to give the union an opportunity to “suggest alternatives.”

The contract also provides that BEA “shall not use lack of employees due to attrition” as a reason for subcontracting.

In the two-day arbitration hearing, the local union presented substantial evidence to show that the work was the type normally or traditionally and historically done by its members and to dispute the employer’s claim that USW members were not qualified. (In fact, the union showed its members were generally more qualified than the contractors – and worked at a lower cost.)

The arbitrator agreed the USW-represented employees were qualified to do the work and that the work was of the type normally and historically performed by unit employees, even though the work was called “experimental” and therefore not covered under Davis-Bacon.

Arbitrator Gordon ruled BEA violated the collective bargaining agreement by deciding to contract out the work without notifying the union or giving it an opportunity to meet to discuss the work and suggest alternatives to subcontracting. He noted the evidence of past instances where the union and company had discussed possible subcontracting and reached some accommodation to secure at least some of the work for the bargaining unit members.

In this case, he found, USW-represented employees could have worked overtime or been on temporary upgrades; in addition, during some of the time at issue, employees were taking leave due to the federal budget sequester but could have done the work the contractors were doing.

The arbitrator also held that the company had violated the contract by basing the subcontract decision, at least in part, on a claimed lack of labor power when the shortage was caused by job losses due to attrition. Even though there had been no layoffs, BEA had not replaced qualified employees who had retired or left for other reasons.

“This excellent decision shows the importance of solid preparation of arbitration cases and of the usefulness of past practice evidence,” said Local 12-652 President Matt Chavez. “The case also marked many months of work – the decision was issued more than three years after the first disputed work was done – by the officers of Local 12-652 and the employee witnesses.”

Idaho Falls attorney DeAnne Casperson represented the local union with the support of the USW Legal Department and the USW’s Atomic Energy Workers’ Council.