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July 27, 2011

The Honorable David Michaels, PhD  
Assistant Secretary of Labor  
Occupational Safety and Health Administration  
Frances Perkins Building  
200 Constitution, NW  
Washington, DC 20210

Dear Secretary Michaels:

Recent media reports<sup>1</sup> describe a series of hotel inspections undertaken by the Occupational Safety and Health Administration (OSHA) in what appears to be an aggressive corporate campaign by UNITE HERE. These multiple, redundant inspections are exceptionally troubling in light of OSHA's stated policy to not involve the nation's safety agency in ongoing labor disputes. Among other things, OSHA's Field Operations Manual directs that:

- Under no circumstances are CSHOs [compliance safety and health officers] to become involved in an onsite dispute involving labor-management issues or interpretation of collective-bargaining agreements. *Chapter 3, page 10.*
- During [an] inspection, CSHOs will make every effort to ensure that their actions are not interpreted as supporting either party to the labor dispute. *See id.*

Clearly, OSHA has an obligation under the Occupational Safety and Health Act (OSH Act) to respond to complaints filed by individuals concerned about safe work environments. In this situation, however, the complaints were filed against 12 hotels in varying stages of labor disputes in both state plan and federally controlled states. Based on a study paid for by UNITE HERE, whose scientific reliability has been called into question, the principal focus of these duplicative

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<sup>1</sup> See, *Daily Labor Report*, April 28, 2011, "Indiana, Hawaii OSHA Cite Hyatt Hotels For Hazards, but Not Ergonomic Violations."

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complaints was alleged ergonomic injuries to housekeepers. Notwithstanding the agency's position to cite ergonomic injuries under the General Duty Clause, Hyatt's hotels have been exhaustively investigated by OSHA's ergonomic experts, and have received no citations that would support the union's ergonomic complaints.

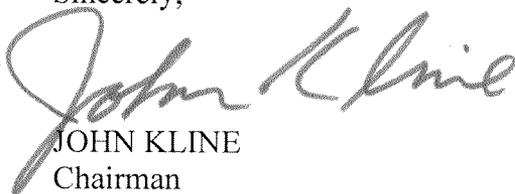
While I share your concern for the safety and health of America's workers, this labor intensive investigation calls into question the agency's use of resources. Your testimony before the House Appropriations Committee asking for an increase of \$7.7 million to "expand the compliance safety and health officer (CSHO) workforce" relies on the belief that OSHA has used its current resources judiciously. Actions such as these inspections suggest otherwise.

As such, I request that you provide the Committee with the following information:

- Any and all communications between OSHA and UNITE HERE related to these inspections – to include any communications related to the study upon which UNITE HERE made the complaints to OSHA.
- Any and all communications between OSHA Headquarters and the Regional and Area Offices related to the inspections, citations, and disposition of these inspections.
- An explanation of how the agency chose the nine hotels that were inspected.
- A full accounting of FTE hours spent interviewing, observing, videotaping, and following housekeepers and other hotel employees related to this inspection as well as other issues, such as recordkeeping, investigated pursuant to these complaints.

Please provide the requested information no later than August 10, 2011. If you have any questions regarding this request, please contact Loren Sweatt at (202) 225-7101. Thank you again for your time and attention to this very important matter.

Sincerely,



JOHN KLINE  
Chairman

OSHA Field Operations Manual, Chapter 3, pages 10-11.

### **G. Employee Responsibilities.**

1. Section 5(b) of the Act states: "Each employee shall comply with occupational safety and health standards and all rules, regulations, and orders issued pursuant to the Act which are applicable to his own actions and conduct." The Act does not provide for the issuance of citations or the proposal of penalties against employees. Employers are responsible for employee compliance with the standards.
2. In cases where CSHOs determine that employees are systematically refusing to comply with a standard applicable to their own action and conduct, the matter shall be referred to the Area Director who shall consult with the Regional Administrator.
3. Under no circumstances are CSHOs to become involved in an onsite dispute involving labor-management issues or interpretation of collective-bargaining agreements. CSHOs are expected to obtain sufficient information to assess whether the employer is using its authority to ensure employee compliance with the Act. Concerted refusals to comply by employees will not bar the issuance of a citation if the employer has failed to exercise its control to the maximum extent reasonable, including discipline and discharge.

### **H. Strike or Labor Dispute.**

Plants or establishments may be inspected regardless of the existence of labor disputes, such as work stoppages, strikes or picketing. If the CSHO identifies an unanticipated labor dispute at a proposed inspection site, the Area Director or designee shall be consulted before any contact is made.

#### **1. Programmed Inspections.**

Programmed inspections may be deferred during a strike or labor dispute, either between a recognized union and the employer or between two unions competing for bargaining rights in the establishment.

#### **2. Unprogrammed Inspections.**

- a. Unprogrammed inspections (complaints, fatalities, referrals, etc.) will be performed during strikes or labor disputes. However, the credibility and veracity of any complaint shall be thoroughly assessed by the Area Director or designee prior to scheduling an inspection.
- b. If there is a picket line at the establishment, CSHOs shall attempt to locate and inform the appropriate union official of the reason for the inspection prior to initiating the inspection.
- c. During the inspection, CSHOs will make every effort to ensure that their actions are not interpreted as supporting either party to the labor dispute.