

Workers' Compensation System Is Under Siege

By Joy Portugal

Fifteen years ago, trumpeter Paul Griffin took his place onstage at the Concord in Albany, ready to perform in an "I Love New York" event presented by the New York State Department of Commerce. As he sat down, his chair slipped backwards off the riser and he plunged five feet, head over heels, onto a pile of scaffolding. A curtain concealed that he was at the edge of the riser, and stagehands had forgotten to nail down a latch to keep chairs from slipping back.

Griffin suffered a concussion and the injury reversed the direction of his cervical spine. He consulted a dozen specialists. Each told him the same thing: You have to stop playing the trumpet. He continued to play for a couple of years but, more and more, he would go into spasms during the performance and be unable to continue playing. He finally accepted the inevitable.

"I don't play at all any more - and that was something that I loved, that was my whole life," he told *Allegro* recently. "I had a darn good career, and I lost it."

That story is tragic enough - but there's more. The workers' compensation system - which is supposed to provide medical care for accidents suffered on the job, and income replacement for people permanently disabled as a result of their injuries - completely failed Paul Griffin. "I never received a penny from workers' compensation," he said. "Nor did my doctors ever get paid." Fifteen years after the accident, he is still paying the bills.

The players were under contract with the New York State Department of Commerce, which had not taken out workers' compensation insurance. "In three hearings before workers' compensation trial judges, we determined that the Department of Commerce was, in fact, the employer," Griffin said. But a state appellate court reversed the decision and he was unable to establish an employer-employee relationship. "As a result, they let the State Insurance Company off the hook.

"It was a terrible case," Griffin said. "We fought it for eight years and finally gave up. It took a lot of years of my life, and I'm still extremely angry about it."

He filed a third-party suit for negligence and won a very modest settlement. "It certainly didn't compensate for losing my career permanently, which I did. And I was a pretty decent trumpet player."

Today, his income is Social Security Disability of about \$6,000 a year.

Paul Griffin's story is a case study in what happens to workers in the absence of workers' compensation. His accident occurred in 1981 - years before Unions for the Performing Arts won legislation to establish an employer-employee relationship for entertainment industry workers, entitling them to workers' comp, unemployment insurance, union representation and other employee protections. In fact, publicity about the case played an important part in UPA's campaign to get the legislation enacted.

This year, the Business Council of New York State has identified so-called reform of the workers' compensation program as the number one priority for business. If they succeed, there will be many more Paul Griffins.

Their "reform" is contained in the Spano/Hochberg bill (S-2452/A-6554), which would cut one billion dollars from the system. "It will make it much more difficult for any worker to establish a claim," said Joel Shufro, Executive Director of the New York Committee for Occupational Safety and Health. "It will make it harder to get benefits, it will reduce the

The weekly benefits are much higher in nearby states. In Connecticut, the maximum is \$700 per week, in Massachusetts \$600, in New Jersey \$500. New York's maximum is only \$400.

WHO'S CHEATING?

The Business Council claims that workers are the chief perpetrators of workers' compensation fraud. In fact, employers and insurers are mostly responsible.

Employers cook the books, paying some workers under the table, misrepresenting the size and nature of their work force, understating payrolls and under-re-

pensation costs. The Bureau of Labor Statistics reports that the number of workdays lost due to injury or illness almost doubled between 1972 and 1992. Since workplace injuries and illnesses result from employer-controlled conditions and are preventable, employers should strive to make the workplace safer if they really want to cut down costs. Instead, the Occupational Safety and Health Administration is also being targeted by the right wing.

The attacks on OSHA and on workers' compensation are part of a much broader assault on working people's living standards, and their effects are interrelated. Injured workers deprived of workers' comp must rely on welfare and on their health insurance - which business wants to slash back as well.

And if Independent Contractor bills are enacted at the state or national level, many musicians will no longer be protected by workers' compensation.

LABOR FIGHTS BACK

On Thursday, April 25, the city's labor movement will come to the defense of the workers' compensation system. Musicians and other members of Unions for the Performing Arts will be among hundreds of New York City trade unionists distributing leaflets at transit stops throughout the five boroughs during the evening rush hour.

Their leaflets will outline business's attack on the workers' comp system and urge people to call Gov. Pataki to let him know they oppose S-2665/A-8552.

UPA will cover subway stops in the theatre district. If you can help, contact Local 802's Public Relations Department at 245-4802, ext. 176.

The New York City Central Labor Council is working hard to mobilize at the grass roots for the citywide leafleting. It will be this year's observance of Workers Memorial Day - an annual commemoration of those killed or injured on the job - and will send elected officials the message that they ignore workers' health and safety agenda at their own peril.

It is critical to prevent Gov. Pataki and the Republican-dominated Legislature from gutting workers' compensation - or even "splitting the difference" by enacting only half a billion dollars in cuts. But we also need to improve the system.

Among the problems are the low benefit levels and the fact that relatively few work-related disease claims are compensated - while the number of workers suffering from occupational disease is reaching epidemic proportions. The system is not computerized (which is why so many statistics cited in this article date back to the late 1980s; current information is not available.) This causes delays and errors in processing claims.

A future article will discuss conditions that musicians have been receiving benefits for - or could potentially be compensated for. Please contact *Allegro* at (212) 245-4802, ext. 179, to let us know what your experiences with workers' compensation have been. □



disability payment, and it will shorten the period in which you receive benefits - yet the Business Council claims they're not cutting benefits with this program."

Among other restrictions, only people who have a whole body impairment of 15 percent or more would even be eligible for payment for permanent partial disabilities, and these benefits would be limited to 700 weeks - less than 14 years!

The Business Council claims that costs and benefit levels are excessively high in New York State, and put employers at a competitive disadvantage. This is simply not true.

New York State ranked next to last in the cost of workers compensation medical benefits purchased by employers; New York was 42nd of 43 states surveyed in 1988-89, and it was 30th of 31 the following year.

New York employers paid \$8.1 million per 100,000 workers to purchase medical benefits between 1988-89, compared to \$11 million in New Jersey, \$17 million in Connecticut and \$34.6 million in Oregon.

Benefit levels are equally low. New York ranked 49th out of 50 states (only Georgia was lower) in terms of the maximum weekly benefit paid to disabled workers as a percentage of the state's average weekly wage. In New York, the maximum weekly benefit is just 64 percent of the average weekly wage; nationwide, maximum weekly benefits are 95 percent of average weekly wages.

porting or failing to report accidents. One in seven employers misclassifies workers.

Fraud is practiced by insurers who systematically deny certain types of claims, cut off benefits without adequate reasons, or use litigation to avoid or delay paying legitimate claims.

Meantime, the National Council of Compensation Insurers estimates that worker fraud amounts to no more than 2 percent of all fraud cases.

The Spano/Hochberg bill would repeal *Dole v. Dow*, an important precedent that allows a third party to sue a wrongdoing employer for its proportionate share of damages when the employer is partially to blame for a worker's injury, illness or death. Without *Dole v. Dow*, there is no economic incentive for an employer to protect workers' health and safety.

The Spano/Hochberg bill would expand the use of managed care controlled by employers and insurers.

In testimony on the bill, UPA Chair William Hanauer charged that "turning our workers' compensation system over to HMOs would be a step back to the days of company doctors, when medical care was doled out when the boss thought you needed it, and you were well enough to return to work when the company doctor said so. This is not reform - it's the destruction of the workers' compensation system."

Increasingly, unsafe work conditions are the main cause of rising workers' com-