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Workplace Drug and Alcohol Testing: A Blueprint for Employee Acceptance and Success

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**WORKPLACE DRUG AND ALCOHOL TESTING:
A BLUEPRINT FOR EMPLOYEE ACCEPTANCE AND SUCCESS**

Charles Edward Martin, B.S.



An Abstract Presented to the Faculty of the Graduate
School of Lindenwood College in Partial
Fulfillment of the Requirements for the
Degree of Master of Science

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ABSTRACT

Drug and alcohol testing in the workplace is a highly emotional and complex issue. Society's drug and alcohol abuse problem has become so pervasive that employers are obligated to act to protect themselves, their businesses and their employees.

Business costs have risen dramatically due to lost productivity resulting from drug and alcohol abuse. Employee Assistance Programs (EAP) and rehabilitation efforts have been somewhat successful but are extremely expensive.

Many businesses have chosen to protect themselves by implementing pre-employment drug screening. Some businesses drug test current employees randomly and "for cause". "For cause" has generally been defined as reasonable suspicion or after an accident at work.

These drug and alcohol tests (urinalysis and breathalyzer, respectively) have been challenged by constitutional rights advocates who believe that mandatory testing is an invasion of privacy and an unreasonable search and seizure. Federal and state courts are split on this issue. Many employers are not

certain of their legal rights to conduct testing in the workplace.

Organized labor has been slow to support any type of drug testing of employees. Studies show the vast majority of employees and union members favor testing provided it is accomplished in a fair, proper and non-discriminatory fashion. Many union leaders still believe it is their responsibility to somehow protect members who cannot or will not behave within acceptable workplace standards. Unfortunately, protecting the chronic abuser simply enables the problem employee to continue using drugs and alcohol.

McDonnell - Douglas of St. Louis formulated, negotiated and implemented a comprehensive workplace drug and alcohol testing program. This program is generally acceptable to management representatives and union leaders. MDC employees have also accepted the program based on responses to the structured interviews and the questionnaires from the program evaluators identified in Chapter III.

Organizations that are considering adoption of workplace testing should carefully analyze the MDC - St. Louis program. Some elements of that program provide education and training, confidentiality, accuracy, discipline, safeguards for the innocent, medical

evaluations of the results, rehabilitation and follow-up testing where necessary.

Employees perceive the program to be fair and reasonable. Therefore, acceptance of the MDC testing program has been achieved.

Charles Edward Martin, A.C.

A Copy of this Report Presented to the Faculty of the
State of Missouri of Lindenwood College in 1975
in fulfillment of the requirements for the
degree of Master of Science

1975

**WORKPLACE DRUG AND ALCOHOL TESTING:
A BLUEPRINT FOR EMPLOYEE ACCEPTANCE AND SUCCESS**

Charles Edward Martin, B.S.

A Culminating Project Presented to the Faculty of the
Graduate School of Lindenwood College in Partial
Fulfillment of the Requirements for the
Degree of Master of Science

1993

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IN APPRECIATION

To my lovely wife, Mary Jo, whose patience, understanding and support were a constant source of strength for me and enabled me to complete this research project...

To McDonnell-Douglas and Jim West, Director of Human Resources, for the opportunity to serve as chief spokesperson for the company in the drug and alcohol testing program negotiations...

And, to my beautiful daughter, Allison, age 11, and my athlete son, Kyle, age 7, who never complained when their invitations to play ball were reluctantly declined with the response, "Sorry kids, dad is busy writing his paper."

Thanks,

Chuck Martin

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Chapter I

INTRODUCTION

Substance abuse has become a major workplace problem in the United States. Every citizen faces the ugly potential consequences of alcohol and drug related accidents, crimes, violence and associated tragic human suffering. This epidemic permeates every fabric of our daily lives. The drug epidemic affects each of us in different ways. Our society is in a virtual fight to the death with drugs. The workplace drug problem crosses every religious, political, economic, educational and racial boundary. Everyone is at risk.

Substance abuse is defined as "the use of a chemical substance, legal or illegal, to the point of causing physical, mental or emotional harm". (Americans For a Drug Free America, 4)

Substance abuse and its effects cost American business and industry an estimated \$100 to \$200 billion per year. (Americans For a Drug Free America, 5)

In addition, the cost in terms of personal suffering resulting from loss of employment or drug related

workplace accidents is staggering and largely immeasurable.

Some obvious costs to industry are lost productivity, equipment and property damage, poor productivity and increased insurance expenditures. The less obvious costs of lost market share and dissatisfied customers are also significant.

To better understand the scope of the drug problem in the American workplace, consider that recent government surveys indicate that over 13 million Americans admit using drugs or alcohol on the job at least once per month. (BNA Bulletin, 7/30/91)

Workplace substance abuse affects all types of employers and employees. Progressive organizations acknowledge people as their most important asset. These organizations understand that revised policies regarding substance abuse are critical to the continued existence and viability of the organization.

For a variety of reasons, management and organized labor, where applicable, have adopted stricter procedures to address the use of drugs by employees.

The purpose of this project is to identify and examine the primary components of an effective,

reasonable, fair and most importantly, acceptable workplace drug and alcohol testing program. Throughout this project, the use of the term "drug" is meant to include alcohol. Alcohol is a drug. It is legal and its use is generally accepted by society, but it can be a dangerous drug.

Much of the information that follows results from my recent personal experience. I was chief spokesperson for the McDonnell-Douglas Corporation (MDC) of St. Louis during drug and alcohol testing negotiations in late 1991 and early 1992.

Developing, negotiating, implementing and administering a comprehensive drug and alcohol workplace testing program for a complex, sophisticated, leading aerospace giant was a monumental task.

MDC created a Drug Force Task Team of over forty-five of its top employees to do just that. This dedicated, enthusiastic and well-intentioned group worked diligently to create an acceptable and effective program.

As chief negotiator, I was a major player, but the entire MDC Drug Force Task Team and the union negotiators contributed greatly to the establishment of the program.

MDC, the nations' largest defense contractor, was directly affected by the Drug-Free Workplace Act of 1988 (Public Law 100-690) and the Department of Defense's interim and final regulations issued in 1991. (Federal Register, Vol. 53: 188, Vol. 55: 102)

The passage of the Drug-Free Workplace Act of 1988 has brought new attention to American business about the problems of alcohol and other drugs on the job. Under the Act, employers with government contracts of \$25,000 or more are required to provide employees with a clear policy about the use and abuse of drugs in the workplace.

Specifically, the Act outlines five key components that employers should have in their drug-free workplace plan:

- A comprehensive written policy;
- Supervisory training;
- Employee education/awareness;
- Availability of an EAP; and
- Identification of illegal drug users, including drug testing on a controlled and carefully monitored basis.

Not surprisingly, many employers view the Act with concern because of its drug-testing language, a legally complex and emotional issue. While drug testing has been

helpful in deterring many employees from using and experimenting with drugs, those in the prevention and treatment fields know that testing does not necessarily prevent drug use or abuse. It may frighten a regular alcohol or other drug user for awhile. It may frighten them into learning how to manipulate testing procedures or to avoid certain substances if testing seems imminent. It may also identify regular users who can then be referred for proper treatment.

Effective in March of 1989, the Act requires that federal contractors provide a "drug-free workplace" by:

(A) publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the person's workplace and specifying the actions that will be taken against employees for violations of such prohibition;

(B) establishing a drug-free awareness program to inform employees about --

- (i) the dangers of drug abuse in the workplace;
- (ii) the person's policy of maintaining a drug-free workplace;

(iii) any available drug counseling, rehabilitation and employee assistance programs; and

(iv) the penalties that may be imposed upon employees for drug abuse violations;

(C) making it a requirement that each employee to be engaged in the performance of such contract be given a copy of the statement required by subparagraph (A);

(D) notifying the employee in the statement required by subparagraph (A) that as a condition of employment on such contract, the employee will --

(i) abide by the terms of the statement; and

(ii) notify the employer of any criminal drug statute conviction for a violation occurring in the workplace not later than 5 days after such conviction;

(E) notifying the contracting agency within 10 days after receiving notice under subparagraph (D)(ii) from an employee or otherwise receiving actual notice of such conviction;

(F) imposing a sanction on or requiring the satisfactory participation in a drug abuse assistance or rehabilitation program by any employee who is so convicted, and

(G) making a good-faith effort to continue to maintain a drug-free workplace through implementation of subparagraphs (A), (B), (C), (D), (E) and (F).

A contractor not meeting the above requirements may lose its contract or be debarred from further federal contracts if it: (1) makes a false certification that it has met the requirements listed in (A) through (G) above; (2) fails to carry out the requirements in (A) through (F); or (3) has a number of its employees convicted of violations of criminal drug statutes, which indicate that the contractor is guilty of "bad faith" in its efforts to provide a drug-free workplace. (Peterson and Massengill, 144-145)

Directly on the heels of that restrictive piece of legislation, the Department of Defense issued interim guidelines termed the DOD's Drug-Free Work Rule. These guidelines provided vague guidance to all federal contractors.

The guidelines:

- required establishment of a program to achieve a drug-free work force;

- required random testing of employees, at a minimum;

permitted reasonable suspicion, post-accident, return to duty, pre-employment and voluntary drug testing;

prohibited the placement of any employee who had tested positive or was convicted of a drug crime in a "safety sensitive" position (one which may affect health, safety or national security);

required the DOD contracting officers' approval of the return to work of any employee who had tested positive for drugs; and

ignored the issue of workplace alcohol testing.

(Federal Register, Vol. 53: 188)

Compliance with these regulations and the law required a massive expenditure of time, money and effort by all federal contractors.

MDC is not a stranger to drug testing. As early as 1985, the company had begun a pre-employment drug testing program for all job applicants. MDC had demonstrated its concern for drug related problems in the workplace long before being required to do so.

MDC was clearly faced with a monumental task. However, with over 40,000 employees in the St. Louis area and 120,000 throughout the world, the company was now required to start a program of testing current employees.

Having previously identified the need for

comprehensive drug and alcohol testing, the company now had a much better understanding of the expectations of its principal customer, the Department of Defense.

Early estimates by the company indicated that between 15,000 and 20,000 employees in St. Louis would be considered to be in a "safety sensitive" position and covered by this new program.

The company's primary objective became the development and negotiations, if possible, of an effective and acceptable drug testing program of current employees. Alcohol testing was also considered essential and thus, incorporated into the company's objectives. A strong rehabilitation program to correct drug use and alcohol abuse received high priority from the members of the MDC Drug Force Task Team.

A negotiations strategy was then developed with timetables, clear language, specific discipline and training and education plans.

Specific objectives of the drug testing program included:

- employee education;
- advanced communication;
- supervisory training;

use of National Institute of Drug Abuse (NIDA) certified forensic laboratory testing;

use of a Medical Review Officer for evaluation of test results;

rehabilitation and Employee Assistance Program counsel;

specific progressive discipline and unannounced follow-up tests;

breathalyzer training of security supervisor and first aid personnel;

successful negotiations resulting in an agreement;

implementation if negotiations failed;

legally defensible;

monitoring to ensure consistency and fairness; and

incorporation of program, by reference, into the current collective bargaining agreement.

(Memorandum of Understanding, January 1992)

Reaching these objectives required strong commitment from many divisions of MDC. Coordination of those divisional responsibilities was crucial to the acceptance and success of the testing program.

An ideal draft of an agreement was prepared by the company. Associated parameters were developed with threshold limits identified for each issue to be bargained.

The company intended to negotiate a very restrictive pro-management agreement with its St. Louis-based unions. Most experts felt that the best strategy would be to negotiate to impasse and implement the program over the objection of the unions. The reason behind that strategy was that the desired program would be so unacceptable to the union leadership, negotiations would prove pointless.

MDC - St. Louis wanted a program for drug and alcohol testing with teeth. The company adopted a very hard-line approach to these negotiations. MDC management wanted a drug and alcohol testing program that included:

1. Alcohol testing with .04% BAC (Blood Alcohol Content) as a positive test result
2. Random drug and alcohol testing
3. Specific discipline (suspensions for positive tests)
4. Unannounced periodic tests for those who tested positive after their return to work
5. Three positives equal discharge

The testing program would be difficult to negotiate. Many experts felt it would be impossible. As chief negotiator, I was confident that an agreement could be reached. The company was prepared to negotiate to impasse, then implement the program if necessary.

Without a negotiated agreement, employee acceptance would be highly unlikely.

Employee Education

Any unionized organization that embarks upon an employee education campaign should start by educating the union leadership. This can be quite sensitive. The union leaders do not generally admit that they need education on a particular subject. The level of understanding among individuals within any union leadership varies on any given subject. The complexities of drug testing made these differences more pronounced within the union leaderships at MDC - St. Louis.

Some union leaders believed all types of drug testing should be opposed on principle. Others felt that reasonableness should be the deciding factor. Many believed reasonable suspicion testing to be an excuse for increased supervisory harassment of their members. A few, privately, confided that drug users should be "thrown out" regardless of the method used by management. Random testing was, surprisingly, generally acceptable to these leaders provided all management personnel were

subject to the same randomness, same procedures and same consequences.

With all those conflicting sentiments, the company chose to emphasize fairness, reasonableness, consistency, accuracy, rehabilitation and privacy as selling points of the program. The ultimate goal of general acceptance remained foremost.

Weeks prior to the start of negotiations, company representatives and union leaders met to discuss, in detail, the current pre-employment drug testing program. For many, this was little more than review, but others learned of the safeguards and quality features the company had built into the program.

MDC - St. Louis had been exclusively using Compu-Chem Laboratories of Research Triangle Park, North Carolina for pre-employment testing. In late 1991, Compu-Chem in North Carolina had over 600 employees and had performed over 28 million drug tests for their clients which included the following United States Government agencies:

- * Department of Transportation
- * Department of Justice
- * Department of Defense

- * Department of Labor
- * N.A.S.A.
- * Department of Commerce
- * Bureau of Prisons
- * U.S. Army
- * Federal Aviation Administration

(Dr. M.A. Peat, personal interview, 2/6/92)

Compu-Chem performs over 4,500 drug tests per day, and not one of their reported results have been challenged in court and overturned. This organization is the best forensic laboratory available. Their record and reputation was a major factor in the acceptance of the program by both the union leadership and the MDC employees. (Collection Procedures for Substance Abuse Testing)

At this educational meeting, the company provided a step-by-step explanation of how the collection and analysis of the urine samples would occur. Union leaders had many questions which were answered and many others were tabled for bargaining. It was apparent the leaders were hungry for knowledge. We interpreted that as a positive sign, and, for the first time, we had reason for optimism.

It was felt that to avoid misinformation, both sides would not distribute any detailed information relating to the bargaining of such a program. In retrospect, this decision helped negotiations. Some organizations may find an advantage in communicating with the employees about bargaining. At MDC - St. Louis, this approach to not communicate in advance was standard. However, the company was prepared to launch a comprehensive educational campaign on the drug testing issue if necessary. We decided to wait and see how negotiations progressed. We certainly did not want to give the union representatives the impression we would attempt to bypass them by directly communicating with our employees, their members.

We did not want to risk a possible unfair labor practice charge, and, primarily, we wanted to work with the union leadership and hammer out an acceptable agreement.

Advance Communications

Months before the beginning of formal bargaining, the company informed all five unions of its intent to negotiate a comprehensive drug and alcohol testing

policy. Letters were sent to each union explaining why the company felt compelled to begin drug testing of current employees. The unions' responses indicated a guarded willingness to talk. Skepticism and distrust prevailed, however.

Throughout the summer of 1991, the MDC - St. Louis Drug Force Task Team met to develop the program and plan for its adoption and implementation. Over 45 management representatives met on a weekly basis for months. Hindsight indicates that representation from each union on the task force team would have resulted in much smoother negotiations. Time and time again, at the table, I was stung by a critical comment from the union regarding the lack of input or consideration allowed them during the planning of the drug testing program. While that may sound strange, it points to the fact that unions want to have a strong say in certain actions that may affect their members. That is only natural and should not shock or deter forward thinking organizations from including unions in their planning activities. Confidentiality can still be maintained through proper caution. Unions understand that certain information cannot and should not be shared with them. Had MDC - St.

Louis invited union participation, a better agreement would have resulted, and less time and money would have been expended.

Supervisory Training

Training supervisors at MDC - St. Louis to their roles and responsibilities regarding drug and alcohol testing was critical to the success of the program. An early determination that all supervisors would receive sixteen hours of training was made by the task team. It was the intent of management that the role of the supervisor was to change dramatically. We wanted our supervisors to take a more active role in evaluating the observable conditions of the employee and make an appropriate determination as to the need to drug test.

Most MDC supervisors were ill-equipped to meet these expectations. Supervisors were expected to observe their workers performance. Most supervisors felt powerless to do more than send the employee to the medical care unit for evaluation when impairment was suspected. There, the employee would be subject to questioning by a company nurse, and possibly, required to submit to a field sobriety test, a subjective evaluation. If in the

opinion of the nurse and the supervisor, the employee was under the influence, the employee was given a three-day suspension. This determination was largely subjective and almost always grieved by the union. Everyone felt the process was far from conclusive, and consequently, the process was not often utilized and not often successful.

An agreement, utilizing a breathalyzer and urinalysis, would give the supervisor conclusive evidentiary support for his initial determination of impairment; thus the need to train supervisors on drug and alcohol testing procedures.

This training could not be conducted until a negotiated program was finalized, however. Therefore, during negotiations, the company could only indicate the extent, type and quality of supervisory training that would be conducted. Unfortunately, the company fell far short of its promises in the area of supervisory training for this program.

National Institute of Drug Abuse (NIDA) Certified Lab

MDC - St. Louis wanted a quality testing program. Its excellent relationship with the premier testing lab

in the country left no doubt that Compu-Chem should be the chosen testing facility. Compu-Chem is a N.I.D.A. certified forensic drug testing facility.

Compu-Chem's chain-of-custody relating to the acceptance, handling and analysis of the urine samples is impeccable. Chain-of-custody is the term that refers to the process of ensuring and providing documentation of proper specimen identification and handling from time of collection to the receipt of laboratory results.

Since 1982, Compu-Chem has set the standard in forensic quality testing for drugs. As of 1990, Compu-Chem was the only large commercial laboratory certified by the Department of Defense, the National Institute on Drug Abuse and the College of American Pathologists for Forensic Drug Testing.

Initially, the selection of the testing facility was not a major concern of the unions, but strangely, during negotiations, it did become a major stumbling block to an agreement.

Medical Review Officer (MRO)

MDC has retained the services of a medical professional for several years. The company saw no

reason to choose a different doctor as their Medical Review Officer (MRO) for this testing program. Therefore, the company sought to utilize this physician to analyze the medical history of any employee testing positive to determine if a medical factor contributed to the positive drug test results.

The company physician was not highly regarded by the union leaders due to some difficult medical decisions he had made throughout his history with MDC. The unions wanted to replace him with another physician.

The primary purpose of the MRO was to evaluate the employees' medical history and current medical status in view of any positive drug test results.

The MRO was then required to verify the drug test results as either positive or medically substantiated. The decision of the MRO was based in medicine, objective and final.

The fact that this physician was thought of as the "company doctor" and a frequent pro-company arbitration witness triggered the unions' desire to have another physician serve as MRO.

Rehabilitation and Employee Assistance Program (EAP)

All drug and alcohol testing programs of current employees need to be rehabilitative in nature. Drug use and alcohol abuse, to a large extent, is a sickness. Employers need to encourage employees who have this problem to get treatment. Most employees will not or cannot improve on their own. The loss of employment, which equates to the loss of purchasing power, is the primary motivating factor employees need to seek help.

MDC has had an Employee Assistance Program (EAP) since the early 1970's. Its EAP has been extremely effective, acceptable to employees and cost-effective.

The company and the unions have worked together in support of the EAP in the past. This formed a common ground for productive negotiations at the table.

The Preamble of the negotiated agreement illustrates this cooperation.

"Whereas, the parties recognize that illegal drug use/prescription drug and alcohol abuse create serious problems for workers, their families, the workplace and the community, that drug/alcohol use and abuse acknowledge no boundaries of age, race or socioeconomic status, that punishing the employee will not eradicate

the problem, and that efforts must focus on treatment, education and restoration of the employee to a meaningful life, and... the parties recognize the keys to this effort will be the providing of education assistance to employees and their families, encouraging the employees to receive treatment as needed, fostering and encouraging an environment which is free of drug/alcohol use and abuse and which deters the use and abuse of drugs/alcohol."

(Memorandum of Understanding, January 1992)

A major company objective of the program was to require the employee, who tests positive, to meet with an EAP representative prior to returning to work.

An EAP representative was present at each negotiations session.

Specific Progressive Discipline

While it is true that rehabilitation was the primary purpose of the program, management knew that without discipline, the program would not be effective.

The task team determined that the "three strikes and you are out" rule should be adopted. The amount of discipline, if any, after the first and second positive

tests, would be the negotiating team's decision. At the formative stage of our program, it was strongly believed that all our unions would refuse to negotiate or agree to specific discipline. That had been their position on discipline, in general, over the years, and we had no reason to believe that position had changed.

Two important elements of progressive discipline the task force wanted were unpaid suspensions and required unannounced follow-up tests after a positive test result.

The three strikes and out theory had as many opponents as proponents on the task team. The advocates of the "once is enough" theory compromised in the interest of reaching an agreement.

Breathalyzer Training for Security and First-Aid Personnel

Although not mandated by either the Drug Force Workplace Act of 1988 or the Department of Defense guidelines, alcohol testing was considered a top priority by MDC. The company considers alcohol a drug and its abuse has the same, and in some cases, a much greater capacity to injure employees, families, co-workers, the general public and the company.

Furthermore, our EAP and medical personnel explained to the task force that chronic drug users will switch drugs when faced with testing. For example, a cocaine user will stop using cocaine and begin drinking heavily. For that reason, and many others, the company told the unions alcohol testing was a must.

Determining the threshold level of the percentage of blood alcohol content (BAC), which would constitute a positive test, would be a subject of negotiations. The company pledged to use the latest equipment and provide comprehensive training to the security supervisors and first-aid personnel on the breathalyzer equipment.

Negotiations Strategy

Foremost, the company wanted a fair, acceptable and effective agreement that included random drug and alcohol testing, a BAC of .04% as a positive test for alcohol and specific progressive discipline. As chief spokesperson those were my "must haves", and I was free to offer any reasonable protections or safeguards demanded in exchange for those three items.

In the initial strategy sessions, cost was not a major factor since the MDC lawyers believed the costs of

the program would be a "reasonable cost of doing business" and, therefore, chargeable expenses to our government contracts. This proved later to be an incorrect assumption.

MDC also wanted to be in a position to implement an effective program in the event negotiations failed and an impasse developed. Some members of the management negotiations team preferred this objective to the objective of reaching a negotiated agreement.

One of my most difficult tasks throughout negotiations was preventing my team members from pushing the objective of negotiating to impasse and implementing to the forefront. Some of the MDC lawyers and others preferred this approach, and I had tremendous difficulty minimizing their influence in this direction.

A related objective was to ensure that our procedures were legally defensible given the potential for grievances and lawsuits. Compu-Chem provided invaluable assistance in this regard.

MDC pledged to monitor all aspects of the program to ensure fairness and consistency.

And, finally, a paramount objective was to incorporate the negotiated agreement into our existing

collective bargaining agreements by reference. Legal and political obstacles had to be hurdled to accomplish this objective.

The task force had identified other lesser objectives, but most of these were dropped or modified during the course of negotiations.

I felt confident that these objectives were achievable and necessary to the overall success and ultimate acceptance of the program. Differences existed among the members of the company negotiating team regarding the best approach to take in pursuit of these objectives. These differences remained a serious source of irritation before, during and even after the formal negotiations concluded.

Problem Statement

Employee lack of understanding and lack of information makes acceptance of workplace drug and alcohol testing difficult.

Statement of Purpose

This paper is intended to assist organizations that are planning to develop and/or possibly negotiate and

ultimately implement workplace substance testing. Employee awareness and education is critical to general acceptance of this controversial activity.

Organizations will be more likely to gain employee support and acceptance of the testing program if they closely follow the MDC - St. Louis program content and methodology.

Chapter II

LITERATURE REVIEW

Drug and alcohol testing is an extremely complex, legalistic and unsettled field. This is due, in part, to a general misunderstanding and mistrust of drug testing and drug testing facilities. Much misinformation exists. Constitutional concerns and accuracy of tests results cloud this issue. Rehabilitative efforts have achieved some successes, but a large percentage of addicts have not benefitted from the billions of dollars spent on drug treatment programs.

A national household survey conducted every two years indicates that 19% of all Americans over the age of twelve have used an illicit substance during the last year. Particularly alarming for employees were data indicating that among young adults, representing those entering the work force for the first time, 65% have had experience with illicit drugs. If we look at the 20 to 40 year old population actually employed in this country, nearly 30% have used illicit drugs during the last month. (Walsh, 167)

These and other problems make it difficult to sell the concept of drug testing to the general population.

The problems about drug and alcohol testing facing employers are as complex as life itself. Countless questions such as those below need answers.

- * Is random testing unconstitutional?
- * When does impairment begin? How is impairment measured?
- * Should employers be allowed to regulate off-duty conduct?
- * Is drug use and alcohol abuse a sickness and, if so, why punish afflicted employees?
- * Should the testing process be negotiated with organized labor?
- * What action should be taken if a drug using employee refuses to participate in an Employee Assistance Program (EAP)?
- * Can an employer guarantee confidentiality of test results?
- * Are suspensions an appropriate penalty for a positive test result?
- * What percentage of employees should be randomly tested and on what frequency?
- * What safeguards should be available to ensure testing accuracy, validity and reliability?
- * Should split urine sample testing utilizing two different labs be offered to employees?
- * Should the employer be required to conduct a drug awareness educational campaign prior to the beginning of a testing program?

- * When state law appears to conflict with federal law, should the employer risk establishing a testing program?
- * What responsibility, if any, does the legal community have to society, employers and employees?
- * Should performance and not drug use or alcohol abuse be the primary concern of the employer?
- * What voice should employees have about the elements and procedures of workplace testing?

A program that is perceived as controversial must be introduced into the workplace with care. The better educated the workforce becomes, the more likely they are to accept a controversial program. Above all, the drug and alcohol testing program must be perceived as fair and necessary.

Prior to attempting to implement a drug/alcohol testing program, employers should try to determine the awareness and attitude of its employees about this complex subject.

Various methods of determining employee knowledge of and support for testing are available.

In 1986, the AFL-CIO published a guide, "Drug and Alcohol Testing on the Job". Obviously, this publication has a pro-union bent, but is remarkably fair in its assessment of drug testing in general. The opening

letter from then President, Lane Kirkland, is of particular interest and is provided in its entirety below:

Dear Trade Unionist:

Employer alcohol and drug testing raises complex and controversial issues for the unions that represent the affected employees. In determining how to proceed, the union must know the facts about alcohol and drug testing and about treatment options as well as the legal rules developed by the arbitrators, the administrative agencies and the courts. The union must, of course, also consider health and safety issues, moral and civil liberties concerns, and various shades of public and employee opinion.

No one doubts that workers who suffer from drug addiction -- or alcoholism -- need, and benefit from, well-conceived and soundly administered treatment programs. Likewise, no one doubts that workers impaired by either of these illnesses can pose health and safety hazards on the job.

But it is equally clear that drug testing is subject to numerous objections. Particularly if the tests are on a random basis, the process cuts deeply into individual privacy rights. There are serious questions about testing accuracy; and a false positive report can stigmatize its victim for life. Contrary to the general belief, drug testing cannot establish whether a worker is currently addicted to a drug, is under the influence of a drug or is unable to do his/her work because of drug use. Testing that leads to discipline rather than treatment gives the employer broad power to punish employees who are doing their job because the employer disapproves of their off-duty conduct.

The purpose of this pamphlet is to provide background material for unions seeking to cope with the social problems caused by drug use and alcohol abuse and by employer responses -- and over-responses -- to these social problems.

In pursuing that aim, the AFL-CIO has put together the Executive Council Statement on Mandatory Drug and Alcohol Tests, a primer on the science on which drug testing is based, and reviewers of the experience to date in collective bargaining, in grievance handling, in arbitration, and in administrative agency and court litigation.

It is our hope and belief that this information will prove useful.

Sincerely and fraternally,

Lane Kirkland, President AFL-CIO

From the tone and content of this letter, it is obvious that Mr. Kirkland raises legitimate concerns about certain elements of drug testing.

All AFL-CIO unions received copies of this letter and the fifteen-page AFL-CIO Executive Council Statement that was issued.

Unions have been provided guidance on this subject for the past seven years. The AFL-CIO understandably and predictably places a premium on rehabilitation and not punishment of those who test positive. It also strongly

opposes random testing, and states that impairment should be the only reason to test current employees.

The guide reviews the applicable court cases at that time. Recent court decisions have made the legal review section of the guide less valuable.

An emphasis is placed on the collective bargaining process to allow unions to negotiate "softer" testing programs and reasonable safeguards.

Overall, this guide is extremely valuable especially in understanding the expectations of organized labor.

In the Fall of 1991, Michael Leroy surveyed 919 union members from 13 major unions asking what drug testing policy, if any, they preferred. A large majority favored a limited drug testing policy negotiated between the union and the employer. Generally, random testing was not favored and rehabilitation was a strong requirement among union members. (453-466)

The Bureau of National Affairs Daily Labor Report (45 March 6, 1992) announced a comprehensive drug testing agreement between the Long Island Light Company and two local unions of the International Brotherhood of Electrical Workers. The agreement covers over 4,000

union members for the next four years and subjects all employees to random drug testing.

An excellent Supervisor's Manual from McDonnell - Douglas outlines, in detail, the entire testing program now in effect at MDC - St. Louis.

The manual is 28 pages of well-written procedures that explain each part of the testing program. The company went to great lengths in compiling this manual. It includes a sample list of questions and answers that supervisors and others may have. A list of office phone numbers is included for additional assistance.

One section of particular interest covers disciplinary suspensions after a positive test. The reader is introduced to a disciplinary form referred to as Alcohol and Drug Violation (ADV) report. The ADV outlines what consequences occur for a positive test. This form is very valuable for supervisors because it is "user-friendly".

After reviewing this document, the reader can more fully understand why the McDonnell - Douglas testing program is the model for the aerospace industry.

The primary elements of the Supervisor Manual are shown below on Table 1:

Table 1

McDonnell - Douglas - St. Louis
 Drug/Alcohol Testing Program
 Primary Elements

SUBJECT

Introduction/Rationale

Definitions

Procedures For Drug/Alcohol Testing

Procedures and Discipline Following Test Results

Return to Duty Policy

EAP (Employee Assistance Program)

Role and Rehabilitation Opportunities

Random Testing

Post-Accident Testing

Reasonable Suspicion Testing

Pre-Employment Testing

Rehire/Reinstatement Testing

General Questions/Answers

(Source: McDonnell - Douglas Supervisor Manual)

Substance abuse testing is a relatively new field. Few studies have been conducted with the intent of

measuring employee acceptance of workplace substance abuse testing.

The lack of available historical data convinced me to conduct my own employee attitude survey toward workplace substance abuse testing.

At my current company, I devised a questionnaire (Figure 1) to ensure a quick, accurate response from employees. Each of the sixteen questions asked had a purpose. Only two responses were possible, to agree with the statement or to disagree with it. Very few of the respondents deviated from these choices. The questions were framed in such a manner in an attempt to eliminate the "gray" areas surrounding such a controversial subject. This questionnaire was not pleasant for the fickle or the undecided.

The questionnaire and a cover letter (Figure 2) were sent or distributed to over 500 company employees. The first 300 returned responses were tabulated for the purpose of this project.

Pains were taken to ensure confidentiality. The survey was strictly voluntary and anonymous.

The questionnaire contained a respondent profile which asked for sex, age and length of service. This

information was requested to determine any significant trend in attitude from a particular grouping of employees.

I included questions not directly related to drug testing on the questionnaire also. These questions were intended to make the respondent consider other aspects or ramifications of drug testing. This was done to ensure that a perfunctory completion of the questionnaire did not happen. I wanted to require the respondents to think before answering.

The results are illustrated in Chapter V (Results) and overwhelmingly validated my original hypothesis. 82% of the respondents support pre-employment drug testing. 88.1% support reasonable suspicion testing. 55% support post-accident testing. 42% support random testing, and slightly more than 40% of the respondents support mandatory workplace drug testing for all employees.

This survey was sent or distributed to a cross-section of employees. It is fair to say, I believe, that this survey covers a typical workforce that is representative of employees throughout the Midwest. Some respondents live or work in St. Louis and Indianapolis, metropolitan areas, as well as Lerna and Trilla, rural

villages. All age groups were represented. Upper management, middle management, salaried exempt, salaried non-exempt, hourly (union) and union officials participated in this project. Employees with twenty or more years of service as well as new hires completed questionnaires and offered forth their opinions.

I distributed over fifty of the questionnaires personally. Everyone agreed to complete it. No one refused my request for their help. I made a practice of distributing the surveys at break time and before or after work. No company time should have been lost by this effort.

One of the dilemmas that any interviewer or researcher faces is the level of sophistication of his targeted respondent group. The survey questions may evoke far different responses from a group of lawyers than a group of operators. This survey did not account for that variable. I am sure that some employees have had more exposure to drug testing than others, through personal experiences or from discussions with others. Other employees are much more well-read on the subject. Notwithstanding the variability of the knowledge of the subject among the respondents, the survey questions are

neutral on their face, and each respondent was asked to respond to the same questionnaire.

Of the 300 respondents, 46% were males and 54% were females. Only 3% were between the ages of 18 and 25. 18% were age 46 or older. 27% were between 26-35 years of age. The age group with the highest percentage of respondents was ages 36-45 with 52%.

The survey requested a declaration of years of company service. 12% of the responses came from employees with less than 3 years of company service. Those with 3 to 10 years of service represented 24% of the returned questionnaire. The same percentage applied to those with over 20 years of service. 40% of the respondents had between 11 and 20 years with the company.

In the interest of educating the employees and gaining their acceptance of drug testing employers should distribute all available information to the employees at the earliest opportunity.

The Americans for a Drug-Free America pamphlet contains a wealth of information about drug use and its effects on all aspects of society. The pamphlet is extremely well written and simple to understand. The problems associated with drug use and the importance of

rehabilitation efforts are outlined in detail. Medical information is provided. The pamphlet describes each drug and its likely effect on the human system.

Overall, the pamphlet describes in lay terms the difficult problems drug users and their families face. The pamphlet attempts to explain drug abuse in humanistic and sociological terms. It provides an excellent basic understanding of the magnitude of the drug abuse problem in our society.

J. Michael Walsh in his article, "Drug Testing in the Private and Public Sectors", offers compelling arguments in favor of workplace substance abuse testing. He presents a balanced view of this issue from the employers, employees and medical communities points of view. He emphasizes the need for strong rehabilitation efforts. He clearly emphasizes the importance that general understanding of the issues has to the level of employee acceptance of the program. (166-172)

Author Constance Grzelka offers several opinions about drug testing from various sources in her article, "Employers Ponder Screening Workers for Drug Use". An analysis of the pros and cons of the accuracy, legality and effectiveness of urine testing for drugs is presented

in a fair and balanced manner. One conclusion that she seems to have reached is that a crucial element of any testing effort is a strong Employee Assistance Program (EAP). (14-15)

MDC effectively communicate the objectives of the program with general listing of definitions.

Alcohol - A colorless, volatile, and flammable liquid that is the intoxicating agent in fermented and distilled liquors. Includes, but is not limited to, beer, wine and liquor.

Alcohol Test - A scientifically valid test utilizing detectors to determine the percent (%) blood alcohol content. The breath analyzer test is non-invasive and requires the test subject to exhale into the detector chamber. If requested by employee, a sample of blood will be taken to determine percent of blood alcohol present in lieu of the breath analyzer.

Drug - Controlled substance as defined by Section 802 (8) of Title 21 of the United States Code, the possession of which is unlawful under Chapter 13 of that Title: marijuana, cocaine, opiates, phencyclidine (PCP), amphetamine and/or methamphetamine.

Drug Test - A multiple step urine enzyme multiplier immunoassay test screening method (EMIT) and a confirmation by use of Gas Chromatography and Mass Spectrometry (GC/MS).

Medical Review Officer (MRO) - A physician knowledgeable in the medical use of prescription drugs and the pharmacology and toxicology of illicit drugs.

Positive Test for Alcohol or Drugs - The presence of alcohol, a drug or a drug metabolite in an employee's system as determined by appropriate

testing of a bodily specimen that is equal to or greater than specified levels or the confirmation test. This shall be referred to as a "positive level," "prohibitive level," or "positive screen." (A positive alcohol test is .04% or greater blood alcohol content.)

Confirmed Positive Test - A positive drug (urinalysis) test result is only considered confirmed after the MRO meets with the employee to verify the positive test result. Any recorded positive drug/alcohol test result is considered to be confirmed.

Split Sample - The urine sample provided by the employee will be poured into 2 bottles, labeled with the same chain of custody code number, and initialed by the employee. Both samples will be sent together to the laboratory. One sample will be tested immediately, while the other sample will be retained if needed for further testing when requested by the employee.

Laboratory (Lab) - NIDA (National Institute on Drug Abuse) approved, certified lab for immunoassay screening of all samples with GC/MS confirmation on all positive results.

(McDonnell - Douglas Supervisor Manual)

Since substance abuse testing is such an emotional issue, employers should do everything reasonable to assuage the fear associated with testing.

Employees need to know that the procedures for sample collection, retention, analysis and reporting of results will be done in a professional, accurate and fair manner.

Compu-Chem Laboratories has produced an information pamphlet explaining proper collection procedures for substance abuse testing. This pamphlet contains illustrations of the actual forms used in the sample collection activities. The components of the collection kit that is used are identified.

An extremely useful explanation of what procedures are necessary to withstand legal scrutiny is included.

The pamphlet says a laboratory must be able to demonstrate:

- * No adulteration or tampering has taken place
- * Documentation of all personnel who handled the specimen
- * No unauthorized access to the specimen was possible
- * Specimen was handled in a secure manner
- * Specimen belongs to the individual whose information is printed on the specimen bottle

In "Foolproofing Drug Test Results", Barbara Steinberg reports that errors caused by false-positive results can be prevented by using a quality forensic laboratory, confirming positive results with a different method, investigating the patient's medical history, and

accurately documenting the chain of custody throughout the procedure. (44-50)

Criticism of drug testing procedures due to lack of standardization of laboratories is voiced by David Nice in his article, "State Regulation of Employee Drug Testing Laboratories". Nice claims that general acceptance of drug testing correlates with the overall education level of the participants. He discovered that strong drug testing regulations tend to be found in better educated and healthier states. He notes that a recent General Accounting Office survey revealed that nearly 1/2 of the states have no regulation of laboratories that perform employee drug testing. He strongly recommends usage of a National Institute on Drug Abuse (NIDA) certified testing facility. (66-78)

Rob Brookler wrote the article "Industry Standards in Workplace Drug Testing". His research resulted in a four point program of safeguards that companies should follow in the drug testing process.

Those four points are 1) choose a laboratory certified by the National Institute on Drug Abuse (NIDA), 2) check laboratory staff credentials, 3) review quality

control measures, and 4) review the chain of custody of the urine sample.

Brookler further reports that due to legal considerations seventeen states have recently passed drug testing laws. (128-132)

"It seems clear that employers and employees alike would be more comfortable with drug testing if there were greater understanding of the accuracy and quality of screening assays and laboratory proficiency." (Walsh 170)

Employers are encouraged to examine their practices and procedures closely. Prior to the administration of an alcohol test and/or the collection of a urine specimen for drug testing, individuals should be thoroughly interviewed to determine if there are any medications (over-the-counter or prescription) or other substances that may have been inhaled, ingested, or injected, which could result in a positive test. Such information should be considered part of an employee's medical record and should be treated with the same level of confidentiality.

An employee's refusal to submit to testing following an order of instruction should be treated in the same manner as a positive drug test result.

Any employee who alters a specimen, submits a false specimen or assists anyone else in altering or submitting a false specimen should be terminated.

To address privacy and chain of custody concerns employees subject to drug testing should be allowed to provide a split double urine specimen in private and in an enclosed room. Both sealed specimen bottles should be shipped to the laboratory.

Collection and shipment of all urine/blood samples should follow strict chain of custody procedures documented in writing. Employees should be given an opportunity to verify the handling and sealing of their samples at the collection site.

An article by Michael Verespej entitled, "Drug Users, Not Testing, Angers Workers" concluded that only 19% of employees view drug testing as an invasion of privacy. Four years earlier the number was 30%, and a poll of Industry Week readers indicates that 45% believe employers should conduct random tests. That figure was up from 29.6% in 1988. (33-34)

If the employer chooses to conduct alcohol testing the same consequences and rehabilitative offers should apply. It is well-known fact that addicts often switch



drugs of usage when only drug testing or only alcohol testing is conducted. Adopting a testing program that incorporates both types of testing is wise.

The administration of an alcohol test should be in accordance with the test equipment manufacturer's instructions and procedures, and in accordance with state law and regulations. A breath analyzer should be used for testing for alcohol, and immediate results will be available. Upon a positive alcohol test by breath analyzer, an employee should be allowed to take a second breath analyzer test within 15 minutes of the first test.

This second chance is not expensive and provides another safeguard that will help sell the testing program to employees and their union leaders, where applicable. The results are extremely unlikely to differ to any great extent. If there is a difference in the recorded BAC between the first and second tests it is recommended that the lesser amount of BAC that is recorded be the official test result.

One of the most telling statistical reports in support of a comprehensive drug screening program is offered in the article, "Sobering Up for Success", by

William Stroller. Stroller studied Express Services company, a temporary help service, and found:

- 1) A 37.5% reduction in the number of worker compensation claims,
- 2) number of positive tests of employees declined,
- 3) absenteeism has declined,
- 4) turnover has been reduced to near zero levels.

(127-128)

"Progress Report: Drug Tests" by Jim Carraher states that only half of the companies surveyed currently incorporate alcohol testing in their substance abuse programs. (40)

In his book, Alcohol, Drugs and Arbitration, arbitrator/author Robert Coulson chronicles over 75 arbitration cases that involved drug and alcohol testing of unionized workers. Coulson reaches no definitive conclusions except to pose a challenge to the reader to think of all the issues related to drug testing at work before forming an opinion. The book is an excellent source of actual cases on this subject. One fact that is abundantly clear is that arbitrators are not uniform in their attitude toward drug testing.

The urinalysis test should be performed by a National Institute of Drug Abuse (NIDA) certified laboratory. Employers may wish to offer one or more NIDA certified labs to help sell the program. Allowing employees to choose which lab may go a long way to minimize the likelihood of a challenge to a positive result.

The results of a drug screening should remain confidential to the extent possible. This becomes increasingly difficult if the results are positive and a suspension results.

The identities of employees who have tested positive should be limited to those persons having a "need to know." Information and records regarding positive drug/alcohol testing should be considered part of an employee's medical record and should be treated with the same level of confidentiality.

NIDA certified labs should work with the employer to establish the ability to defend themselves against challenges. Most of these labs have elaborate procedures to follow to this end. At a minimum, all urine samples confirmed positive should be frozen by the testing laboratory and retained for one year. When the results

of a test are subject to arbitrary or legal challenge, then the specimen should be retained until final resolution of such challenge. All negative urine samples should be destroyed.

Rehabilitation

The primary purpose of testing is to identify employees who use illegal drugs or who abuse alcohol and to introduce them to rehabilitation. While rehabilitation has had mixed results it is the best medical method known to help addicts "stay clean".

Rehabilitation works best when the addict seeks treatment of his own free will. However, unless pressures are placed upon the addict that are more powerful than his addiction, success is unlikely.

Experts are convinced that the loss of employment, which equates to the loss of the ability to buy drugs or alcohol, is the greatest fear the addict faces.

Employers should offer paid rehabilitation to substance abusers. While expensive, rehabilitation may save an employee and help that employee become a productive member of society. To this end, employers should also maintain an effective Employee Assistance

Program (EAP) to intervene and help the employee cope with his addiction.

Margaret Coshan reported that an EAP (Employee Assistance Program) is appropriate for addressing substance abuse in the workplace because they are comprehensive, neutral and confidential, and they often include the whole family. This author strongly recommends against implementation of drug testing unless the employees' performance cannot be measured by any other means. (22-24)

"The basic purpose for any drug (testing) policy should be to get the substance-abusing employee the help that is needed and to get him back on the job." (Walsh 170)

One of the most difficult situations an employer will face is assisting an employee who tested positive for alcohol or drugs. The EAP role is to help supervision with this process, as well as to help the employee. An EAP:

- * Helps identify signs and symptoms of drug/alcohol abuse for early intervention,
- * provides ongoing management consultation,

- * provides limited feedback with management referrals,
 - whether or not the employee kept the appointment
 - whether or not recommendations are being followed, and
- * reduces absenteeism, turnover, and medical claims.

The EAP also:

- * Offers comprehensive interview to assess the individual's needs,
- * matches resources to employee needs and develops plan of action in coordination with Health Benefit Plans,
- * encourages and motivates employee to accept the need for help, and
- * offers ongoing support and follow-up.

Most EAP representatives are trained professionals who are dedicated to helping employees become contributory members of the organization and society in general. They are knowledgeable about all levels of rehabilitation services in the community. Referrals are tailored to individual needs and may include any combination of the following services:

- * Medical detoxification
- * Inpatient drug/alcohol treatment

- * Outpatient drug/alcohol treatment
- * Self help programs
- * Other educational alternatives

The EAP can be used to help employees resolve problems affecting their work performance and impacting their lives.

Employee Challenges

Regardless of how much effort is expended developing a fair and reasonable testing program someone will challenge it. In our litigious society everything seems to be subject to a legal challenge.

If the testing program has been negotiated with organized labor and an agreement has been reached the preferred challenge is the form of a written grievance. Both parties will know how best to proceed since this avenue is one that is familiar and well traveled. If the grievance remains unresolved and is subsequently referred to impartial binding arbitration, then a neutral third party will rule on the challenge.

If the challenge is filed within the legal system precedential case law may already apply.

A recent United States Supreme Court ruling held that "testing in this case is reasonable without any suspicion of drug use on the part of an individual employee." (N.T.E.U. vs. Von Raab)

In addition, the Court also recognized the government's compelling interest in ensuring "that employees do not use drugs, even off-duty, for such use creates risks of bribery and blackmail". Therefore, drug tests, if reasonable, are not in violation of the Fourth Amendment.

In a related ruling, the U.S. Supreme Court held that "employees engaged in safety sensitive positions could be compelled to submit to blood and urine tests" even if no evidence of impairment or intoxication is shown. (Skinner vs. R.L.E.A.)

The Americans with Disabilities Act of 1990 (ADA) has been hailed as the Bill of Rights for the disabled population of the United States, which has been estimated at 43 million. (Americans For a Drug Free America). Unfortunately, it is apparent that the ADA also will be the source of innumerable problems for employers. Some parts of the statute and regulations are very technical and contain precise definitions, but some very important

concepts are ambiguous. One of the most significant of these is the status of employees or applicants for employment who have engaged in the illegal use of drugs.

The ADA prohibits employer discrimination against qualified disabled persons in the application, hiring, promotion, training and discharge processes, as well as in the establishment and maintenance of terms and conditions of employment generally. An employer is obliged to make reasonable accommodation for any known physical or mental disability of a person who is otherwise qualified for the position at issue, unless such an accommodation would impose an "undue hardship" on the employer. Factors to be considered in determining whether an undue hardship exists include the employer's size and resources, the cost of the accommodation and the employer's type of business.

Under the ADA, a disabled person is an individual who: (1) has a physical or mental impairment that substantially limits a major life activity; (2) has a record of such impairment; or (3) is regarded as having such an impairment. Significantly, Section 104 of the ADA excludes from this definition "any employee who is

currently engaging in the illegal use of drugs, when the [employer] acts on the basis of such use."

"Current" drug use means that the illegal uses of drugs occurred recently enough to justify an employer's reasonable belief that involvement with drugs is an ongoing problem. It is not limited to the day of use, or recent weeks or days, in terms of an employment action. It is determined on a case-by-case basis.

The ADA permits the adoption of reasonable drug policies and procedures to: (1) prohibit the illegal use of drugs in the workplace; (2) prevent employees from being under the influence of illegal drugs in the workplace; (3) ensure compliance with the Drug-Free Workplace Act of 1988; (4) hold employees who may be engaging in drug abuse to standards imposed on other employees and (5) ensure compliance with any federal regulations, such as Department of Defense standards, applicable to the employer. (CUE Legal Alert)

Patricia Wall reported in The Journal of Applied Business Research that employers are now more willing to conduct drug testing of employees because drug tests are less expensive, non-invasive and more reliable. Her

research also examines leading legal cases and statutory laws governing the issue. (127-132)

Authors, Donald Peterson and Douglas Massengell, in their article, "Employer Response to the Drug-Free Workplace Act of 1988: A Preliminary Look", offer a point by point summary of what requirements this piece of legislation places on employers. Since this law has not been challenged in court much of the article focused on the likelihood of the success of legal challenges. While the article provided a detailed look at the law the speculation offered by the authors regarding possible legal battles was not valuable. (14-145)

Author, Joyce Frieden, in the article, "Drug Testing: Time Marches On", attempted to predict the likelihood of an increase in the number of employers who will adopt drug testing programs. Several states have recently passed legislation to restrict the ability to perform drug tests on employees according to her research. Frieden believes that state legislation will slow the growth and spread of drug testing in the workplace. (70-74)

Testing will identify users. Rehabilitation will not help every substance abuser. Some will remain addicts. Subsequent testing will produce additional positive results. At some point, employers must terminate the services of these substance abusers and a former wage earner now has lost his source of income.

Critics would say that testing has now made things worse and that the employer-pushed program of testing caused another casualty. Society must now be burdened with another addict it can ill afford. In these instances, where is the gain that testing has produced?

Shadid Alvi, representing the Conference Board of Canada, recently completed a study of substance abuse policies and practices of 97 public and private sector organizations.

The results show 50% of employers that implemented substance abuse programs did so to combat lowered productivity and poor quality. The majority of these programs were oriented toward education and rehabilitation, not punishment, and although controversial, 25% of the organizations sampled are currently testing or considering drug testing its employees. (14-16)

Christopher Dauer in the National Underwriter reports that the state of Florida grants a 5% reduction to employers that established a drug-free workplace program. The Florida Department of Labor reported that 39% of all workplace accidents in Florida in 1990 were drug-related. (95: 23-24)

Authors, Thompson, Riccucci and Ban, compiled a report entitled, "Drug Testing in the Federal Workplace: An Instrumental and Symbolic Assessment." This study emphasized the federal government's employee drug testing programs. Their conclusion was that little evidence exists to support contentions that drug testing improves workplace efficiency or that it promotes public health or reduces crime. These authors remained optimistic, however, that future studies may show a more positive effect from drug testing programs. (515-525)

J.P. Guthrie and J.D. Olian hypothesize that environmental and organizational factors of a company influence the type of substance abuse testing program ultimately implemented. (221-232)

Drug testing protects retail companies from losses due to employee drug abuse and absenteeism according to research performed by David Evans. Evans further

determined the most vulnerable aspect of any drug test is the chain-of-custody of the specimen. Evans is definitely pro-testing as evidenced by his statement that the courts have repeatedly recognized that employers are entitled to define conditions for employment. He further claims that by drug testing job applicants, the employer is asserting its right to seek healthy and qualified employees. (48-53)

While a convincing argument can be made that society cannot support drug and alcohol addicts an equally convincing argument can be made that employers cannot do so either. Workplace substance abuse costs U.S. employers between \$100 and \$200 billion a year.

Layoffs and plant closings are announced daily with no end in sight. Many employers are losing market share to foreign competition at an alarming pace. Employers are frantically seeking any way to reduce costs and maintain business levels. If workplace substance abuse negatively affects productivity to the extent estimated then employers have an overwhelming obligation to conduct drug/alcohol testing.

Problem Statement

A successful, effective workplace drug and alcohol testing program must be fair, reasonable and acceptable to the affected employees.

Acceptance by the employees will determine the program's success longevity. Any program that is perceived to be unfair or unreasonable will not survive.

Regardless of whether the program is promulgated by management or negotiated with organized labor, the acceptance of the employees to the elements of the program will determine its degree of success.

Chapter III

METHODS AND EVALUATION

Organizations that are contemplating establishing a workplace substance testing program should carefully consider the receptivity of its employees to such a program. The program must contain the essential elements necessary to achieve the testing program objectives, but must also be sensitive to the issues of style as well as substance.

This study is designed to identify the elements of a successful drug and alcohol testing program and to suggest how best to gain acceptance of the program from the affected employees, union and non-union alike. My personal experience with the testing program designed, negotiated and implemented at McDonnell - Douglas - St. Louis has enabled me to become familiar with workplace substance testing in detail. However, a formal evaluation of the program, to my knowledge, has not been attempted.

This study will formally evaluate the acceptability and effectiveness of MDC's testing program. In addition, suggested improvements will be solicited from actual

participants within the MDC - St. Louis organization. The MDC - St. Louis drug and alcohol workplace testing program began in April of 1992. After one year of testing, opinions of some of the actual participants will be useful to any organizations thinking of developing a similar program.

Preparation Methods

Any successful workplace substance testing program must contain certain basic elements. Any workplace substance testing program should include:

- * Drug testing before a person is hired.
- * Establishment of consistent policies regarding discovery of substance abuse in the workplace.
- * Education of supervisory personnel to be alert to symptoms and indications of alcohol and drug usage or trafficking.
- * Emphasis on physical fitness.
- * Maintenance of direct lines of communication with employees.
- * Offers of educational incentive programs and potential promotions.
- * Recommendations for treatment and offer of continuing employment if treatment is successful.
- * Rehabilitative programs for employees.

(Americans For a Drug-Free America)

The program must explain the purpose of testing and must identify what the organization expects to accomplish through testing.

McDonnell - Douglas drafted the following preamble to establish the need for testing and set the tone for negotiations.

PREAMBLE

WHEREAS, the parties have a joint interest in workplace safety and in job performance; and

WHEREAS, the parties recognize that illegal drug use/prescription drug and alcohol abuse create serious problems for workers, their families, the workplace and the community, that drug/alcohol use and abuse acknowledge no boundaries of age, race, or socioeconomic status, that punishing the employee will not eradicate the problem, and that efforts must focus on treatment, education and restoration of the employee to a meaningful productive life, and

WHEREAS, the parties recognize that a cooperative and constructive effort is needed to overcome the impact of drug/alcohol use and abuse on safety, productivity, quality of work, and morale, and that such a policy must apply to abuses of alcohol and certain prescribed medicines, as well as illegal drugs, and

WHEREAS, the parties have zero tolerance for drug pushers and providers or those persons who are in control of these activities or those who knowingly assist in permitting such activities by acting as couriers, dispensers, bankers, or as any other key participant in a drug trafficking operations, and

WHEREAS, the parties recognize the additional concerns related to drug abuse, as demonstrated by the Drug Free Workplace Act and regulations promulgated pursuant to

that Act by the U. S. Department of Defense and other Federal agencies, and

WHEREAS, the parties recognize the keys to this effort will be the providing of education, assistance to employees and their families, encouraging the employees to receive treatment as needed, fostering and encouraging an environment which is free of drug/alcohol use and abuse and which deters the use and abuse of drugs/alcohol.

THEREFORE, in implementing the general principles stated above, the parties agree as follows:

(Memorandum of Understanding)

Another critical element that needs to be clearly communicated is definitions. Drug and alcohol testing is a sophisticated field. Clear definitions of medical terms and substances to be measured are essential. McDonnell - Douglas could have done a better job in this respect. It did, however, have the foresight to provide union leaders and employees with the basic definitions and understanding of the medical and testing terms shown in Chapter Two.

While these definitions are adequate, additional descriptive terms such as those below proved valuable to the participants during negotiations.

"Substance abuse is the use of a chemical substance, legal or illegal, to the point of causing physical, mental or emotional harm to a person."

There are five basic types of substance abusers:

Experimenter: A person who uses alcohol or one or more drugs out of curiosity.

Recreational User: An individual who "gets high" on alcohol or other drugs on special occasions, such as parties.

Regular User: A person who continues a constant pattern of alcohol and drug abuse while attempting normal activities at home, work or school.

Binge User: Someone who uses alcohol or other drugs in an uncontrolled manner for only a short period of time, then abstains until the next "binge".

Dependent User: Someone who has become "hooked", physically and emotionally, on alcohol or other drugs and whose existence centers on obtaining them.

(Americans For a Drug-Free America)

The next item that needs to be made crystal clear is the type or types of testing to be performed within the program. MDC chose to conduct reasonable suspicion, post-accident, random, return to duty and rehire/reinstatement drug and alcohol testing. Not every organization will feel compelled to address all the above types of testing. The types of testing that will be conducted must be clearly communicated to the employees. Any terms not self-explanatory must be defined. This may

seem unnecessary to some, but every effort should be made to properly communicate with the affected employees.

After the types of testing are explained, the organization must state the procedures to be followed under each type of testing. This establishes the expectations of the company, and allows the employee to understand what he will face if a specific test is required.

MDC chose to address these procedures in two parts, pretesting and testing. Outlining these procedures provides additional safeguards and adds to the general acceptance of the program. MDC's negotiated language regarding pretesting and testing procedures is shown below:

Procedures For Drug or Alcohol Testing

Pretesting Procedure

- (1) A representative of the union will be notified prior to testing unless employee requests otherwise. If a representative is not immediately available, the union will be given a reasonable opportunity to obtain one. In the interest of privacy, the union representative will not be present during medical examination or sample collection.
- (2) Employee Refusal of a Drug/Alcohol Test - An employee's refusal to submit to testing following an order or instruction will be treated in the same

manner as a positive test result under Section 5 of this program subject to the terms of the grievance and arbitration provisions of the Articles of Agreement.

- (3) Precollection Interviews - Prior to the administration of an alcohol test and/or the collection of a urine specimen for drug testing, individuals will be thoroughly interviewed to determine if there may be any medications (over-the-counter or prescription) or other substances that may have been inhaled, ingested, or injected, which could result in a positive test. Such information will be considered part of an employee's medical record and will be treated with the same level of confidentiality.
- (4) Any employee who alters a specimen, submits a false specimen or assists anyone else to alter or submit a false specimen will be terminated.

Testing Procedure

- (1) Alcohol Testing - The administration of an alcohol test shall be in accordance with the test equipment manufacturer's instructions and the procedures and in accordance with Missouri law and regulations. Upon a positive alcohol test by breathalyzer, an employee may take a second breathalyzer test within fifteen (15) minutes of the first test. In lieu of a breathalyzer test, an employee may request a blood test upon the signing of a release. Any blood alcohol test will be in accordance with Missouri law and regulations for such tests.
- (2) Collection Site - any employee subject to drug testing must be allowed to provide a split double urine specimen in private and in an enclosed room. Both sealed specimen bottles will be shipped to the laboratory.
- (3) Chain of Custody - Collection and shipment of all samples will follow strict chain of custody procedures documented in writing. The employee will be given an opportunity to verify the handling

and sealing of their samples at the collection site..

Analytical Laboratory Procedure

- (1) Laboratory - The Company will select only laboratories certified by the National Institute on Drug Abuse for drug testing. The Company will provide two other laboratory choices if the employee requests the second portion of the sample tested.
- (2) Confidentiality - The identities of employees who have tested positive shall be limited to those persons having a "need to know". Information and records regarding positive drug/alcohol testing will be considered part of an employee's medical record and will be treated with the same level of confidentiality.
- (3) Retention of Sample - All urine samples confirmed positive will be frozen by the testing laboratory and retained for one year except that where the results of a test are subject to arbitral or legal challenge, the specimen will be retained until final resolution of such challenge. Blood samples will be retained in accord with acceptable medical practices.

(Memorandum of Understanding, 7-9)

The organization must also state how the tests will be conducted and by whom. The analytical laboratory needs to be identified and the reasons for its selection should be shared. I strongly recommend an actual on-site visit to the testing laboratory be made by management and union officials. Management officials and union leaders,

where appropriate, should talk with the chief toxicologist of the lab.

The issue of confidentiality must be properly addressed. Drug and alcohol testing results should be considered part of the employee's medical record and therefore, shared with only those having a legitimate "need to know".

Employees have a fundamental right to know the negative consequences of a positive test result. They have a right to know what to expect. All conditions and actions related to a positive test result must be stated in detail so there is no misunderstanding of any kind.

Rehabilitation is the cornerstone of any comprehensive testing program. Drug addicts and alcohol abusers are sick. Some can be cured. The emphasis of the testing program should be on detection, correction (cure) and as a last result, disciplinary expulsion from the workforce. Without a strong well-intentioned rehabilitation program the acceptance of workplace testing may be difficult. Despite the expense without rehabilitation the program cannot succeed.

Kim Oppliger, MDC, Administrator - Medical Services, believes the strength of the MDC program is "its focus on

education, awareness and rehabilitation." She said, "Employees are encouraged, then, if necessary, required to seek help through the Employee Assistance Program" (EAP).

All of the aforementioned elements are important, but education and training may be the most important. Unfortunately, the expense associated with thorough and effective education and training may result in inadequate training efforts.

MDC, due in part to costs, did not meet its pledge to properly train its supervisors prior to the start of the testing program. For most people, the term training implies class attendance. With such a complicated subject extensive classroom training was in order.

MDC chose to send an elaborate training manual to all its supervisors with a self-administered test enclosed. The supervisors were instructed to read the manual, answer the questions on the test and send the test to the training department for scoring.

This type of "training" fell far short of the expectations of the organized labor leaders.

Classroom training of key supervisors should be provided. Training short cuts are not advisable. The

integrity of the program is at risk if adequate training is not provided.

"The most serious error made by management regarding the testing program was the lack of any real training in how to deal with employees who are affected by a drug and alcohol problem, " said Tim Corry, President, UP6WA Local #250.

Evaluation Methods

Ten key participants to the development, negotiation and implementation of the McDonnell - Douglas Drug and Alcohol Testing Program were asked to evaluate the program. A year of testing experience has occurred since the implementation date of April 1992.

All of the evaluators played major roles in some phase of the program. Most, if not all, continue to participate in the program in some capacity.

Company evaluators include representatives of human resources, medical services and labor relations. Union evaluators represent the three largest unions at MDC - St. Louis.

Each evaluator was interviewed and asked to responded to a uniform set of questions. At the end of

this structured interview, each evaluator was asked to offer general comments or suggestions for improvements. Each evaluator willingly accepted the opportunity to participate.

PROGRAM EVALUATOR - COMPANY

Jim West
Director, Human Resources
McDonnell - Douglas

P.O. Box 516 MC 073 5000
St. Louis, MO 63166-0516

Work Phone: (314) 429-9292

- * Responsible for overall negotiations and administration of the substance testing program
- * Shrewd, quiet, observant
- * Excellent strategist
- * Strong sense of ethics in negotiating style
- * Trustworthy and a quick study
- * Played an invaluable role in reacting to union's demands during negotiations
- * Established positive rapport with union leaders quickly after receiving a promotion to Director, Human Resources (which included labor relations responsibility)

PROGRAM EVALUATOR - COMPANY

Chris Greenley
Administrator, Labor Relations
McDonnell - Douglas

P.O. Box 516 MC 029 2240
St. Louis, MO 63166-0516

Work Phone: (314) 232-2913

- * Insightful with a solid appreciation and understanding of organized labor
- * Skilled experienced negotiator
- * Strong voice in the formulation of the MDC - Testing Program
- * Gained excellent experience negotiating a required testing program for Teamster drivers under the Department of Transportation auspices

PROGRAM EVALUATOR - COMPANY

Joseph Pagano
Manager, Human Resources Services
McDonnell - Douglas

P.O. Box 516 MC 001 1120
St. Louis, MO 63166-0516

Work Phone: (314) 234-9143

- * Perceived by many to be the primary driver of the testing program from the planning stages through implementation (shortly after testing began was promoted to a position outside the Medical Services department)
- * Provided training to Kim Oppliger, his replacement
- * Good negotiator, ethical and trustworthy
- * Maintained excellent rapport with organized labor
- * Very valuable member of the company's drug testing team

PROGRAM EVALUATOR - COMPANY

Kim Oppliger
Administrator, Medical Services
McDonnell - Douglas

P.O. Box 516 MC 001 2491
St. Louis, MO 63166-0516

Work Phone: (314) 232-4307

- * Extremely well-organized
- * Gained a thorough grasp of the components of the testing program after earning a promotion within the Medical Services department
- * Perceived as fair and ethical, not directly involved in the formal negotiations
- * Accepted by organized labor at MDC - St. Louis as the official voice of the company regarding the drug and alcohol testing procedures

PROGRAM EVALUATOR - COMPANY

Gene Feldmann
Manager, Facilities
McDonnell - Douglas

P.O. Box 516 MC 306 6066
St. Louis, MO 63166-0516

Work Phone: (314) 232-3004

- * Possesses a wealth of understanding of the IBEW Local #1
- * Excellent verbal skills and is trusted by the IBEW
- * Provided excellent counsel and advice during negotiations despite his inexperience at formal bargaining
- * Displayed a solid awareness of the counter proposals offered by labor during bargaining
- * Ethical and helped immensely when frustration occurred and tempers flared at the table

PROGRAM EVALUATOR - UNION

Tim Corry
President, Local #250
United Plant Guard Workers of America
c/o McDonnell - Douglas

P.O. Box 516 MC 001 2101
St. Louis, MO 63166-0516

Work Phone: (314) 232-2821
(314) 232-3373

- * Extremely knowledgeable of bargaining methods and techniques
- * Attempted, unsuccessfully, to force multi-union bargaining on the issue of testing at MDC - St. Louis (This would have resulted in more consistent program with identical safeguards for all unions at MDC - St. Louis. Management objected because of the difficulty associated with multi-union bargaining.)
- * Strong opponent of alcohol testing based on his law enforcement experience prior to joining MDC
- * Honest, fair, and reasonable negotiator

PROGRAM EVALUATOR - UNION

Paul Staryak
Unit Chairman, Local #250
United Plant Guard Workers of America

P.O. Box 516 MC 001 2101
St. Louis, MO 63166-0516

Work Phone: (314) 232-9443

- * Extremely ethical and rational
- * Knows the importance and possible value of rehabilitation
- * Ex-law enforcement official
- * Strongly opposed to what he considered a double standard practiced by MDC with regard to alcohol (objected to the company providing alcohol at various company sponsored employee activities and then, labeling alcohol as a dangerous drug.)
- * Non-drinker, adopts positions based on principles
- * Good effective compromiser
- * Fair and open to suggestions that will benefit both sides

PROGRAM EVALUATOR - UNION

Vince Dolan
Business Representative
International Brotherhood of Electrical Workers
Local No. 1, AFL-CIO

5850 Elizabeth Avenue
St. Louis, MO 63110

Work Phone: (314) 647-5900

- * Calm and cool under pressure
- * Known for doing his homework on any issue
- * Well versed in the drug and alcohol testing procedures of other companies
- * Expects management to practice what they preach
- * Strong opponent of .04% BAC for alcohol positive test
- * Believes in rehabilitation, but also fairly places expectations upon those who enter rehabilitation
- * Good business skills
- * Understands the workplace realities at MDC
- * Extremely ethical and honest, his word is gospel
- * Enjoys strong support from the IBEW Local #1 members
- * Enlightened union leader
- * Journeyman Electrician

PROGRAM EVALUATOR - UNION

Jim Rodgers
Chief Steward
International Brotherhood of Electrical Workers
Local No. 1, AFL-CIO

5850 Elizabeth Avenue
St. Louis, MO 63110

Work Phone: (314) 234-1692

- * New negotiator with the IBEW Local #1
- * Popular journeyman electrician
- * Excellent understanding of MDC supervision and how they carry out their responsibilities
- * Strong proponent of company sponsored training
- * Interested in efforts to upgrade the skills of current MDC electricians
- * Presented strong evidence against alcohol testing in general and .04% BAC as positive test, specifically
- * Man of his word, open, honest and respected by peers

PROGRAM EVALUATOR - UNION

Luther Lovelace
Business Representative
District Lodge No. 837
International Association of Machinists and Aerospace
Workers, AFL-CIO

212 UTZ Lane
Hazelwood, MO 63042

Work Phone: (314) 731-0603

- * Well respected, experienced union leader
- * Highly regarded by both sides as well-intentioned and knowledgeable
- * Was a welcome "voice of reason" during negotiations
- * Journeyman Tool and Die Maker
- * Insisted that management be fair with the testing program

Instruments

The questions asked during the structured interview are listed below. Responses to the interview are summarized in Chapter Five.

STRUCTURED INTERVIEW

1. Did the company prove to your satisfaction that there was a need for a drug/alcohol testing program? (Y or N)
2. Did the company adequately explain the testing program to you before the testing began? (Y or N)
3. Did the company seek your input about the testing program prior to negotiations? (Y or N)
4. Do you believe the testing program is fair? (Y or N)
5. Do you plan to seek any major changes to the program? If yes, please elaborate. (Y or N)

6. Are you satisfied with the program, in general? (Y or N)
7. Does your membership support the program, in general? (Y or N)

The two page questionnaire sent to the evaluators is shown below.

Responses to the questionnaire are also summarized in Chapter Five.

QUESTIONNAIRE

On a scale of 1 to 5, with 1 being poor and 5 being excellent, rate the following elements of the drug and alcohol testing program at MDC.

1. Employee Understanding _____
2. Employee Acceptance _____
3. Fairness _____
4. Reasonableness _____
5. Supervisory training efforts _____
6. Rehabilitation Program _____
7. Chain of Custody Procedures _____
8. Laboratory Credibility/Accuracy _____
9. Alcohol Testing _____
10. Random Testing Selection Process _____

To the best of your knowledge, please answer the following questions in as much detail as possible.

What was the most serious error made by management regarding the testing program?

What is the best aspect of the drug
and alcohol testing program?

What would you like to see changed
about the drug and alcohol testing
program?

Thank you for your input!

Procedure

Structured interviews were conducted with (10) evaluators. Each evaluator was selected because of his/her familiarity with the negotiated MDC testing program. Each evaluator was told the purpose of the interview. The evaluators were interviewed at their work location approximately one year after the effective date of the testing program in question.

The questionnaires were sent to each evaluator approximately seven days after the completion of the interview.

All questionnaires were received via the United States Postal Services within the time frame requested.

The evaluators spoke freely without provocation. Responses were considered to be honest, sincere and thoughtful and, therefore, valid.

Chapter IV

RESULTS

Ten experienced, knowledgeable professionals were chosen to evaluate the current MDC Drug and Alcohol Testing Program and to determine how successful it is and what, if any, improvements should be made. Their overall evaluations provide valuable information and will assist other organizations and individuals in developing future programs.

The testing at MDC was implemented in April of 1992. Table 2 indicates that the testing program through 1992 resulted in 547 random drug and alcohol tests of which only 4 resulted in positive results.

A total of sixteen reasonable suspicion tests were performed resulting in twelve positive findings for 75%. The percentage of positive results for scheduled unannounced tests was 33.3%. Overall in the nine months following the start of testing 598 tests were performed with 26 positive results for a percentage of positive results of 4.3%.

Of the 26 positive test results, 12 were from illegal drug use and 4 from alcohol abuse.

Kim Oppliger, McDonnell's Testing Program top administrator, said, "The program is working exactly as we had hoped. The percentage of positive results from random tests is low and the percentage of positive results from reasonable suspicion tests is high. The key to the success of the program has been the cooperation of all involved and the effectiveness of the scheduled unannounced tests," Oppliger said.

With almost a full year of testing experience, the evaluators freely responded to the question during the structured interview and to the follow-up questionnaire sent one week after the interview.

The structured interview was designed to produce a "yes" or "no" response from each evaluator for each question. The first question asked was,

"Did the company prove to your satisfaction that there was a need for a drug and alcohol testing program?"

To that question, each evaluator responded "yes", but two of the evaluators said they were not completely convinced of the need to conduct alcohol testing.

The next question asked was,

"Did the company adequately explain the testing program to you before testing began?"

Eight of the evaluators responded "yes" and two responded "no".

The third question posed was,

"Did the company seek your input about the testing program prior to negotiations?"

Only four evaluators said "yes" and six emphatically responded "no" to this question.

The next question asked was,

"Do you believe the testing program is fair?"

Every evaluator said "yes" without hesitation.

The fifth question was,

"Do you plan to seek any major changes to the program?"

Only three of the evaluators replied "yes" and seven said they had no intention of seeking any major changes to the program.

The sixth question of the structured interview was,

"Are you satisfied with the program?"

All of the evaluators responded "yes".

And the last question asked was,

"Do your members (employees) support the program?"

Nine evaluators said "yes" and only one replied "no" to this question.

Table 3 below illustrates the responses given to these questions by the evaluators.

Table 3

RESULTS OF THE INTERVIEWS (10 Evaluators)

QUESTIONS		YES	%	NO	%
1.	Proof of Need	10	100	0	0
2.	Adequate Explanation	8	80	2	20
3.	Advance Input	4	40	6	60
4.	Fairness	10	100	0	0
5.	Anticipated Changes	3	30	7	70
6.	Satisfaction	10	100	0	0
7.	Employee Support	9	90	1	10

(Source: Interviews)

Since this structured interview was designed to solicit yes or no responses, each evaluator was asked to complete a follow-up, two-page questionnaire to be mailed at a later date. All agreed. This questionnaire was sent seven days after their interview with instructions to return it to me within forty-eight hours.

A self-addressed, stamped envelope was provided. Page one of the questionnaire was a simple straight forward listing of topics with a request that each evaluator assign a numerical score to each topic with one being low and five being high. Page two asked three questions of the evaluator.

Each evaluator completed the questionnaire and returned it in a timely manner. Figure 3 shows the composite scores from page one of the evaluators for each measured element of the current testing program. As one can see, the overall scores are good with six of the ten measured elements receiving 4.0 score or higher.

Responses to the questions on page two are more difficult to categorize due to the freedom to respond given to the evaluators. Page two questions were:

1. What was the most serious error made by management regarding the testing program?
2. What is the best aspect of the program?
3. What would you like to see changed?

The evaluators were in general agreement as to the most serious error made by the company in that five identified it as the lack of supervisory training. Three other evaluators singled out the lack of union input

prior to negotiations as the most critical mistake made by the company. One evaluator suggested the inclusion of alcohol testing at the threshold level of .04% blood alcohol content (BAC) as the most serious error. The remaining evaluator identified random testing as the primary mistake.

Regarding the best aspect of the testing program, the evaluators differed to a greater extent. Three said rehabilitation efforts, two identified reasonable suspicion testing, two cited offering split samples and alternate laboratories as excellent safeguards, two mentioned required unannounced testing after a positive test and one said disciplinary suspensions was the best aspect of the program.

Regarding the best aspect of the testing program, the evaluators differed to a greater degree. A listing of those responses follows:

# OF EVALUATORS	BEST ASPECT
3	Rehabilitation Efforts
2	Reasonable Suspicion Testing

- 2 Offered Split Samples and Alternate Laboratories (safeguards)
- 2 Required Unannounced Tests After a Positive Test for up to Two Years.
- 1 Disciplinary Suspension of 10 or 15 Days.

When posed with the third question asking what should be changed, the evaluators differed markedly again. A listing of those responses are as follows:

# OF EVALUATORS	SUGGESTED CHANGE
3	Improved supervisor awareness of what constitutes "reasonably suspicious" behavior.
2	Raise the BAC of .04% for a positive test.
2	Random pool should include <u>all</u> employees, not just those in "safety sensitive" positions.
2	Increase the number of random tests per week from 20 to 40 or more.
1	Replace the current Medical Review Officer

The reader must remain cognizant that each of the evaluators played a major role in determining the final product, the MDC Drug and Alcohol Testing Program. Half of the evaluators are union leaders, half are management representatives. The evaluations given, are to some extent, emotional and self-serving. However, the integrity of each evaluator guarantees a fair and honest evaluation. It should also be noted that each evaluator has a different perception of the program itself. The union evaluators, in general, are less enthusiastic about the program because, by law, they are compelled to give "competent representation" to their members. A union member that failed a drug and alcohol test would naturally turn to his union for assistance. And the union leaders cannot easily challenge a program that it helped create and ultimately ratified. The management evaluators have no such legal obligation.

Chapter V

DISCUSSION

Discussions about workplace drug and alcohol testing of current employees at McDonnell - Douglas St. Louis did not begin, in earnest, until the spring and summer of 1990.

Collective bargaining negotiations were in full swing at that time with all five MDC St. Louis-based unions. The company negotiating teams had established a drug and alcohol testing program as an agenda item.

This issue never became a serious subject of the 1990 negotiations, however. Company spokespersons simply decided to wait until the federal mandates regarding drug testing were clearer. After that, many of the union negotiators became convinced that drug and alcohol testing would not come to MDC.

Soon after successful negotiations were concluded McDonnell - Douglas created a St. Louis Task Force to study and recommend how best to create a drug testing program. The task force met in relative secrecy for several months developing a suitable program. The company task force consisted of legal, medical, human

resources and labor relations representatives. Participation from organized labor was not requested.

When news of the task force's work became common knowledge, several union leaders inquired as to MDC's intent. The response was that the company was preparing to respond to its primary customer, the government, if required.

During the summer of 1991, the task force completed its work. The framework for a drug and alcohol testing program was completed. The task force also had prepared actual language to be followed toward negotiating an agreement with labor.

Without input from labor and with little or no regard to labor's concerns, the task force recommended language that would be very difficult for labor to accept. The task force honestly believed that the best approach with labor was to negotiate to impasse, then implement the company program. After implementation, the company hoped to have the testing program approved by an impartial third party, an arbitrator or administrative law judge. The company labor representatives did not approve of the tactic of negotiating to impasse, then implementing. The labor relations department felt that

a better objective was to negotiate and reach an agreement with labor. Avoiding a legal battle and opposition to the program was a more appropriate plan. The question remained if the union leaders could agree to such a restrictive program as originally drafted by the MDC task force. Obviously, serious negotiations would be required if any thing close to an agreement would be reached.

Pre-negotiations briefings were given to the leaders of each union in September '91. For most of these leaders, this was their first exposure to substance testing methods, terms and consequences. This was the only formal attempt by the company to educate the union prior to the start of the actual negotiations. These briefings were about an hour long, hardly sufficient time to gain a firm grasp of the subject.

Formal negotiations began with the IAMAW Local #837 in October 1991. The IAMAW had thirty-eight representatives on their side of the table. The company negotiators numbered eight. Negotiations proved difficult and lengthy. The parties met almost daily for 2 1/2 months. Finally, on December 19, 1991, an agreement was reached. The breakthrough was achieved.

The primary parameters set forth by the MDC task force remained intact, yet several checks and balances were included in the final agreement. These safeguards provided the union an opportunity to assure its members that the program was fair and reasonable.

The negotiations with the other unions were completed in somewhat similar fashion in January and in February 1992. Workplace testing was scheduled to begin in April of 1992.

Summary - Interview Results

In April of 1993, ten evaluators were asked to reflect upon the testing program and practices and to comment. The five from the company were extremely positive in their evaluations. The five from the union gave positive evaluations but with some hesitancy and reservation with regard to some portions of the program. As stated in Chapter 4, interviews were conducted and follow-up questionnaires mailed to each evaluator.

All of the evaluators felt there was a definite need for the company to begin a workplace drug and alcohol testing program. Each evaluator felt that the program was fundamentally fair and was being administered fairly.

Each evaluator also stated that he was generally satisfied with the program.

Only one evaluator believed that the employees did not support the program. He explained that the alcohol testing portion of the program was not supported by employees. He reasoned this by arguing that alcohol is not illegal, and if an employee wanted to drink and then come to work that should be permissible, provided the employee could do his work in an acceptable fashion. He believed strongly that .04% blood alcohol content should not equate to a positive test. He stated that the equivalent of two ounces of alcohol for some employees may result in .04 BAC. If the employee is not impaired, he should not be punished he argued.

When asked what changes he would advocate, he responded by saying that the blood alcohol content threshold level of .04% should be raised to .06%. He further stated that the company should effectively train its supervisors in detecting signs of impairment as it promised it would at the negotiating table. According to Joe Pagano, MCAIR's manager of medical services, testing for alcohol, which is not covered under the DOD regulations or the Drug Free Work Place Act, was added by

MDC to the list of substances because of the effect it can have on workers.

"Alcohol is often the drug of choice. It is the most easily obtained and can be most often abused," said Pagano. "In addition, an alcohol or drug problem knows no limits. It can play havoc with one's personal life and could ultimately affect job performance. It's all interrelated." (Pagano, personal interview, 2/5/92)

This same evaluator felt the company did a grave disservice to organized labor by not asking for their input prior to attempting to negotiate a program. He felt that was the most glaring mistake made by the company. He placed the blame on the company legal department who displayed an "arrogance and lack of trust" toward organized labor in his opinion.

Of the ten evaluators, six claimed the lack of advance input from the participants was a major flaw in the approach taken by the company. While this complaint may be more of an indictment of the company's negotiating strategy, it remains notable due to importance placed on this issue by organized labor. Enlightened company labor relations professionals know how critical it is to get organized labor's acceptance of a plan as opposed to

forcing a plan upon labor. In this case, MDC failed to even attempt to get "buy in" from the unions.

Again, this may not have been possible given the legal complexities of negotiations. However, each of the evaluators clearly indicated that seeking input was not the same as negotiating per se.

In addition, two of the evaluators had previous experience with conducting breathanalysis when they were employed in law enforcement prior to joining MDC. Their expertise would have been very helpful in the formulation of an alcohol testing plan. While these two understood that the company may not have been comfortable divulging their plan to them, they felt slighted nonetheless, and, during actual negotiations, convinced the company to alter its alcohol testing plan to some degree.

Tim Corry, president of local 250, UPGWA, said, "We knew this (alcohol- and drug-testing) program was coming. We wanted to make sure there would be plenty of safeguards against false test results and that everyone would be treated fairly. Most of us are appalled by (illegal) drug use and so we're not offended by the program. Nobody wants to work with someone who shouldn't be working". (Corry, personal interview, 2/3/92)

Evaluators did not feel enough effort was given toward the actual explanation of the testing process. In retrospect, the evaluators felt that a plant visit to the laboratory should have occurred before negotiations began. (It should be noted that the company did provide a representative from each union an on-site inspection visit of Compu-Chem Labs in Research Triangle Park, North Carolina after agreements were signed. One union declined the invitation.)

Three evaluators stated they would seek major substantive changes to the program. Those changes may be suggested this spring or summer since each collective bargaining agreement expires and the drug and alcohol testing program is a part of those agreements. One evaluator said he would push for a higher BAC % for alcohol positive results. One evaluator said he would demand some penalty for supervisors who incorrectly diagnose someone as acting reasonably suspicious.

The other evaluator said he believed the parties should replace the current Medical Review Officer with an impartial doctor chosen by both parties. He said this was one of his objectives at the last negotiation and he intended to pursue it again this year. He said he and

his members still distrusted the MDC medical department and the current MRO. He feels that changing the MRO would be a show of good faith by the company. He also said he believed the company would refuse to make this change.

Questionnaire Results

After the interview, a two-page questionnaire was sent to each evaluator. Ten questions were on page one requiring a rating from 1 to 5 as their response with 1 being low and 5 being high. Page two asked only three questions requiring short answers.

The evaluators were asked to affix a numerical score to each of the elements of the program. Composite scores of 4.0 or higher were given to:

1. Employee Acceptance
2. Fairness
3. Reasonableness
4. Chain of Custody
5. Laboratory Credibility/Accuracy
6. Random testing selection process

These scores are particularly enlightening because together they validate the program as essentially fair, reasonable accurate and acceptable. Lower scores were given for:

1. Employee Understanding
2. Supervisory Training
3. Rehabilitation Program
4. Alcohol Testing

The four elements that were scored lower may be indicative of the methods used to explain the program or the lack of follow-through training that was promised. The point being that the elements with lower scores, with the possible exception of alcohol testing, may be satisfactorily addressed with additional training and education.

One would be far more concerned with the legitimacy of the program if the elements that scored 4.0 or above had not received high marks. Those elements are far more critical, overall, to the ongoing success of the program.

A counter argument can be made, however, that employee understanding is essential to the success of a workplace drug and alcohol testing program. While it is

true that employee understanding is necessary, far more important is the element of employee acceptance. For example, one may not completely understand the principles of electricity, but acceptance of electricity is common. Understanding the testing program does not become critical until the employee is faced with the test itself. Most MDC employees will never be tested.

Supervisory training is a matter of degree. In addition with the passage of time, supervisors' understanding of the program will improve.

All supervisors do not have to be proficient within the parameters of the program. They must, however, have a solid understanding of the program and they must know whom to approach for guidance when necessary.

The fact that the rehabilitation program scored somewhat low can be attributed to a variety of factors. The evaluators may have an unreasonable expectation of the likelihood of success any rehabilitation program can offer. Also, rehabilitation in conjunction with punitive action may seem inconsistent to some. Further, one evaluator indicated that rehabilitation is a waste of time and money in his opinion.

Alcohol testing scored less than 4.0. The evaluators had considerable trouble with this issue during the initial negotiations in the fall of 1991 and winter of 1992. Alcohol is not an illegal drug and moderate use of the drug is socially acceptable. On numerous occasions during the initial negotiations the union negotiators reminded the company team that the company sponsored events where alcohol was served to off-duty employees. In addition, MDC marketing representatives at special events, served alcohol on company time especially to foreign customers.

QUESTIONNAIRE RESULTS

Page two posed three questions. The first question asked the evaluators to identify the most serious error made by management regarding the testing program. These responses differed, but the response showed it to be obvious that the lack of supervisory training before the program began was a major shortcoming of the program.

One must remember that intensive supervisory training was promised to the unions during negotiations. The union leaders felt that supervisors would use the program to harass employees. The company pledged

training to ensure that harassment would not occur. After negotiations were completed, the company chose not to commit the time and money necessary to conduct traditional classroom training of the supervisors. Each supervisor received a training guide with a self-administered test inside. Each supervisor was instructed to carefully read the guide, complete the enclosed test and return it to the training department. Any supervisor who did not pass the test would be given remedial instruction. Other evaluators selected issues that have been previously discussed. One response identified random testing as the most serious mistake. Although the evaluator did not elaborate as to why, the presumed objection is that random is a possible privacy invasion or an extreme inconvenience that is not supported by necessary evidence. Identification of random testing without explanation could also be interpreted that the random pool should include all employees, not just those listed in "safety sensitive" positions. Another possible reason could be that the evaluator objects to only testing 5% of the random pool on an annual basis. At MDC, with a random pool of approximately 20,000 employees, testing 5% per year equates to testing 1000

employees. When that figure is broken down per week, the number of employees randomly tested per week becomes less than 20.

The second question on page two asks the evaluators to identify the best aspect of the program. The responses again differed greatly and included:

1. rehabilitation efforts
2. reasonable suspicion testing
3. split samples and alternate testing labs
4. required unannounced tests after a positive test
5. disciplinary suspensions

Since these responses are so different, separate analysis of each will prove valuable.

Rehabilitation efforts are crucial to any effective testing program. Sick employees should be given an opportunity to get well. A company should try to salvage the addicted employee. Corrected behavior not punishment should be the focus. The MDC EAP representatives were included as part of the company negotiating team. Those representatives were professional and empathetic. The role they played at the bargaining table and in administration of this program has proved to be

invaluable. The program does not require EAP intervention until after a second positive test result. EAP intervention is voluntary after the first positive test but is strongly encouraged. An addict will not get well until he wants to get well. Medical treatment is paid completely by the company under the EAP services plan. This represents a major investment in the welfare of its employees by MDC.

Luther Lovelace, business representative for the IAMAW, said their representatives went into negotiations knowing that the program would help those with substance-abuse problems. "The testing should identify those who are addicted and need help," he said.

"We also wanted to make sure that the laboratories and people who would be conducting the tests were reputable," he said. "Under the circumstances, we feel the program is fair. But time will tell if it's working." (Lovelace, personal interview, 2/5/92)

Reasonable suspicion testing was listed as the best aspect by two evaluators. Most of the positive test results have occurred as a result of reasonable suspicion test ordered by the supervisor. This illustrates that supervisory training has been more than adequate in these

instances or perhaps it indicates that the supervisors know their employees well. Supervisors have needed this reasonable suspicion testing tool for years at MDC. Before the advent of alcohol testing, impairment was determined through a series of hand-eye coordination exercises or motor skills displays under supervision and evaluation of the company nurse. Highly subjective, these evaluations were consistently challenged by the employee and grievances were almost automatic if impairment and subsequent suspension was the decision. Now, a machine makes it a simple measurement task. The guesswork is gone.

At the negotiations, the unions argued that testing laboratories can make mistakes and that urine samples can be mis-labeled. The company countered with Compu-Chem's perfect record. In the end, the company reluctantly agreed to offer split samples and the choice of an alternate N.I.D.A. certified, forensic testing lab. Two evaluators felt this was the best aspect of the program. A split sample is one urine specimen placed into two identical containers. Both containers are sent to Compu-Chem for the drug test. Compu-Chem opens only one of the containers and performs the test. If the results are

positive, the employee may choose to instruct Compu-Chem to send the unopened container to another lab (agreed upon by the company and union) for testing at the employees' expense. The results of the second lab will be official and the employee reimbursed for the expense of the test if the results are negative.

That elaborate safeguard is completely unnecessary in the company's mind, but went a long way toward securing union approval of the program. This safeguard allows the employee recourse if he feels a mistake has been made.

Two evaluators cited required unannounced tests after a positive test as the best aspect of the program. The text of the agreement provides for four unannounced tests within twelve months after the first positive test. After the second positive test, eight unannounced tests within twenty-four months are required. The MDC medical department arranges for these unannounced tests and these tests essentially require the addict to stop using or face termination. The magic of these tests is that the employee has no idea when he will be called for testing. This sends a strong message to the users that if you test

positive, the company will keep pressure on you to get rehabilitated.

Disciplinary suspension is the best aspect of the program in the mind of one evaluator. One could probably safely assume that this evaluator is not a union leader. However, that may be a dangerous assumption. Long before negotiations began, the company leadership was convinced that the unions would never agree to specific discipline for positive test results. Throughout the negotiations that belief persisted. Historically, organized labor does not agree to discipline of its membership. Labor may choose not to object to specific discipline under certain circumstances but rarely will labor agree that specific discipline should be given prior to a review of circumstances. But the MDC - St. Louis based unions chose to accept specific discipline as appropriate. This was interpreted as a strong sense of commitment on the part of organized labor to the principles of a drug free workplace.

Under the MDC program, the first positive test earns a ten day suspension, and the second positive test earns a fifteen day suspension. These suspensions are clearly punitive. EAP experts say that suspensions can be a

deterrent to drug use but are not as strong a deterrent as the threat of termination of employment. The value of disciplinary suspensions are debatable at best.

The MDC program contained all the necessary elements of a successful approach to workplace substance testing of current employees. MDC did not implement all the elements of the program with the same degree of success. Partly by design and partly by circumstances, the company shortchanged a couple of critical elements such as supervisory training and seeking union input in advance. Overall, the program of McDonnell-Douglas was well documented and comprehensive. Any organization thinking about implementing such a program would be wise to contact MDC for guidance. This program accomplished all the company's objectives, is generally acceptable to all five of the company unions and is very acceptable to the federal government, MDC's primary customer.

The MDC program addresses the problem statement at the end of Chapter 2 quite well. Some modifications to the MDC program need to be adopted however. These modifications focus on the organization's efforts to communicate the elements of the program to the employees. MDC did not do enough in this regard initially. The ten

evaluators have said that general acceptance exists among the MDC employees however. That acceptance may be attributable to a variety of factors. Perhaps the concept of testing, in general, is acceptable to the average MDC employee. Perhaps the company has not abused the authority it has gained in the testing arena. Perhaps, the non-user is happy that the company is pruning drug users from the workplace. Perhaps, the company did a better job of "selling" the program than the elements and related company actions so indicate.

Employee buy-in is what is essential to a workable effective testing program. If the employees rise up against the program, it cannot stand. This will not happen if education, training and reason prevail.

In order for a drug and alcohol testing program to enjoy general acceptance by employees, a commitment from top management must be demonstrated. This commitment may take several different forms. The most effective way top management can show support is to volunteer for testing. The same procedures and consequences for positive results must apply to all employees. If top management agrees to testing, a strong message is sent.

The employees' opinion on the subject. Management.

To avoid allegations of coercion from top management, a volunteer agreement should be executed. Any member of top management should be free to say no to the volunteer testing. All members of top management should readily agree to inclusion in the random testing pool of employees, however.

The establishment of the random pool for testing may be accomplished in several ways. One method is to include all employees in the random pool. While this sounds fair and simple, it may not be legal. Unions usually favor this approach. State laws may prohibit drug testing in the absence of probable cause.

Asking unions to agree to the exclusion of some employees from random testing may be difficult and politically sensitive. Insisting that top management be subject to random testing goes a long way toward selling the program.

In late '91 and early '92, I negotiated a drug and alcohol workplace drug testing program with five unions representing over 12,000 employees at my former place of employment. At no time before, during or after the agreement was reached did anyone, to my knowledge, ask the employees' opinion on the subject. Management felt

compelled to charge forward with its agendas, and the union leaders must have felt that their members favored testing. Since that time (December 1991), I have wondered how the employees felt about the resultant program.

In addition, drug testing at work is a sufficiently emotional and controversial topic that brings out strong feelings in individuals. In an earlier research study, I attempted to measure employees' support for various types of workplace drug testing. I surveyed over 300 employees of my current company asking them to state their feelings toward drug testing. My current employer has no policy for performing workplace drug testing with the exception of pre-employment drug testing of applicants who receive a job offer.

My employer, Consolidated Communications Inc., is a unionized telecommunications company headquartered in east-central Illinois. Any drug testing program would have to be negotiated with the union leadership, and this research project will help me better understand the feelings of the workforce toward this issue.

A questionnaire (Figure 1) and an explanatory cover letter (Figure 2) were distributed to 300 co-workers.

Over 88% of the 300 employees voluntarily and anonymously stated that employers should conduct reasonable suspicion drug testing in the workplace. Support for other types of drug testing ranged from 82% for pre-employment to 40% for mandatory drug testing. Figures 4 through 9 illustrate the age groups and their support for various types of testing.

Limitations

While attempting to complete this project, I found myself constantly struggling against my own personal beliefs about the importance of workplace substance abuse testing. As the chief spokesman for McDonnell-Douglas - St. Louis negotiating team, and an original member of the MDC Drug Force Task Team, I was tempted to substitute my opinions for those of the ten evaluators.

I believe a researcher's objectivity is diminished if he is too close to his subject. I helped build MDC's program. I helped negotiate what it is today. To ask others to tell me what is wrong with the program took courage. Their responses made me feel good about what we accomplished.

Looking at this project objectively, I have to say that I wish I had interviewed a larger group of employees of MDC. Since I left MDC voluntarily to join Consolidated Communications Inc. (CCI) on August 1, 1992, I felt uncomfortable contacting large numbers of MDC employees. To substitute, I did survey a large number of CCI employees about their feelings toward the various types of drug testing at work.

The results of that survey will be reviewed in the following section, "Suggestion For Future Research".

Another limitation was that of timing. The collective bargaining agreements of all five MDC - St. Louis unions expire in the spring and summer of 1993. Negotiations between the company and the largest union, the IAMAW, have already begun. Negotiations preparations began months ago. I have been extremely reluctant to spend a great deal of time in discussions with representatives of the parties because they have other issues more important to them at this time.

As a former MDC employee, I did not want this project to interfere with the negotiations at MDC. This testing program is subject to negotiations. I had no knowledge of the parties negotiations strategy with

respect to the testing program. I did not want to interfere, so I adopted a low-key approach, yet one that was still valuable.

I also wish I had required the evaluators to state why they responded in the manner they did to the questions on page two of the questionnaire. Without explanations, I had to substitute my assumptions for the evaluators rationale.

I also realize that yes or no responses and short answer questions do not provide reasons for the answers. A researcher collects data but may not know why the respondents answered in the manner in which is shown.

Subsequent questions requiring explanation would have shown a clearer picture. The evaluators may have wanted to say more, but the instrument (questionnaire) limited their response.

In addition, the structured interview was intentionally designed to compare "apples to apples" by limiting the evaluators' responses to specific questions. Some limits were intentional to provide consistent responses.

Suggestions For Future Research

All the evaluators of the MDC program played a significant role in its creation. Their evaluations may have been influenced by their closeness to the program. A future research effort that may paint a somewhat different picture would be to conduct a simple polling procedure of all affected MDC employees. A short, simple ballot could be printed, distributed and collected. Measuring employee acceptance may be more accurate with this method. The feelings of the majority of affected employees would then be well-known.

Another research effort could take the form of a follow-up questionnaire to be sent three to six months from now to the same ten evaluators. A cross check of the results may show differences in the responses given.

Obviously, a different set of evaluators faced with the same set of questions may respond differently.

Another method of determining employee acceptance of the program is face-to-face interviews of a cross-section of employees. This is a direct approach and may give rise to interviewer or interviewee bias affecting the results. This is a time consuming method of determining data and quite costly. The interviews should be

structured in such a manner that subjectivity be minimized. There is also a possible fatal flaw within this process if the employees are not truly representative of the general work force. Another drawback to this method within a unionized facility is the influence union leadership may exert upon those to be interviewed.

Another form of research I would like to conduct would be to survey employees at various times of the year, such as each quarter. Comparing the results may show how attitudes change with the season.

Further research separating management responses from non-management responses and union from non-union employees may show interesting differences. Similarly, a further breakdown of the subjects surveyed might be of value. Are more-educated employees more likely to support drug testing than less-educated employees? These questions could be answered with a more thorough profile section of the respondents.

One aspect of scientific research I would like to explore in employee attitudes toward drug testing is to determine if employees would be willing to submit to mandatory and random drug testing in exchange for free

health care coverage paid fully by the employer. It is my belief that 90%-95% of all employees would favor mandatory drug testing at work if their health care premiums were reduced by a significant amount.

Independent research that links the reduction of health care premiums to mandatory drug testing would provide very valuable insight to employees' true feelings toward drug testing.

A research project I would like to conduct is one that attempts to determine the amount of financial incentive necessary to persuade employees who violently oppose drug and alcohol testing to agree to mandatory monthly unannounced testing.

I would take each subject and offer incremental financial inducements starting at \$5 in exchange for a 12 month drug and alcohol testing agreement with the employee. I would tell each employee that each subsequent increase of \$5 is my final offer. I would not exceed \$200 per employee under any circumstances. Employees would not be tested who did not accept a financial inducement. Extensive negotiating skills are necessary for this to be workable.

Another study I would like to read about, but not conduct, is an analysis of employees who have been discharged as a result of workplace drug and alcohol testing. I would like to read a collection of comments from the ex-employees about fairness, rehabilitation and testing procedures.

The MDC Drug and Alcohol Testing program was designed as a supervisory tool. This tool ostensibly helps supervisors manage the workforce in a more productive manner. Of the ten evaluators I chose, only four are supervisors in the true sense of the word and not one is a production supervisor.

The vast majority of MDC supervisors had little or nothing to say about the content of the testing program. I would have liked to have interviewed a group of production supervisors to compare their responses with those of the ten evaluators used.

The work of a researcher never seems to end. There always seems to be another method, another angle or another hypothesis. The elements of the MDC testing program will benefit any organization that chooses to pursue workplace drug and alcohol testing. There is no place for drug use or alcohol abuse in the workplace. I

sincerely hope that workplace drug and alcohol testing becomes prevalent throughout the United States.

STATEMENT OF UNDEPTLINE

Deputy

James J. O'Connell, President, The McDonnell Aircraft Company
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APPENDIX A

January 6, 1992

MEMORANDUM OF UNDERSTANDING

between

McDonnell Douglas Corporation for McDonnell Aircraft Company and McDonnell Douglas Missile Systems Company (hereinafter referred to collectively as the "Company")

and

District Lodge No. 837, International Association of Machinists and Aerospace Workers, AFL-CIO

and

The International Association of Machinists and Aerospace Workers, AFL-CIO (hereinafter referred to jointly as the "Union")

PREAMBLE

WHEREAS, the parties have a joint interest in workplace safety and job performance; and

WHEREAS, the parties recognize that illegal drug use/prescription drug and alcohol abuse create serious problems for workers, their families, the workplace and the community, that drug/alcohol use and abuse acknowledge no boundaries of age, race, or socioeconomic status, that punishing the employee will not eradicate the problem, and that efforts must focus on treatment, education and restoration of the employee to a meaningful productive life, and

WHEREAS, the parties recognize that a cooperative and constructive effort is needed to overcome the impact of drug/alcohol use and abuse on safety, productivity, quality of work, and morale, and that such a policy must apply to abuses of alcohol and certain prescribed medicines, as well as illegal drugs, and

WHEREAS, the parties have zero tolerance for drug pushers and providers or those persons who are in control of these activities or those who knowingly assist in permitting such activities by acting as couriers, dispensers, bankers, or as any other key participant in a drug trafficking operation, and

WHEREAS, the parties recognize the national concerns related to drug abuse, as demonstrated by the Drug Free Workplace Act and regulations promulgated pursuant to that Act by the U. S. Department of Defense and other Federal agencies, and

WHEREAS, the parties recognize the keys to this effort will be the providing of education, assistance to employees and their families, encouraging the employees to receive treatment as needed, fostering and encouraging an environment which is free of drug/alcohol use and abuse and which deters the use and abuse of drugs/alcohol.

THEREFORE, in implementing the general principles stated above, the parties agree as follows:

EDUCATION AND TRAINING

- A. Employees are to be advised in writing of the McDonnell Douglas Drug and Alcohol Education, Testing and Rehabilitation Program. Information is provided to cover various aspects of the Program including the reasons for the Program, benefits for employees and the Company, Employee Assistance Services ("EAP"), effects of drugs/alcohol on individuals and their families, and drug/alcohol tests.
- B. Management officials, medical professionals, designated union officials, supervisors, plant security personnel and other selected employees are to be trained on the following issues:
 - (1) Drug/alcohol abuse recognition, symptoms and effects;
 - (2) Methods of visually identifying employees who may be under the influence of drugs/alcohol;
 - (3) Methods of referring employees who might be suffering from personal problems that could signal possible drug/alcohol problems to the EAP;
 - (4) Procedures related to handling employees who appear to be under the influence of drugs/alcohol;
 - (5) Documenting observations and impressions of persons who may be under the influence of drugs/alcohol;

- (6) Drug/alcohol testing program, procedures, and safeguards;
- (7) Benefit programs and alternatives that are available; and
- (8) Safety aspects of drug/alcohol problems in both work and social environments.

DRUG AND ALCOHOL TESTING

A. REASONABLE SUSPICION DRUG AND ALCOHOL TESTING POLICY

- (1) This policy covers any employee who exhibits abnormal behavior at an employee's worksite, such as Company owned or leased property, vendor or customer facilities, or in any vehicle while on Company business. Following reasonable suspicion that an employee has exhibited abnormal behavior within the scope of this policy, the Company may require that employee submit to drug/alcohol testing. Union steward or plant chairman will be notified immediately.
- (2) Initial suspicion will be followed by a confirmatory evaluation. Testing will be administered as soon as practicable following suspicion of drug/alcohol use or being under the influence. The Company will follow the procedures set forth in Attachment 1 entitled "CBU Procedural Flow Chart, Handling of Employees Under the Influences of Alcohol/Drugs."
- (3) The requirements of this policy constitute conditions of employment and refusal or failure to submit to testing following an order or instruction will be treated in the same manner as a positive test result under Section 5 of this program subject to the terms of the grievance and arbitration provisions of the Articles of Agreement.
- (4) The consequences related to drug/alcohol use or influence in the workplace or on Company business are set forth in Section 5 of this program.
- (5) For the purposes of this testing policy, "abnormal behavior" may include, but is not limited to, sudden, unexpected changes in physical appearance, difficulty in maintaining balance, difficulty in speech, gait, engaging in an unsafe practice which endangers the

employee or others, the distinct odor of drugs/alcohol, engaging in physically aggressive behavior or in unusual emotional behavior such as uncontrollable laughter or uncontrollable crying.

- (6) When the Company has reasonable suspicion that an employee is demonstrating signs of abnormal behavior, the employee shall be escorted to the Medical Department or other Company designated offsite medical/testing facility for evaluation by a medical professional. A management official and a Security supervisor both of whom are trained under provisions of subsection 1.B above shall each complete a written report of the observed signs of impairment.

(a) If judged appropriate by a medical professional, after assessment of the employee, tests for drugs/alcohol shall be required. The employee's visit to the Medical Department or other designated testing facility will be conducted in a manner consistent with any other medical conditions, i.e., privacy, confidentiality of records.

(b) In the event a Medical Department is not available, a trained management official and a Security supervisor will determine whether the employee should be escorted to a Company designated offsite medical/testing facility for evaluation by a medical professional.

B. POST-ACCIDENT DRUG AND ALCOHOL TESTING POLICY

- (1) As soon as possible following a "work-related accident" the Company will require the employee to submit to drug/alcohol testing if the employee's action or inaction either contributed to the accident or cannot be completely discounted as a contributing factor. No testing will be necessary if the Company determines that the employee's action or inaction could not have contributed to the work-related accident using the best information available at the time of the accident. For the purposes of this testing policy, the following definitions shall apply:

"Work-related Accident" is defined as an occurrence arising out of or in the course of employment:

in which any person suffers death or serious bodily injury requiring immediate medical care.

- (2) The Company may require employees involved in accidents not covered by this subsection to submit to drug/alcohol testing under the terms of the Reasonable Suspicion Drug and Alcohol Testing Policy.
- (3) An employee covered by this policy who is injured at the time of the work-related accident shall authorize the Company to obtain records, reports, and other documents that would indicate the presence and extent of drugs/alcohol in the employee's system. If the employee is unable to submit to drug/alcohol testing after the work-related accident, the employee shall authorize testing of any samples taken by examining or treating medical facilities. If the employee refuses to grant such authorization outlined above, such refusal will be treated in the same manner as a positive test result under Section 5 of this program subject to the terms of the grievance and arbitration provisions of the Articles of Agreement.
- (4) The requirements of this policy constitute conditions of employment and refusal or failure to submit to testing following an order or instruction will be treated in the same manner as a positive test result under Section 5 of this program subject to the terms of the grievance and arbitration provisions of the Articles of Agreement.
- (5) The consequences related to drug/alcohol use or being under the influence in the workplace or on Company business are set forth in Section 5 of this program.

C. RANDOM DRUG AND ALCOHOL TESTING POLICY

- (1) The following groups of employees have been identified as being in sensitive positions and are included in the random testing program.
 - (a) Employees in Safety Sensitive jobs are set out on Attachment 2.
 - (b) The following groups of employees having access to classified information:
 1. Employees applying for or in possession of Secret or Top Secret clearance;

2. Employees applying for or in possession of Special Access Programs/Special Access Required clearances.

- (2) Employees covered by this policy will be selected for random drug/alcohol testing using a verifiable random number or computer-based number generator.
- (3) The requirements of this policy constitute conditions of employment and refusal or failure to submit to required testing following an order and instruction will be treated in the same manner as a positive test result under Section 5 of this program subject to the terms of the grievance and arbitration provisions of the Articles of Agreement.
- (4) The consequences related to drug/alcohol use or being under the influence in the workplace or on Company business are set forth in Section 5 of this program.

D. RETURN TO DUTY DRUG AND ALCOHOL TESTING POLICY

- (1) This policy covers any employee who commences or returns to work after failing a required drug/alcohol test. Such employee shall be subject to unannounced drug/alcohol testing consistent with the provisions of Section 5 of this program.
- (2) The requirements of this policy constitute conditions of employment and refusal to submit to testing following an order or instruction will be treated in the same manner as a positive test result under Section 5 of this program subject to the terms of the grievance and arbitration provisions of the Articles of Agreement.
- (3) The consequences related to drug/alcohol use or being under the influence in the workplace or on Company business are set forth in Section 5 of this program.

E. REHIRE/REINSTATEMENT DRUG AND ALCOHOL TESTING POLICY

- (1) This policy requires any employee whose employment with the Company was terminated and who returns to employment more than ninety (90) days after such termination to be tested prior to returning to work unless otherwise agreed to by the parties or as ordered by an arbitrator.

- (2) If prior to rehire/reinstatement an employee has any record of positive drug/alcohol test results while employed by the Company, these results will be carried forward as positives under this policy.
- (3) The requirements of this policy constitute conditions of employment and refusal or failure to submit to required testing following an order and instruction will be treated in the same manner as a positive test result under Section 5 of this program subject to the terms of the grievance and arbitration provisions of the Articles of Agreement.
- (4) The consequences related to drug/alcohol use or being under the influence in the workplace or on Company business are set forth in Section 5 of this program.

PROCEDURES FOR DRUG OR ALCOHOL TESTING

A. PRETESTING PROCEDURE

- (1) A representative of the union will be notified prior to testing unless employee requests otherwise. If a representative is not immediately available, the union will be given a reasonable opportunity to obtain one. In the interest of privacy, the union representative will not be present during medical examination or sample collection.
- (2) Employee Refusal of a Drug/Alcohol Test - An employee's refusal to submit to testing following an order or instruction will be treated in the same manner as a positive test result under Section 5 of this program subject to the terms of the grievance and arbitration provisions of the Articles of Agreement.
- (3) Precollection Interviews - Prior to the administration of an alcohol test and/or the collection of a urine specimen for drug testing, individuals will be thoroughly interviewed to determine if there may be any medications (over-the-counter or prescription) or other substances that may have been inhaled, ingested, or injected, which could result in a positive test. Such information will be considered part of an employee's medical record and will be treated with the same level of confidentiality.
- (4) Any employee who alters a specimen, submits a false specimen or assists anyone else to alter or submit a false specimen will be terminated.

- (5) The President-Directing Business Representative or the Assistant Directing Business Representative will have access to drug/alcohol test results upon obtaining a release from an individual IAM-represented employee. In addition, the President or his designee will have access to information on a "no-name basis" for all IAM employees and will have access to such statistical information as number of employees participating in drug/alcohol referrals to EAP, the number of employees subjected to drug testing, the number of employees who test positive for drugs/alcohol. Employees will have the right to obtain copies of their drug/alcohol test results.

B. TESTING PROCEDURE

- (1) Alcohol Testing - The administration of an alcohol test shall be in accordance with the test equipment manufacturer's instructions and the procedures and in accordance with Missouri law and regulations. Upon a positive alcohol test by breathalyzer, an employee may take a second breathalyzer test within fifteen (15) minutes of the first test. In lieu of a breathalyzer test, an employee may request a blood test upon the signing of a release. Any blood alcohol test will be in accordance with Missouri law and regulations for such tests.
- (2) Collection Site - Any employee subject to drug testing must be allowed to provide a split double urine specimen in private and in an enclosed room. Both sealed specimen bottles will be shipped to the laboratory.
- (3) Chain of Custody - Collection and shipment of all samples will follow strict chain of custody procedures documented in writing. The employee will be given an opportunity to verify the handling and sealing of their samples at the collection site.

C. ANALYTICAL LABORATORY PROCEDURE

- (1) Laboratory - The Company will select only laboratories certified by the National Institute on Drug Abuse for drug testing. The Company will provide two other laboratory choices if the employee requests the second portion of the sample tested.

- (2) Confidentiality - The identities of employees who have tested positive shall be limited to those persons having a "need to know." Information and records regarding positive drug/alcohol testing will be considered part of an employee's medical record and will be treated with the same level of confidentiality.
- (3) Retention of Sample - All urine samples confirmed positive will be frozen by the testing laboratory and retained for one year except that where the results of a test are subject to arbitral or legal challenge, the specimen will be retained until final resolution of such challenge. Blood samples will be retained in accord with acceptable medical practices.

D. PROCEDURES FOR RESULT NOTIFICATION

- (1) Notification - A Medical Review Officer (MRO) reviews and interprets positive test results to assure a scientifically valid result and to determine whether a legitimate medical explanation could account for the confirmed positive drug test result. All individuals who test positive shall be so notified by the Company and given an opportunity to provide the Company any reasons he/she may have which would explain the positive test. If the individual provides a reasonable explanation that can be substantiated to the satisfaction of the MRO, the test result will be reported as negative to the employee and the employee's supervisor and the record will be microfiched.
- (2) Employees have the right to have the same sample drug specimen retested within seventy-two (72) hours of the employee's notification of test result at the same lab at their expense, or to have the second split specimen tested at their expense at another laboratory in accordance with paragraph 3(c)(i) above. Should the outcome of the tests differ, the negative test will be assumed correct and the employee will be reimbursed for the actual cost of the negative test.
- (3) Drug Test Results - All positive test results and records will be microfiched and become a part of the employee's medical records. Negative test results will be retained only if the employee has also had a prior positive test result.

serum blood alcohol content.

- (4) The Company is responsible for the actions of its employees and agents, including the MRO and the laboratories used in the administration of this program. The Company shall hold the union harmless against any and all claims against the union arising out of selection of MRO or laboratory used in administration of this program. This Hold Harmless provision shall not apply to any Duty of Fair Representation claim unless the claim relates solely to selection of the MRO or the laboratories.

DEFINITIONS

- A. Alcohol - A colorless, volatile, and flammable liquid that is the intoxicating agent in fermented and distilled liquors. Includes, but is not limited to, beer, wine and liquor.
- B. Alcohol Test - A scientifically valid test utilizing detectors to determine the percent (%) blood alcohol content. The test is non-invasive and requires the test subject to exhale into the detector chamber. If employee requests, a scientifically valid method utilizing a measurement of an actual sample of blood of employee to determine a percent of blood alcohol present will be used.
- C. A Positive Test for Alcohol or Drugs - Means to have the presence of alcohol, a drug or a drug metabolite in an employee's system as determined by appropriate testing of a bodily specimen that is equal to or greater than the levels specified below for the confirmation test. This shall be referred to as a "positive level," "prohibitive level," or "positive screen."

The presence of any of the below listed drugs in an amount equal to or greater than what is identified constitutes a positive drug test:

	Initial Test Levels	Confirmation Test Levels	
1. alcohol	0.04%	0.04%	*
2. marijuana metabolite	100 ng/ml	15 ng/ml	**
3. cocaine metabolite(s)	300 ng/ml	150 ng/ml	***
4. opiates	300 ng/ml	300 ng/ml	
5. phencyclidine (PCP) (and or metabolites)	25 ng/ml	25 ng/ml	
6. amphetamine and/or methamphetamine	1000 ng/ml	500 ng/ml	

* percent blood alcohol content.

** delta-9-tetrahydrocannabinol--carboxylic acid.

*** benzoylecgonine, ecgonine methyl ester, and/or ecgonine.

- D. Drug Test - A multiple step urine test enzyme multiplier immunoassay test screening method (EMIT) screening method and a confirmation by use of Gas Chromatography and Mass Spectrometry (GC/MS).
- E. Drug - Means a controlled substance as defined by Section 802 (8) of Title 21 of the United States Code, the possession of which is unlawful under Chapter 13 of that Title: marijuana, cocaine, opiates, phencyclidine (PCP), amphetamine and/or methamphetamine.
- F. Medical Review Officer - A physician knowledgeable in the medical use of prescription drugs and the pharmacology and toxicology of illicit drugs. MRO will be reviewed on an annual basis upon request by either party.

PROCEDURES FOLLOWING TESTS FOR DRUGS OR ALCOHOL

- A. The following procedures describe the rehabilitation opportunities and consequences which shall apply to employees who test positive for the presence of drugs/alcohol under the following Drug Testing Policies:
 - (1) Pre-Employment
 - (2) Reasonable Suspicion
 - (3) Post-Accident
 - (4) Random
 - (5) Return to Duty
 - (6) Rehire/Reinstatement
- B. Employees who have been tested under the Reasonable Suspicion and Post-Accident policies will be suspended, without pay, pending receipt of test results. Employees testing under the Random policy shall not be suspended pending receipt of test results. Suspended employees who test negative for the presence of drugs/alcohol will be reimbursed for straight time and overtime wages lost by virtue of their removal from service. The parties agree that when an employee has violated Company rules other

than those relating to drug/alcohol use that the Company may impose appropriate discipline for those rule violations.

- C. An Alcohol/Drug Violation form ("ADV") will be issued to an employee for each positive test result. The ADV form will state that a positive test for drugs or alcohol was received as a result of Reasonable Suspicion, Post Accident, Random, Return to Duty or Rehire/Reinstatement testing policy and the discipline issued for the positive test result. ADVs for a positive alcohol test will be removed from the employee's personnel file provided the employee is not issued a subsequent ADV for either drugs or alcohol within three (3) years. ADVs for a positive drug test will be removed from the employee's personnel file provided the employee is not issued a subsequent ADV for either drugs or alcohol within five (5) years.
- D. Employee discipline and/or discharge under this section are subject to the grievance and arbitration provisions of the labor agreement.
- E. LEAVE OF ABSENCE

In the event that an employee enters a drug/alcohol treatment program, the employee will be granted such leave of absence as is necessary to allow the employee to complete the rehabilitation program in accordance with Article VII of the Articles of Agreement.

F. FIRST POSITIVE TEST RESULT

- (1) Following notice of an individual's initial positive drug/alcohol test result under any of the listed policies, the employee's suspension, without pay, will be initiated or continued for a minimum of ten (10) working days. The time lost due to removal from service pending receipt of test results under Reasonable Suspicion and Post-Accident policies shall be applied against the suspension. The employee will be made aware of the Company EAP and will be encouraged to use the services of the program.
- (2) If the employee selects the option of using the Company EAP services after a positive drug/alcohol test, the use of such services shall be considered as a management-referred entry rather than a self-referred entry. This would result in the referral being termed "Adverse Information" which must

be reported to the government for employees holding security clearances.

- (3) The employee will not be allowed to return to active employment until a negative test result is obtained from a Company-directed drug/alcohol test, given no later than sixty (60) days from the date of receipt by the Company of the initial positive test.
- (4) Employees who fail to make themselves available for retesting within this sixty (60) day period shall be deemed to have resigned their employment from the Company. Employees who retest in this sixty (60) day period and test positive again will fall under subsection 5.G, below, describing the second positive test result except as set out in paragraph 5.F(5) below.
- (5) When an employee's first return to work test result is positive and the employee reimburses the Company for the expenses of that test, that positive test result will not be considered to be a positive test result under subsection 5.G.
- (6) After receipt by the Company of a negative drug/alcohol test result, the employee may return to active employment, subject to the following condition:

Employee will be subject to four (4) unannounced drug/alcohol tests during the twelve (12) months after the employee returns to work.
- (7) If an employee tests between .040 - .059 for alcohol on his/her first positive test, the employee will not be given a disciplinary suspension but the test will be considered as a positive test under this program and the employee will be sent home for the remainder of the shift. Employees testing .06 or greater will be given a disciplinary suspension in accordance with this policy.

G. SECOND POSITIVE TEST RESULT

- (1) If for a second time, the employee tests positive for drugs/alcohol under any testing policy, a minimum fifteen (15) working day suspension, without pay, will be initiated or continued. The employee will also be required as a condition of employment to be interviewed by a representative of EAP. The employee's failure to appear for the interview during

the fifteen (15) day suspension will be treated in the same manner as a positive test result under subsection 5.H of this program.

- (2) The employee will not be allowed to return to active employment until a negative test result is obtained from a Company-directed drug/alcohol test given no later than sixty (60) days from the date of receipt by the Company of the second positive test result. Employees who fail to make themselves available for retesting within this sixty (60) day period shall be deemed to have resigned employment with the Company.
- (3) After receipt, by the Company, of a negative drug/alcohol test result, the employee may return to active employment subject to the following conditions:
 - (a) Employee will be subject to eight (8) unannounced drug/alcohol tests during the twenty-four (24) months after employee's return to work.
 - (b) A third positive drug/alcohol test following return to work from the second positive test will result in termination.

H. THIRD POSITIVE TEST RESULT

If an employee tests positive a third time under this policy, the employee will be terminated.

CONFORMITY TO LAW

In the event this agreement is in violation of any applicable law, the parties will negotiate such changes as are necessary to conform this agreement to such law. Additionally, the parties agree that this Agreement shall not diminish the rights of individual employees under state and federal law.

This will be incorporated as a supplemental understanding to the Articles of Agreement.

APPENDIX B

McDonnell Aircraft Company

MCDONNELL DOUGLAS

ADMINISTRATIVE
BULLETIN

NO: 92-025

DATE: 10 Feb 92

MDC-St. Louis Drug and Alcohol Testing Program

All MCAIR and Associated Component Personnel

Reference: (a) Michael R. Becker's Administrative Bulletin 91-36, dated 09 September 1991

McDonnell Douglas continues to be vitally concerned with the health, safety, and well-being of all employees. It is recognized that illegal drug use and alcohol abuse can create problems for workers, their families, the workplace, and the community. Our goal is to make every effort to provide education and assistance to employees and their families, to encourage employees to receive treatment, as needed, and to foster and encourage an environment that is free of illegal drug use and alcohol abuse.

Reference (a) affirmed the Corporation's commitment to these goals, and we are now to move forward. MDC-St. Louis has developed a high quality program for Drug and Alcohol Testing. This program will meet the provisions of the Federal Government's Drug-Free Workplace Act of 1988 and the Department of Defense's Drug Free Workforce final regulations of 1991.

MCAIR management and local unions representing MCAIR Collective Bargaining Unit employees have successfully completed negotiations regarding the details of the program. Agreements have been reached with the International Association of Machinists Aerospace Workers (IAMAW), the International Brotherhood of Electrical Workers (IBEW), the United Plant Guard Workers of America (UPGWA), and the Teamster Firemen, Maintenance Men and Associated Industries (F&O). The MCAIR Teamster truck drivers implemented their drug testing program in December 1989. We can all be proud of everyone's hard work in developing this program and in making sure that it is the best in the industry.

MCAIR will begin its testing program for all St. Louis employees, both CBU and Free Personnel (FEP), on 06 April 1992. The testing program for sites outside of the St. Louis area will begin at a later date. The program will include random testing, as well as testing for these reasons - reasonable suspicion, following a serious accident, and upon return to duty after a positive drug or alcohol test. Our pre-employment program will remain the same.

Details regarding the MDC-St. Louis Drug and Alcohol Testing Program will be provided to all employees and supervisors within the next few weeks. MDC is committed to providing the highest quality drug-free workforce program that protects the privacy and interests of our employees. Furthermore, the Corporation encourages those who need counseling to contact the Employee Assistance Program (EAP) at 314/232-2984.

Capellupo
Capellupo

ADMINISTRATIVE BULLETIN

NO: 92-060

DATE: 03 April 1992

APPENDIX C

SUBJECT: MDC-ST. LOUIS DRUG AND ALCOHOL TESTING PROGRAM

TO: All MCAIR and Associated Component Personnel

Reference: (a) John Capellupo's Administrative Bulletin 92-025, dated 10 Feb 92

1. As announced in Reference (a), MCAIR will initiate a Drug and Alcohol Testing Program on 6 April 1992. The intent of this Program is to fully comply with the provisions of the Department of Defense's Drug Free Workforce Regulations as well as MDC's Drug and Alcohol Testing and Rehabilitation Program. This communication is to provide all MCAIR employees with additional details on the Program.

2. TYPE OF TESTS APPLICABLE TO ALL EMPLOYEES:

REASONABLE SUSPICION DRUG AND ALCOHOL TESTING will occur when a consensus is reached among a supervisor, a Guard Services supervisor and a Medical Services representative that an employee exhibits abnormal behavior for which there is no legitimate medical reason.

POST ACCIDENT DRUG AND ALCOHOL TESTING will occur when a worksite accident results in a death or serious bodily injury and management determines that an employee's actions or inactions may have contributed to the accident.

Employees tested under the Reasonable Suspicion or Post Accident testing will be suspended pending receipt of drug test results.

TYPE OF TESTS APPLICABLE TO EMPLOYEES IN SENSITIVE POSITIONS:

RANDOM DRUG AND ALCOHOL TESTING will occur when a computer based random generator produces a list of names selected from the random pool of employees in sensitive positions and those selected employees are notified to appear for testing at a medical facility.

EMPLOYEES IN SENSITIVE POSITIONS are those defined as such in the Department of Defense final rule on drug testing which includes all employees: who have secret or special access clearances, who design or manufacture the final products and who are in safety sensitive positions.

TESTING PROCEDURES AND DRUGS TESTED:

Employees will be tested for alcohol by breath analyzer or, upon request, by blood, with a blood alcohol content of .04 or greater resulting in a positive test result. Employees will be tested for marijuana, cocaine, opiates, phencyclidine and amphetamines by urine drug screen with a strict chain of custody being

- - MORE - -

maintained. All positive drug test results will be reviewed by the Medical Review Officer, who is a physician, with the employee prior to being confirmed positive. Employees can request the same sample be retested, at their cost, within 72 hours of being notified of a positive drug test result.

5. **DISCIPLINARY PROCEDURES:**

FIRST POSITIVE TEST RESULT

- o 10 working day suspension
[Exception: No suspension if employee tests between .04 - .059 % blood alcohol content]
- o an Alcohol/Drug Violation form (ADV) placed in employee's personnel file
- o a recommendation to visit the Employee Assistance Program (EAP)
- o appear for testing within 60 days of notification of positive test or are considered to have resigned
- o test negative to return to work
- o upon return 4 unannounced tests in 12 months

SECOND POSITIVE TEST RESULT

- o 15 working day suspension
- o an ADV placed in employee's personnel file
- o mandatory interview with EAP during suspension or terminated
- o appear for testing within 60 days of notification of positive test or are considered to have resigned
- o test negative to return to work
- o upon return 8 unannounced tests in 24 months


THIRD POSITIVE TEST RESULT

- o termination

employee who fails or refuses to test will be treated as though they tested positive for drugs. Any employee who adulterates a specimen will be terminated.

As Cap stated in his AB, MDC is committed to conducting the highest quality Drug and Alcohol Testing Program which protects the privacy and best interests of our employees.

For more information, call your Human Resources office or EAP.


 Charles E. Martin
 President - Human Resources
 Services

MAILCODE: 001 2101 MA M 219191
 MARTIN, CHARLES E.
 061/002/1/166

REASONABLE BELIEF REPORT**EMPLOYEES IMPAIRED DUE TO DRUGS/ALCOHOL**

<u>(Employee Name)</u>	<u>(Employee No.)</u>	<u>(Dept. No.)</u>	<u>(Bldg. No.)</u>
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MANIFESTATIONS OF ABNORMAL BEHAVIOR: (Please mark all boxes which apply)

SPEECH: <input type="checkbox"/> Thick <input type="checkbox"/> Slurred <input type="checkbox"/> Loud <input type="checkbox"/> Hesitant <input type="checkbox"/> Fast <input type="checkbox"/> Slow	EYES: <input type="checkbox"/> Red <input type="checkbox"/> Watery <input type="checkbox"/> Inflamed <input type="checkbox"/> Glassy <input type="checkbox"/> Heavy Eyelids <input type="checkbox"/> Fixed Pupils
BEATH: <input type="checkbox"/> Foul <input type="checkbox"/> Distinctive odor of intoxicant	BEHAVIOR: <input type="checkbox"/> Difficulty in performing ordinary tasks <input type="checkbox"/> Boisterous <input type="checkbox"/> Difficulty in recognizing individuals <input type="checkbox"/> Disorientation <input type="checkbox"/> Easily agitated <input type="checkbox"/> Inattentiveness <input type="checkbox"/> Unsafe practices <input type="checkbox"/> Uncontrollable laughing/crying
GAIT: <input type="checkbox"/> Unsteady <input type="checkbox"/> Deliberate/Over careful <input type="checkbox"/> Swaying <input type="checkbox"/> Weaving <input type="checkbox"/> Stooped	

REMARKS: _____

Date Witnessed)

(Witnessing Company Representative)

Time Witnessed)

LOOKING FOR HELP . . .

NATIONAL HOT LINE NUMBERS:

Alcohol and Drug Referral Hot Line (A.A.Info--see note)	1-800-252-6465
Child Help's--National Child Abuse Hot Line	1-800-422-4453
National A.I.D.S. Hot Line	1-800-342-2437
National Cocaine Hot Line	1-800-262-2463
National Hepatitis Hot Line	1-800-223-0179
National Runaway Switchboard	1-800-621-4000
National Sexually Transmitted Diseases Hot Line	1-800-227-8922
Suicide and Rape 24-Hour Emergency Services	1-800-333-4444

NATIONAL ASSISTANCE GROUPS:

Al-Anon	1-800-344-2666
Food and Drug Administration	(301) 443-1240
M.A.D.D.	1-800-438-6233
Narcotics Anonymous	(818) 780-3951
National Association for Children of Alcoholics	(301) 468-0985
National Association of Anorexia Nervosa and Associated Disorders	(708) 831-3438
National Council of Child Abuse and Family Violence	1-800-222-2000
National Federation of State High School Associations Target Programs	1-800-366-6667
National Institute of Drug Abuse--Drug and Treatment Information	1-800-662-4357
Parents Anonymous National Office	1-800-421-0353
S.A.D.D.	(508) 481-3568
Tough Love	1-800-333-1069

NOTE:

Alcoholics Anonymous (A.A.)--local chapter information and phone numbers can be obtained by calling the Alcohol and Drug Referral Hot Line.

Works Cited

- Alvi, Shahid, "A Survey of Corporate Responses", Canadian Business Review, 19 (Summer 1992): 14-16.
- Americans for a Drug Free America, Austin: American Crisis Publishing, Inc., 1988.
- Brookler, Rob, "Industry Standards in Workplace Drug Testing", Personnel Journal, 71 (April 1992): 128-132.
- Carraher, Jim, "Progress Report: Drug Tests", Security (October 1991): 40.
- Carraher, Jim, "Progress Report: Drug Tests", Security, 28 Number 10, October 1991, 40.
- Collection Procedures for Substance Abuse Testing, Triangle Park, N.C.: Compu-Chem Corporation, 1990.
- Corry, Tim, personal interview, President, UPGWA Local #250, c/o McDonnell Aircraft Company, Box 516, St. Louis, MO 63166-0516, (314) 232-2821.
- Coshan, Margaret, "An EAP Can Be Part of the Solution", Canadian Business Review, 19 (Summer 1991): 22-24.
- Coulson, Robert, Alcohol, Drugs and Arbitration, New York: American Arbitration Association, 1991.
- Cue Legal Alert, Washington: National Association of Manufacturers, 14: 1, January 1993.
- Dauer, Christopher, "Florida Launches Program to Cut WC Rates", National Underwriter, 95: 23, 24.
- Drug and Alcohol Testing: An AFL-CIO Guide, Washington: AFL-CIO, 1986.

Evans, David G., "A Dose of Drug Testing", Security Management, (May 1992): 48-53.

Federal Register, "Drug Free Workforce: Interim Rules", 53, #188, 9/28/88.

Federal Register, "Drug Free Workplace Act of 1988", 55, #102, 5/25/90.

Frieden, Joyce, "Drug Testing: Time Marches On", Business and Health, 9 (June 1992): 70-74.

Grzelka, Constance, "Employers Ponder Screening Workers for Drug Use", Health-Link, February 1987, pp. 14-15.

Guthrie, J.P., Olian J.D. "Drug and Alcohol Testing Programs: Do Firms Consider Their Operating Environment?", Human Resources Planning, 14 (1991): 221-232.

IBEW Pacts with Long Island Lighting Expand Random Drug Testing Program, Washington: Bureau of National Affairs Daily Labor Report, March 1992.

Individual Employment Rights Newsletter, Bureau of National Affairs, Inc., 6, #15, 1991.

Leroy, Michael H., "Discriminating Characteristics of Union Members' Attitudes Toward Drug Testing in the Workplace", Journal of Labor Research, 12 (Fall 1991): 453-466.

Lovelace, Luther, personal interview, Business Representative, IAMAW Lodge #837, 212 Utz Lane, Hazelwood, MO 63042, (314) 731-0603.

McDonnell - Douglas - St. Louis Drug/Alcohol Testing Program: Supervisor Manual, St. Louis: McDonnell - Douglas, 1992.

Memorandum of Understanding between MDC and the IAMAW, 8 January 1992.

National Treasury Employees Union, Et. Al., Petitioners vs. William Von Raab, Commissioner, United States

- Customer Service, 51 Federal Contracts Report 598, U.S. SUPCT No. 80-179, 1989.
- Nice, David C., "State Regulation of Employee Drug Testing Laboratories", Review of Public Personnel Administration, 11 (Summer 1991): 66-78.
- Oppliger, Kim, personal interview, Administrator, Drug and Alcohol Testing Program, McDonnell Aircraft Company, Box 516, St. Louis, MO 63166-0516, (314) 232-4307.
- Pagano, Joe, personal interview, Manager Medical Services, c/o McDonnell Aircraft Company, Box 516, St. Louis, MO 63166-0516, (314) 234-3873.
- Peat, Michael M.D., personal interview, Vice President Toxicology, Compu-Chem Laboratory, P.O. Box 12652, Research Triangle Park, N.C. (919) 248-6810, February 1992.
- Peterson, Donald J., Massengill, Douglas, "Employer Response to the Drug Free Workplace Act of 1988: A Preliminary Look", Labor Law Journal, 42, 3 (1991): 144-151.
- Skinner vs. Railway Labor Executive Association, 37 U.S. LW., 4,324 (1989).
- Steinberg, Barbara, "Foolproofing Drug Test Results", Business and Health, (December 1990): 44-50.
- Stroller, William H., "Sobering Up For Success", Security Management, 35 (September 1992): 127-128.
- Thompson, F.J., Riccucci, N.M. and Ban, C., "Drug Testing in the Federal Workplace: An Instrumental and Symbolic Assessment", Public Administration Review, 51 (November/December 1991): 515-525.
- Verespej, Michael A., "Drug Users - Not Testing - Angers Workers", Industry Week, (February 17, 1992): 33-34.

Wall, Patricia S., "Drug Testing in the Workplace: An Update", Journal of Applied Business Research, 8 (Spring 1992): 127-132.

Walsh, Michael J., "Drug Testing in the Private and Public Sectors", Bulletin of the New York Academy of Medicine, 65, 2 (1989): 166-172.