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Report to Congressional Requestors

August 2000

WORKER PROTECTION

OSHA Inspections at Establishments Experiencing Labor Unrest

GAO/HEHS-00-144

Contents

Abbreviations

BLS	Bureau of Labor Statistics
FMCS	Federal Mediation and Conciliation Service
IMIS	Integrated Management Information System
NLRB	National Labor Relations Board
OSHA	Occupational Safety and Health Administration

United States General Accounting Office
Washington, D.C. 20548

Health, Education, and
Human Services Division

B–284100

August 31, 2000

The Honorable Peter Hoekstra
Chairman, Subcommittee on Oversight and Investigations
Committee on Education and the Workforce
House of Representatives

The Honorable Cass Ballenger
Chairman, Subcommittee on Workforce Protections
Committee on Education and the Workforce
House of Representatives

The Department of Labor's Occupational Safety and Health Administration (OSHA) is responsible for ensuring healthful and safe working conditions in nearly all of the approximately 7 million workplaces nationwide. To carry out this responsibility, OSHA and its state partners conduct about 100,000 onsite inspections of employers each year, on a programmed or routine basis and in response to fatalities or catastrophes[1] or worker complaints alleging violations of safety and health laws. Employees have the right to notify OSHA of any potential safety and health violations, and OSHA[2] is required by law to investigate all valid[3] complaints about serious hazards from employees or their representatives. OSHA's long-standing policy also requires the investigation of all fatalities and catastrophes.

In recent years, however, employers and members of Congress have raised concerns that employees may file complaints with OSHA during periods of labor unrest solely to secure an inspection by OSHA as a way to pressure employers to meet employee demands. Others maintain that the conditions that lead to labor unrest may often be related to those that lead to potential health and safety violations. According to Labor officials, labor unrest and resulting breakdowns in labor-management relations can disrupt the

[1]A catastrophe is defined as the hospitalization of three or more workers due to an accident or illness caused by a workplace hazard.

[2]Our discussion of OSHA throughout this report includes the activities of OSHA and its state partners.

[3]Under the law, there must be "reasonable grounds to believe" that the violation or danger complained of exists. See 29 U.S.C. 657(f)(1).

internal resolution of health and safety problems and can cause workers and/or unions to turn to outside compliance authorities such as OSHA. Given the different viewpoints about OSHA's role and the timing of its inspections, you asked that we determine (1) the extent to which employers experiencing labor unrest are more likely to be inspected than employers not experiencing labor unrest, and (2) whether OSHA has policies for performing inspections during labor unrest and whether these policies are followed.

To address your request, we identified those establishments that experience labor unrest. There is no specific definition for labor unrest, although it includes situations such as work stoppages (strikes), allegations of unfair labor practices by employers or unions, campaigns to organize employees into a union, or efforts to remove an existing union from an establishment. We found only two databases that track specific events that may be related to labor unrest—the Federal Mediation and Conciliation Service (FMCS), which tracks work stoppages, and the National Labor Relations Board (NLRB), which investigates and resolves complaints about unfair labor practices and processes petitions requesting employee elections to determine union representation. Using these databases, we identified about 22,000 establishments each year from fiscal years 1994 through 1998 that experienced conditions involving labor unrest. We estimated the OSHA inspection rate for a random sample of these establishments and compared it with an OSHA inspection rate we developed for establishments not experiencing labor unrest.[4] When possible, we provided information on the characteristics of these inspections[5] (see app. I for a more detailed description of our scope and methodology). We performed our work between June 1999 and June 2000 in accordance with generally accepted government auditing standards.

[4]The inspection rate we developed for establishments without labor unrest was based on the universe of about 7 million establishments minus those establishments experiencing labor unrest. Although OSHA would be able to perform an inspection at any of these establishments if a valid complaint was filed or a fatality or catastrophe occurred, in actuality, some establishments within this 7 million are more likely than others to be inspected.

[5]Because our sample only included establishments with labor unrest, we do not have information on the characteristics of establishments without labor unrest. Our comparisons of inspection characteristics, such as reason for inspection, are between OSHA inspections for all establishments and inspections of establishments experiencing labor unrest, which comprise about 2 percent of all OSHA inspections.

Results in Brief

Establishments experiencing labor unrest are about 6.5 times more likely to be inspected by OSHA than establishments not experiencing labor unrest (8.6 percent inspected compared with about 1.3 percent) during fiscal years 1994 through 1998. The statutory requirement that OSHA investigate valid complaints and OSHA's policy to investigate a fatality or catastrophe may be related to the higher rate of inspection for establishments experiencing labor unrest. About 68 percent of the approximately 1,900 OSHA inspections conducted each year at establishments experiencing labor unrest resulted from complaints, fatalities, or catastrophes. In contrast, only about 27 percent of the approximately 100,000 total inspections OSHA conducted each year resulted from complaints, fatalities, or catastrophes. We found that about 76 percent of the establishments with labor unrest that were inspected by OSHA from fiscal year 1994 through fiscal year 1998 were unionized, as compared with about 24 percent of all establishments inspected by OSHA over this period. While it did not appear that unionized establishments were in general more likely to receive a complaint-based inspection than nonunionized establishments, our analysis did find that, among establishments experiencing labor unrest, there were a higher proportion of complaint-based inspections at unionized establishments than at nonunionized establishments.

OSHA's policy concerning inspections during labor unrest provides discretion for programmed inspections. OSHA may delay programmed inspections during periods of labor unrest, such as a strike, which would prevent OSHA inspectors from witnessing actual work operations. However, OSHA officials said that it has rarely delayed these inspections. Statutory requirements or OSHA's long-standing policy dictate that inspections resulting from valid complaints, fatalities, or catastrophes—which accounted for the majority of OSHA's inspections at establishments with labor unrest during fiscal years 1994 through 1998—must be performed, regardless of whether labor unrest exists.

Background

OSHA was created in 1970 to carry out the Occupational Safety and Health Act, which declared a national policy of ensuring safe and healthful working conditions for every man and woman. To carry out its mission, OSHA develops and enforces workplace safety and health standards, educates employers and employees about workplace hazards, and along with its state partners,[6] conducts inspections of employers to assess compliance with applicable safety and health standards. Of the approximately 100,000 inspections conducted each year from fiscal year 1994 through fiscal year 1998, about 65,000 were conducted by the 25 states and territories with approved OSHA programs. Four of these states—California, Michigan, Oregon, and Washington—conducted about half of the state inspections.

OSHA and its state partners conduct inspections for a variety of reasons. Programmed inspections are inspections that are planned at the beginning of each year and are generally targeted at industries and particular employers with high injury or illness rates. During fiscal years 1994 through 1998, more than half of OSHA's inspections were programmed. Sixty percent of the remaining inspections resulted from valid complaints (which OSHA is required by law to investigate) and fatalities and catastrophes that occurred in the workplace (which OSHA is required by policy to investigate).

Although OSHA has the authority to inspect most types of establishments—from large manufacturing plants to small retail stores—some limitations govern when an inspection can be conducted. For example, OSHA does not have the authority to conduct any type of inspection at a farm that employs 10 or fewer employees and that does not have a temporary labor camp. For an establishment employing 10 or fewer employees in low hazard industries, OSHA does not have the authority to conduct a programmed safety inspection but can conduct other types of inspections.[7] In addition, although OSHA generally can conduct inspections in any industry, it tends to focus its inspection resources on those industries that present the greatest workplace hazards to workers. For example, in fiscal years 1994 through 1998, OSHA conducted about 44

[6]States are allowed to operate their own safety and health programs as long as OSHA determines that they are at least as rigorous as federal OSHA programs.

[7]These limitations on OSHA's authority have appeared regularly in OSHA's yearly appropriation.

percent of its inspections in the construction industry, which has the highest death rate of any industry. OSHA conducted about 26 percent of its inspections in manufacturing, 11 percent in the service industry, 8 percent in wholesale/retail trade, and the remaining 11 percent in other industries.

The term "labor unrest" is commonly used to indicate some type of dissatisfaction among workers, but there is no consensus about the ways in which labor unrest develops or the forms it takes. However, it is clear that there is some relationship between labor unrest and employees' dissatisfaction with wages and working conditions. For example, a strike, which we are using as an example of labor unrest, may result, at least in part, from unsafe working conditions. On the other hand, a strike also might lead to unsafe working conditions if an employer calls in replacement workers who are less trained and thus may be more susceptible to injury. Allegations of unfair labor practices, another example of labor unrest, can be filed by employees if the employer subjects them to unsafe working conditions, or by an employer if workers conduct a work slowdown, which also could be in response to working conditions. As a result, conditions that lead to labor unrest and those that lead to safety and health violations may be related.

OSHA Inspection Rate Higher at Establishments With Labor Unrest

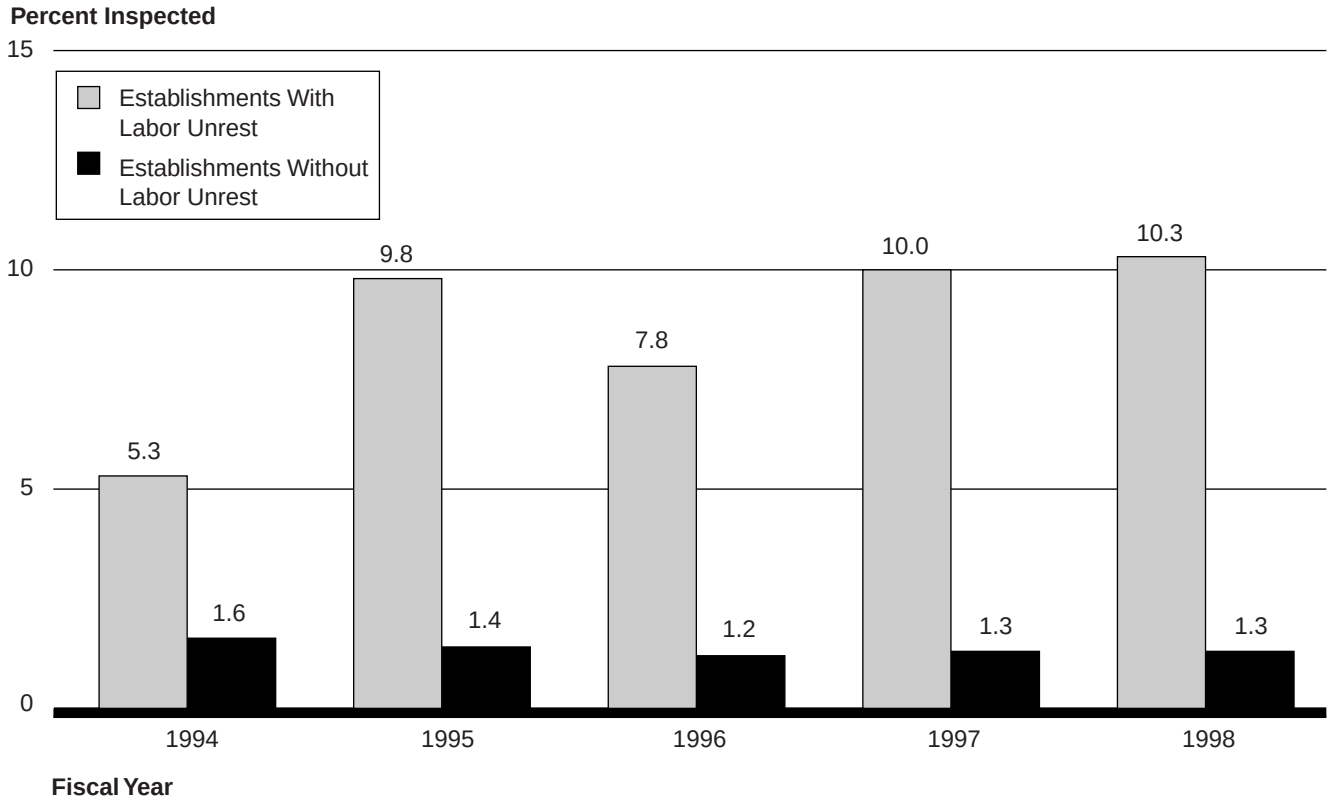
The OSHA inspection rate at establishments that experienced labor unrest during fiscal years 1994 through 1998 was 6.5 times higher (8.6 percent) than at establishments that did not experience such unrest (1.3 percent). This may be related to OSHA's statutory requirement to investigate valid complaints and union employees' awareness of their right to file complaints with OSHA, in addition to its policy to investigate fatalities and catastrophes.[8]

[8]The information we present concerning inspection characteristics illustrates the association between labor unrest and OSHA inspections; it does not demonstrate a causal relationship between the two. There are numerous factors that may affect inspection rates and labor unrest that are outside the scope of this review.

OSHA Inspections at Establishments With and Without Labor Unrest

During fiscal years 1994 through 1998, OSHA inspected, on average, about 8.6 percent of the approximately 22,000 establishments each year that experienced labor unrest (about 1,900 inspections a year). In contrast, OSHA inspected, on average, about 1.3 percent of the approximately 7 million establishments[9] each year that did not experience labor unrest (about 93,000 inspections each year) (see fig. 1).

Figure 1: Inspection Rates for Establishments With and Without Labor Unrest, Fiscal Years 1994–98



[9]As pointed out by OSHA officials, OSHA's policy of targeting high-hazard industries means that some establishments within this 7 million are more likely than others to be inspected. We recognize that if we were to reduce that figure to include only those establishments OSHA officials say are most likely to be inspected, this would increase the inspection rate for establishments not experiencing labor unrest. However, OSHA has the authority inspect any of these establishments based on a complaint.

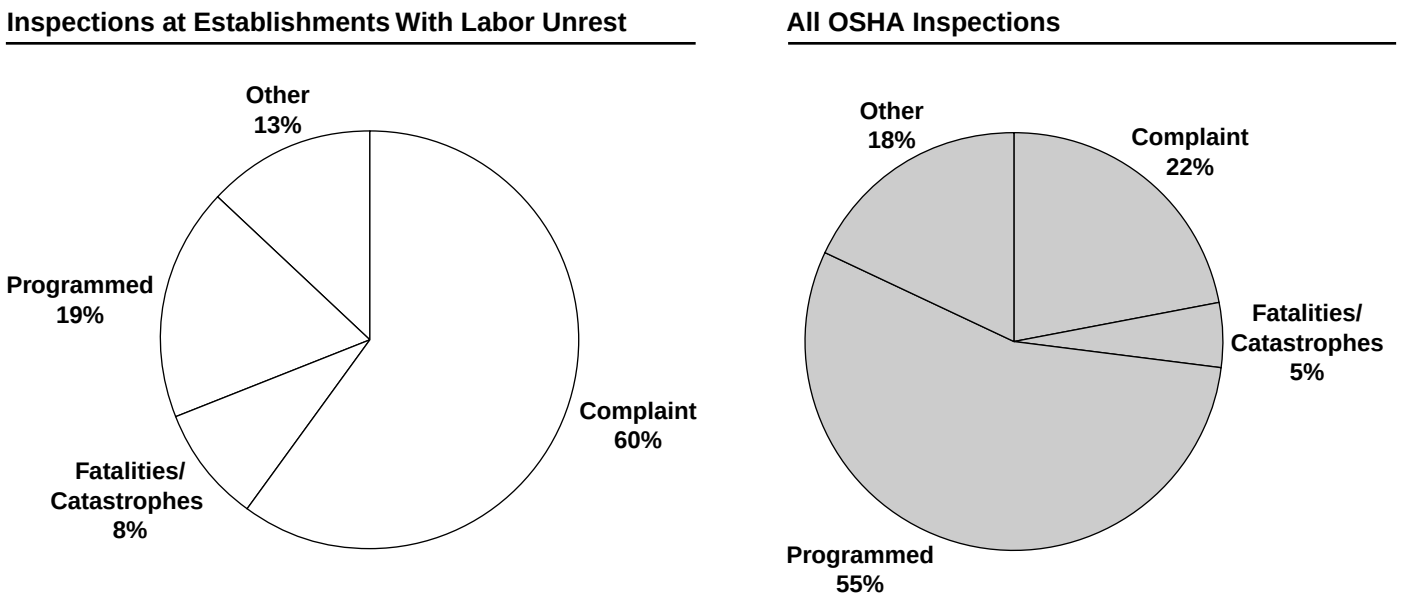
The percentage of establishments with labor unrest that were inspected during fiscal years 1994 through 1998 ranged from about 5 percent to about 10 percent, while the percentage of establishments without labor unrest that were inspected ranged from about 1.2 percent to about 1.6 percent.[10]

Statutory Requirement and OSHA Policy May Be Associated With Higher Inspection Rate for Establishments With Labor Unrest

The statutory requirement that OSHA investigate valid complaints and its long-standing policy to investigate fatalities and catastrophes may help to explain the higher rate of inspection for establishments with labor unrest. About 68 percent of the inspections at establishments with labor unrest were required because a complaint was filed (60 percent) or a fatality or catastrophe occurred (8 percent). In contrast, only 27 percent of all inspections OSHA conducted during this period were the result of a complaint (22 percent) or a fatality or catastrophe (5 percent) (see fig. 2). Thus, OSHA inspections at establishments experiencing labor unrest were 2.5 times more likely to result from a complaint, fatality, or catastrophe than OSHA inspections in general.

[10]Because the yearly estimates of the percentage of establishments with labor unrest that were inspected are based on samples, there is a sampling error of roughly plus or minus 3 percentage points surrounding each of those estimates at the 95 percent confidence level. The difference between the rate of inspection among establishments experiencing labor unrest and the rate of inspections among those without unrest is statistically significant at the .05 level for each fiscal year.

Figure 2: Reasons for Inspections at Establishments With Labor Unrest and for All OSHA Inspections, Fiscal Years 1994–98



Because of OSHA's requirements to investigate valid complaints and fatalities and catastrophes, an OSHA inspection occurring at an establishment with labor unrest may be wholly separate from any ongoing labor unrest or may in fact be related to the labor unrest. For example, of the four establishments we visited in California that had labor unrest and were inspected by OSHA during periods of labor unrest, two of the inspections were unrelated to the labor unrest that was ongoing at both sites. One inspection resulted because an employee broke his ankle[11]; the other inspection resulted when a parent filed a complaint citing the possible presence of asbestos during the renovation of an educational facility. For the other two inspections, however, there were indications that the filing of the complaint with OSHA may have been a result of, or at least related to, the labor unrest ongoing at the time. In one case, union officials acknowledged that the OSHA complaint the union filed was related to labor unrest, and in the second case, the employer believed that a complaint filed

[11]California OSHA's policy is to respond to serious work-related accidents in the same manner as federal OSHA responds to fatalities and catastrophes. In the case of nonserious work-related accidents, its inspection policy is discretionary.

by a union employee was in response to efforts to remove the union from the workplace.

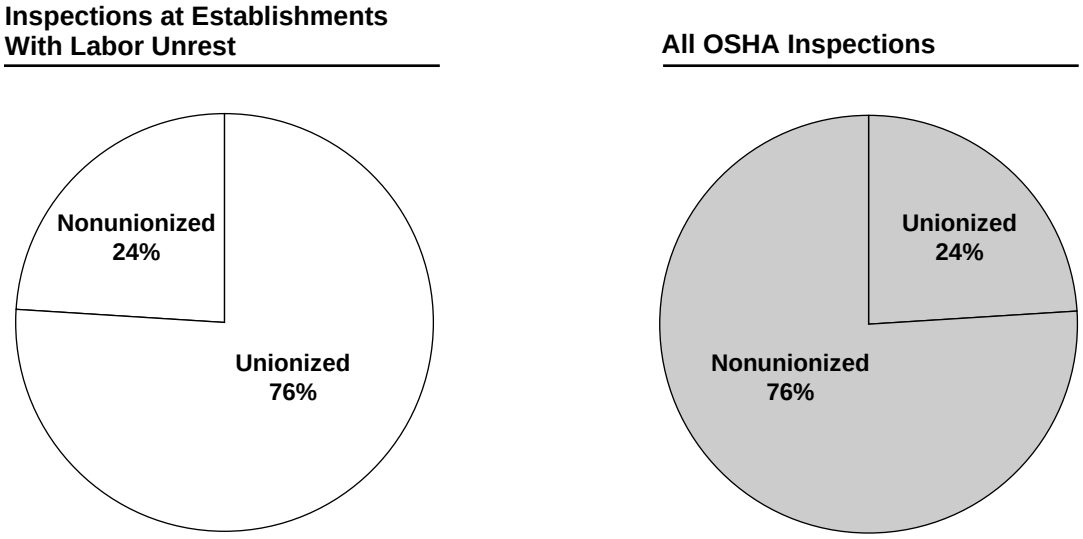
Despite the greater representation of complaint-driven inspections for establishments with labor unrest, inspections at establishments with labor unrest were just as likely to result in at least one violation or a violation classified as "serious" as were all inspections conducted by OSHA. For example, for both types of inspections during fiscal years 1994 through 1998, about 62 percent of all inspections resulted in at least one violation and about 90 percent of those had 10 or fewer violations. Similarly, when there were violations cited for establishments with labor unrest, about 51 percent of the violations were classified as "serious," as opposed to about 53 percent for all OSHA inspections.

Higher Representation of Unionized Establishments in Inspections of Establishments With Labor Unrest

Approximately 76 percent of the OSHA inspections at establishments experiencing labor unrest during fiscal years 1994 through 1998 were conducted at unionized establishments. In comparison, about 24 percent of all OSHA inspections during this time were conducted at unionized establishments (see fig. 3).[12]

[12]Information is not available on the percentage of establishments nationwide that are unionized. For comparison, however, about 10 percent of all private workers were represented by a union in 1998, ranging from 27 percent in the transportation and public utilities industry to about 2 percent in the agriculture industry.

Figure 3: Inspections of Unionized and Nonunionized Establishments, With Labor Unrest and for All OSHA Inspections, Fiscal Years 1994–98



According to OSHA officials, the higher rate of inspections for unionized establishments experiencing labor unrest may in large part result from OSHA's targeting procedures. They said that OSHA concentrates its inspections in high-risk and relatively more unionized industry sectors, which include construction, manufacturing, and oil/gas extraction. According to OSHA officials, the greater dangers in these sectors and the greater presence of unionization may also be related to a higher degree of labor unrest.

Regarding complaint-driven inspections at establishments with labor unrest, we found that 63 percent of those inspections at unionized establishments resulted from complaints compared with about 52 percent for nonunionized establishments. However, in general, OSHA inspections resulting from complaints did not vary significantly between unionized and nonunionized establishments, as the percentage of complaint-driven inspections at unionized establishments was only slightly higher than for nonunionized establishments (26 versus 21 percent, respectively). This indicates that during periods of labor unrest, complaint-based inspections are somewhat more likely at unionized establishments than at nonunionized establishments.

Union, NLRB, and OSHA officials, as well as employer representatives, said that unionized employees are in general more aware of their worker protection rights and may be more likely to file complaints with regulatory agencies, especially during periods of labor unrest. An OSHA official said that unions are also more aware of the role of regulatory agencies, both in terms of protecting workers' rights and as a bargaining tool during contract negotiations. Furthermore, according to a researcher well known for work in this area, establishments with labor unrest are probably predominately unionized because these employees are more likely to speak out and file complaints with agencies such as OSHA in times of unrest.[13]

OSHA Policy Allows Inspections at Establishments Experiencing Labor Unrest

Federal and state OSHA policies allow programmed inspections to be delayed if a condition such as a strike is significant enough to prohibit OSHA inspectors from witnessing normal work operations. However, according to federal and most state OSHA officials, this has rarely occurred. Two states highlighted conditions that would affect the decision to conduct a programmed inspection. Kentucky OSHA officials stated that programmed inspections would not be conducted if a picket line existed. The official said that several reasons existed for this policy, including concern for the safety of state inspectors and a desire not to get involved in employer/employee controversies. Vermont OSHA officials said that the state would postpone a programmed inspection if the company was on strike before the start of the inspection, and if a strike began while the OSHA inspectors were on site, OSHA inspectors would leave the premises and continue the inspection after the strike was finished.

However, both federal and state OSHA inspection policies follow the statutory requirement that OSHA investigate valid complaints, and state policies follow federal policy regarding the investigation of fatalities and catastrophes. Under these policies, federal and state OSHA officials stated that inspections resulting from complaints, fatalities, and catastrophes are to be conducted even during periods of labor unrest. They also said that, as discussed above, these types of inspections accounted for the majority of those OSHA performed at establishments with labor unrest from fiscal years 1994 through 1998.

[13]David Weil, "Building Safety: The Role of Construction Unions in the Enforcement of OSHA," *Journal of Labor Research*, Vol. 13, No. 1 (1992), and "Enforcing OSHA: The Role of Labor Union," *Industrial Relations*, Vol. 30, No. 1 (1991).

Agency Comments

In commenting on a draft of this report, Labor said that it recognized the limitations in the data available to address the objectives of the review. It believed that, because of these limitations, we could not conclude that labor unrest led to an increased likelihood of OSHA inspections. While the report estimates the percentage of establishments with labor unrest that were inspected by OSHA, we do not draw any conclusions about a specific relationship between the existence of labor unrest and OSHA inspections. In fact, the report discusses a variety other factors that affect an establishment's likelihood of inspection by OSHA. Labor's comments are reproduced in app. II. Other technical comments provided by Labor were incorporated as appropriate.

We are sending copies of this report to the Honorable Alexis M. Herman, Secretary of Labor; the Honorable Leonard R. Page, General Counsel of the National Labor Relations Board; the Honorable C. Richard Barnes, Director of the Federal Mediation and Conciliation Service; relevant congressional committees; and others who are interested. Copies will be made available to others on request.

If you or your staffs have any questions concerning this report, please call me at (202) 512-7215. Other GAO contacts and staff acknowledgments are listed in app. III.

Marnie S. Shaul
Associate Director
Education, Workforce, and
Income Security Issues

Objectives, Scope, and Methodology

We were asked to determine (1) the extent to which employers experiencing labor unrest are more likely to be inspected than employers not experiencing labor unrest, and (2) whether the Occupational Safety and Health Administration (OSHA) has policies for performing inspections during labor unrest and whether these policies are being followed. To determine whether employers experiencing labor unrest are more likely to be inspected than employers not experiencing labor unrest, we (1) identified the universe of establishments that experienced labor unrest and determined how many of these were inspected by OSHA and (2) determined how many of the establishments that did not experience labor unrest were inspected by OSHA. To identify policies for conducting inspections during labor unrest, we obtained OSHA policies and interviewed federal OSHA officials. We also obtained inspection policies from each of the 25 states and territories that conduct their own safety and health programs.

We also interviewed officials from the National Labor Relations Board (NLRB); the Federal Mediation and Conciliation Service (FMCS); the Bureau of Labor Statistics (BLS); representatives of the National Association of Manufacturers, the Labor Policy Association, the AFL-CIO, and a California longshoremen union; and David Weil, an associate professor of economics from Boston University known for his research on occupational safety and health. In addition, we visited four California employers that had experienced various forms of labor unrest and had been inspected by OSHA during a period of labor unrest to obtain information about the inspections.

OSHA Inspections at Establishments Experiencing Labor Unrest

Labor unrest is a vague term with many connotations and no precise definition. To perform our analysis, we first identified the various documented forms of unrest. Accordingly, we obtained information from the only two sources that systematically collect and maintain information on events that may be related to labor unrest—NLRB and FMCS. Using these sources, we were able to identify establishments that experienced (1) charges of unfair labor practices, (2) union campaigns to organize employees, (3) efforts to decertify (remove) a union, or (4) work stoppages (strikes). For purposes of this report, we define labor unrest as the occurrence of one or more of these four conditions.

From NLRB we obtained a listing of all cases on file during fiscal years 1994 through 1998 that involved charges of unfair labor practices (either against an employer or against a union), union efforts to organize employees, and

efforts to have a union decertified as a bargaining representative of employees. This accounted for approximately 40,000 cases each year. From FMCS we obtained a listing of all establishments that had a work stoppage during fiscal years 1994 through 1998. This resulted in about 400 cases each year. These establishments may have had multiple cases on file with NLRB during a fiscal year and may also have had a work stoppage according to FMCS. As a result, we had to review manually each case in the two agencies' databases to obtain an unduplicated count of establishments for each fiscal year (see table 1).

Table 1: Number of Establishments Experiencing Labor Unrest, by Source, Fiscal Years 1994–98

	1994	1995	1996	1997	1998	Combined
Cases listed						
NLRB	41,415	40,444	39,366	40,627	37,647	199,499
FMCS	477	388	375	386	430	2,056
Total	41,892	40,832	39,741	41,013	38,077	201,555
Unduplicated count						
NLRB	21,811	21,927	20,724	21,978	20,499	106,939
FMCS	275	211	208	224	222	1,140
Total	**22,086**	**22,138**	**20,932**	**22,202**	**20,721**	**108,079**

Once we had an unduplicated list of establishments that experienced labor unrest, we selected a random sample of 400 establishments from each of the 5 fiscal years. Our sampling procedure permitted us to generalize the sample results to the entire universe of establishments experiencing labor unrest.

After we selected our sample establishments, we compared them with OSHA's Integrated Management Information System (IMIS), which tracks OSHA inspection activity, to determine whether an inspection was conducted at a particular establishment. Because labor unrest can exist over a period of time, we decided to include any OSHA inspections conducted at the sample establishments 6 months before the earliest date on record with NLRB or FMCS and 6 months after the latest date. For example, if NLRB recorded charges of unfair labor practices filed against an employer on November 9, 1997, and again on September 15, 1998, then we counted all OSHA inspections at this establishment between May 9, 1997, and March 15, 1999, as a match. Inspections before May 9, 1997, and

after March 15, 1998, would be considered outside the period of labor unrest. Using this methodology, we determined that OSHA inspected 172 of the 2,000 sample establishments. We then projected these results to the universe of establishments experiencing labor unrest. As shown in table 2, we estimated that, of the approximately 108,000 establishments with labor unrest during this period, about 9,300 were inspected by OSHA (see table 2).

Table 2: Estimated Number of Establishments With Labor Unrest Inspected by OSHA, Fiscal Years 1994–98

	1994	1995	1996	1997	1998	Combined
Sample size	400	400	400	400	400	2,000
Number inspected	21	39	31	40	41	172
Percentage inspected[a]	5.3	9.8	7.8	10.0	10.3	8.6
Number of establishments with labor unrest	22,086	22,138	20,932	22,202	20,721	108,079
Estimated number inspected[a]	**1,171**	**2,170**	**1,633**	**2,220**	**2,134**	**9,328**

[a]Because the yearly estimates of the percentage of establishments with labor unrest that were inspected are based on samples, there is a sampling error of roughly plus or minus 3 percentage points for each of those estimates at the 95 percent confidence level. Thus, for example, there is a 95 percent chance that in fiscal year 1998 the number of establishments with labor unrest that were inspected was between 1,513 (7.3 percent) and 2,756 (13.3 percent). The difference between the rate of inspection among establishments experiencing labor unrest shown in table 2 and the rate of inspections among those without unrest shown in table 5 is statistically significant at the .05 level for each fiscal year.

OSHA Inspections at Establishments Without Labor Unrest

According to BLS, approximately 7 million establishments existed nationwide each year from 1994 through 1998. We had already determined, using the NLRB and FMCS database, that there were approximately 22,000 establishments each year that experienced labor unrest. We then subtracted this number from the total establishments identified by BLS (see table 3) to calculate the total number of establishments without labor unrest.

Table 3: Number of Establishments With and Without Labor Unrest, Fiscal Years 1994–98

	1994	1995	1996	1997	1998	Combined
Total establishments nationwide	6,620,651	6,761,169	7,008,812	7,057,794	7,354,744	34,803,170
Number of establishments with labor unrest	22,086	22,138	20,932	22,202	20,721	108,079
Number of establishments without labor unrest	**6,598,565**	**6,739,031**	**6,987,880**	**7,035,592**	**7,334,023**	**34,695,091**

We then determined the percentage of establishments without labor unrest that were inspected by OSHA. We first converted the number of inspections conducted on a yearly basis (about 100,000) to establishments inspected, as OSHA may conduct numerous inspections at a single establishment. To do so, we identified the number of different addresses at which OSHA conducted inspections during fiscal years 1994 through 1998, the method OSHA officials suggested to approximate unique establishments inspected. We had already identified the number of inspections OSHA conducted at establishments with labor unrest, so we subtracted this number from the estimated number of establishments at which OSHA conducted inspections (see table 4).

Table 4: Number of OSHA Inspections at Establishments With and Without Labor Unrest, Fiscal Years 1994–98

	1994	1995	1996	1997	1998	Combined
With unique addresses	106,076	93,369	84,165	94,462	94,106	472,178
With labor unrest[a]	1,171	2,170	1,633	2,220	2,134	9,328
Without labor unrest	104,905	91,199	82,532	92,242	91,972	462,850

[a]See note under table 2.

We then divided the number of OSHA inspections at establishments without labor unrest for each fiscal year by the number of establishments

nationwide that did not have any labor unrest to determine the proportion of those establishments that were inspected by OSHA (see table 5).

Table 5: Percentage of Establishments Without Labor Unrest Inspected by OSHA, Fiscal Years 1994–98

	1994	1995	1996	1997	1998	Combined
Number of establishments without labor unrest	6,598,565	6,739,031	6,987,880	7,035,592	7,334,023	34,695,091
OSHA inspections at establishments without labor unrest	104,905	91,199	82,532	92,242	91,972	462,850
Percentage of establishments without labor unrest inspected by OSHA[a]	1.6	1.4	1.2	1.3	1.3	1.3

[a]See note under table 2.

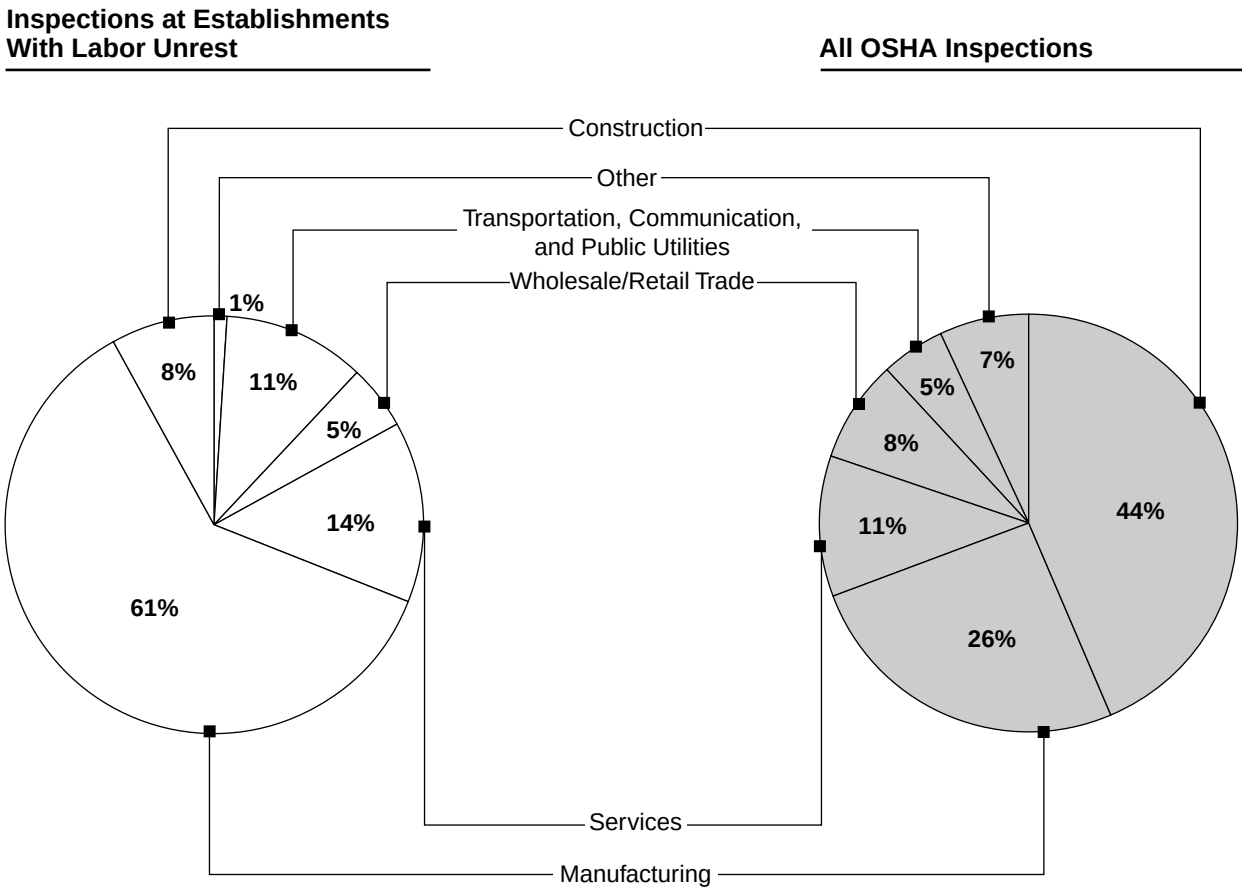
Comparison of Inspection Characteristics

Because we used a sampling procedure to estimate the OSHA inspection rate at establishments experiencing labor unrest, we cannot identify whether a particular establishment in OSHA's database that was not in our sample experienced labor unrest. Thus, we could not obtain inspection characteristics for those OSHA inspections conducted at establishments without labor unrest. As a result, we can compare inspection characteristics for those establishments that appeared in our sample only against all OSHA inspections. Inspections at establishments experiencing labor unrest comprise only about 2 percent of all OSHA inspections. The characteristics we compared include:

- reason for inspection,
- union status of the establishment inspected,
- size of the establishment inspected, and
- industry designation of the inspected establishment.

Information on the first two variables is contained in the report. We found that IMIS data on establishment size were of questionable reliability, so we did not present information on this variable. For the last variable, industry designation, we found that differences existed between the percentage of various industries inspected by OSHA in general and during times of labor unrest. We found that although OSHA was in general more likely to inspect construction establishments, for establishments with labor unrest, OSHA was more likely to inspect manufacturing establishments (see fig. 4).

Figure 4: Percentage of Inspections by Industry for All OSHA Inspections and Inspections at Establishments With Labor Unrest, Fiscal Years 1994–98



A number of different factors could have contributed to this. For example, NLRB's database, the primary database we used to identify establishments experiencing labor unrest, might contain primarily manufacturing establishments. However, NLRB officials would not confirm whether manufacturing establishments would be more apt to be in its database than any other industry. Because we were unable to obtain an explanation for the differences in inspection rates, we present this data for informational purposes only.

Comments From the Department of Labor

U.S. Department of Labor

Occupational Safety and Health Administration
Washington, D.C. 20210

Reply to the Attention of:

Marnie S. Shaul
Associate Director
Education, Workforce, and
Income Security Issues
United States General Accounting Office
441 G Street, NW #5928
Washington, D.C. 20548

AUG 9 2000

Dear Ms. Shaul:

Thank you for providing the Department of Labor the opportunity to comment on your study, *OSHA Inspections at Establishments Experiencing Labor Unrest.* We recognize that there are serious limitations in the data available to you and that you were constrained by the questions posed to you by your Congressional requesters. Nevertheless, we believe that there are shortcomings in the study's methodology that undermine the significance of its major conclusion and limit its usefulness.

First, the study does not answer the key question, which the Report identifies on page one: whether, and to what extent, employees "file complaints with OSHA during periods of labor unrest solely to secure an inspection by OSHA as a way to pressure employers to meet employee demands." The best way to answer this question would be to examine the results of 'unrest' complaint inspections: if they did not find serious safety and health violations, it would tend to suggest harassment, but if serious violations were found, it would show that employees were not abusing their right to file complaints.

We have no reason to believe that OSHA's complaint process is being abused. The only evidence GAO adduced on this issue tends to disprove the harassment hypothesis: the study reports that, "inspections at establishments with labor unrest were no more or less likely to result in a violation or a more serious violation than for all inspections conducted by OSHA" and that when violations were cited they were somewhat more likely to be classified as serious in the "unrest" inspections.

Second, the study significantly inflates the correlation between "unrest" and the likelihood that an establishment will have an inspection. The great majority of inspections are based on targeting programs that are unaffected by the existence of labor unrest and, as GAO recognizes, are not influenced by employee complaints. The most powerful determinants of the likelihood of inspection are the employers' size and industry, not whether they are experiencing labor unrest (which, according to your findings, coincides with only two percent of all OSHA inspections). As the result of OSHA's programmed inspection procedures, large establishments are far more likely to be inspected than small ones. And the most hazardous industries, such as construction

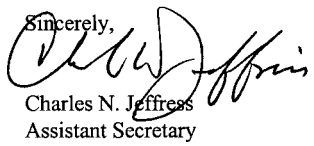
and manufacturing, are far more frequently inspected than others, such as finance and trade, where the risk of a serious occupational injury or death is low. Even within industries, there can be major differences in inspection rates. For example, residential construction, where crews are generally small and projects are of short duration, is rarely inspected, as compared with commercial, heavy and highway construction.

Thus, the only meaningful comparison in an analysis of inspection rates to determine the influence of "labor unrest" is between the rate of complaint inspections among establishments experiencing "unrest" and the rate of complaint inspections among establishments without signs of unrest. GAO found that an establishment "with labor unrest" was 2.5 times more likely than the average establishment to receive an inspection based on a complaint. This is a much more valid indicator of the influence of "labor unrest" on complaints to OSHA than the figure (6.5 times) GAO chose to highlight, which was based on a comparison that included inspections that had nothing to do with employee complaints. Of course, nothing in the report suggests that any discretionary decision by OSHA accounts for the greater likelihood of an inspection. And, again, there is no evidence in the report that the higher inspection likelihood is unwarranted in terms of safety and health considerations.

Finally, we do not believe that it is possible to draw any valid, general conclusions about the motives of employees who file complaints based on a sample size of four cases. The two examples GAO cites where there were "indications" that the employee complaint was related to 'labor unrest' cannot be said to be representative, and in one case, the only "indication" of the employee's motive was the employer's unsubstantiated belief. Nor does the report indicate whether the complaints in either case led to the discovery of serious safety and health problems.

Once again, I want to thank you for permitting us to review this study and for your consideration of our comments.

Sincerely,



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