Statement of the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW
Submitted to the
Committee on Health, Education, Labor and Pensions, of the U.S. Senate
Subcommittee on Employment and Workplace Safety
Hearing on April 29, 2014

Chairman Casey, Ranking Member Isakson, Senators:

Thank you for the opportunity to testify before you today. I am Ross Baize, an employee of Caterpillar in Peoria, IL and a UAW Safety Committeeman. Yesterday we paused, on Workers' Memorial Day, to highlight the preventable nature of many workplace deaths, injuries and illnesses. Today, we continue the fight for improvements in workplace safety. So I welcome the opportunity to share my own personal experience as a worker who attempted to use Section 11(c) of the Occupational Safety and Health Act of 1970 to protect myself from employer retaliation.

As a 7 year employee of Caterpillar, I am proud of the products we manufacture and I can say with certainty that I personally want the company and workforce to succeed and the UAW International Union wants the same thing. I am not here to bash Caterpillar or its reputation. I am here to simply share my experience and describe some of the work that I so proudly do every day.

The work tasks involved in the case I will be describing are part of the Full Link Heat Treat process. A link is a part of the caterpillar track. This part weighs between 15 and 80 pounds. In order to make the links more durable, they are heat treated. The process starts with a large hopper filled with links. The hopper vibrates and shakes the links on to an orientation track. As the link travels down the track it is controlled by pneumatic stops or large air powered gates. At the stops, electric sensors measure the link position and the link is reoriented. Often times the links get jammed on the track. Also, debris builds up on the sensors and we have to clear the debris. Workers have been injured doing these tasks.

One of my co-workers was reaching from the steps next to the orientation track to unjam the link so the parts could continue to the heat treat oven. When he unjammed the link, the electric eye sensor automatically initiated a pneumatic gate that came down and broke his hand. He received two and a half months suspension without pay.

Another co-worker was injured when inspecting the cause of an orientation track jam. This worker had 38 years of seniority at Caterpillar and had never received any form of disciplinary action. He had a nearly perfect attendance record.

He was clearing debris from the front of a sensor to get the orientation track running. He pulled out the debris from inside the track when a stop came down, striking his left hand. He reported his injury to the supervisor on duty and was taken to seek medical attention. He was suspended for two and a half months without pay on the grounds that

he had not shut off the air pressure valve before walking up to the platform. He had, however, followed the employer's standard work practice for dealing with machine jams by turning the control switch from AUTO to MANUAL on the main control panel. He had not been issued a lock to prevent the machine from hurting him while clearing a jam. He was the second employee in six months who was injured trying to clear a jam in this machine.

In the first week of 2011, an OSHA 11(c) Whistleblower Complaint was filed on his behalf as well as a complaint about the lack of procedures, training, or equipment for Lockout/Tagout in the Full Link Heat Treat area. OSHA issued two repeat citations and one serious citation to Caterpillar. The company contested the citation and the union filed a request for party status. The company eventually agreed to accept a serious citation for a violation of OSHA's machine guarding rule and paid a fine of $7,000, which is the maximum allowed by the OSHA statute for such a serious violation.

In accordance with the collective bargaining agreement between the UAW and Caterpillar, all efforts are made to reach an in-house settlement before involving a federal agency. Unfortunately, in these cases, those efforts failed.

In our view, the standard operating procedure for unjamming was a violation of the Lockout/Tagout Standard; we brought this before management using the grievance procedure before going to OSHA. On March 30, 2011, I informed management that I wished to move the Lockout/Tagout complaint to the Final Step of the Grievance Procedure as per part 8.3 of our collective bargaining agreement. I had my Committeeman present when I made the request. In response, management asked my Committeeman to leave the room. They then informed me that my job had been eliminated.

My status was changed from Labor Grade 4 to a Labor Grade 1 job, reducing my pay by thousands of dollars. I was at the lower pay grade for several weeks but thankfully, because I am a member of the union with the seniority and qualifications. I was awarded a bid to a different job back up at Labor Grade 4 pay.

The actual move was carried out on April 4, 2011. Originally, my job was the only one affected by the reduction in force (RIF), even though there were junior employees kept on the job. Upon filing a grievance regarding RIF procedures used, the junior employees were subsequently moved back to the appropriate job classification, per RIF procedures. I successfully bid out of that particular division and vowed to start over.

An OSHA 11(c) Whistleblower Complaint was filed on my behalf on May 3, 2011. It was dismissed on procedural grounds. The stated reason for the dismissal was timeliness of the complaint. I believe that since the adverse action in my case did not take place until April 4, 2011, I was within the 30-day statutory time limit set forth in the OSH Act Again, I was told on March 30, 2011 that my job would be eliminated immediately after I put a safety complaint regarding Lockout/Tagout into the Final Step of the Grievance Procedure. The actual Adverse Action (job elimination and resultant reduction in pay)

did not take place until April 4, 2011, when I was placed on the new job and my pay was reduced. Often job moves are delayed by weeks or months so I filed my complaint on May 3, 2011; 29 days after the adverse action took place.

The 30 day filing period for retaliation claims under Section 11(c) is one of the shortest anti-retaliation limitations periods in employment law. It is incredibly difficult to do your job, perform your family obligations, perform your union obligations to your co-workers and build a retaliation case to present to OSHA within a 30 day period of time. This short time frame is made even more draconian if it is interpreted rigidly, as it was in my case.

In my case, while I was told my job was being eliminated, I knew that I had "bumping rights" to other jobs. It was impossible on March 30th to know how my bumping rights would play out and whether I would lose my shift or lose income due to the job elimination. If I did not lose my shift or suffer a reduction in salary, it could be argued that I did not suffer an adverse action under the OSH Act. It was therefore entirely proper to begin the running of the 30 day statute of limitations when the actual adverse action could be accurately determined.

I would add that during the time I was at the lower pay, I felt the need to work as much overtime as I could in order to provide for my wife and child who was not even nine months old at the time. I felt like I had to prepare for the worst case scenario that I could be stuck in that job for a lengthy period. This incident caused me and my family to have to scale back on certain amenities that we were previously able to afford. It also took its toll on my wife who was dealing with the stress that comes along with being a new mother and this was the last thing she needed to worry about.

At the end of the day, I never attempted private action on this case. I learned the day that I called in my complaint that it was probably going to be deemed untimely.

Under the OSHA law, I have no legal right to pursue my case on my own if the Department of Labor chooses not to take it up. Other whistleblower statutes provide for more time to file a complaint and the ability pursue a case even if the Department chooses not to. The OSHA law must be strengthened to protect job safety whistleblowers.

It took a little time, but I have made myself a home in the building that I moved to. I have earned the respect of many management and hourly employees in my current job.

In closing, I would again like to thank you for the opportunity to testify before this subcommittee and I look forward to answering any questions you may have.

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