

PINs and needle

HSE inspector Sarah Page went to Australia to look at union safety reps' rights, including provisional improvement notices (PINs). She found that UK safety reps, employers and inspectors are missing out on a labour-saving and potentially lifesaving approach.

At the end of this year the Health and Safety Commission is expected to publish a consultation document on employee consultation and safety representatives.

New research published by the Health and Safety Executive suggests one change could have a big impact – the safety watchdog could make workplaces safer and its own job a lot easier by trusting union safety reps to take a more active enforcement role.

HSE inspector Sarah Page went on an HSE fact-finding mission to Australia, looking particularly at PINs – safety rep-issued, legally-backed, provisional improvement notices (*Hazards* 76).

She found initial employer and enforcement agency reservations about PINs – the workplace equivalent of our union inspection notices (UINs) on steroids – had been overcome, and they had become an accepted part of the workplace safety enforcement armoury.

Writing in *exPress*, the in-house magazine of the Health and Safety Executive, she says a PIN "is issued by a worker rep without recourse to the regulator. Powerful stuff! Yet there is more: OHS (occupational health and safety) reps may also 'stop the job' (prohibit work) in circumstances where they identify serious and imminent danger. And there is no requirement for a written notice."

She adds that formal procedures for issuing PINs are "powerful restraints to over-zealousness, as well as promoting fair play in the workplace."

The new HSE report, *Worker participation in health and safety: A review of Australian provisions for worker health and safety representation*, notes that "legislation for active worker involvement is more empowering for Australian workers, providing them with greater opportunity to challenge management prerogative. Provisions to resolve conflict are legislated for, ie. there are statutory rules governing employer/employee interaction and sanctions available in the event of 'foul play'."

Page adds in a personal commentary that under the

UK system of worker consultation: "HSC/E guidance states that 'the aim is to encourage active workforce involvement in developing measures to improve health safety.' However, worker involvement is far from guaranteed. Management prerogative remains so that consultation, in effect, patronises the workforce."

She says that by contrast the Australian system "acknowledges that differences of opinion exist, that conflict is likely and that provisions need to be made judiciously to control this. The co-regulatory model, supported by issue resolution mechanisms, is founded in *negotiation* rather than consultation."

The HSE report addresses the concern of some employers and inspectors that unions may use PINs to further their own "industrial" agenda.

Page says: "My own view is that it is not that simple and I would seek to challenge those who advocate the ready divorce of OHS and industrial relations matters."

She cites Yossi Berger, national health and safety director of the Australian Workers' Union, who says: "It's trite to pseudo-cynically state that workers and unions



Union power: Legally-backed PINs are like "our union inspection notices on steroids."

Get it right!

◆ Reps will use PINs frivolously: **Wrong!** Australian safety reps use notices sparingly, and most – at least threequarters – are upheld by official safety inspectors, indicated the HSE report. And safety reps can be "disqualified" if they use PINs irresponsibly.

◆ PINs will bring industry to a standstill: **Wrong!** Cease work orders are rare, and workers transfer typically to other work if part of the job is shut-down, the HSE report found.

◆ Inspectors will be bogged down in PIN adjudications: **Wrong!** Most problems are resolved without the safety

inspectors having to become involved at all, meaning less trouble and fewer employers before the courts.

◆ PINs will solve everything for safety reps: **Wrong!** Bad employers still try to victimise good safety reps, and poorly trained, poorly supported reps find life difficult with or without PINs.



PIN AT WORK The Victorian Rural Ambulance Service introduced a new fleet of 280 ambulances purchased from the United States. The floor level of the new vehicles was higher than that of the previously used model and was incompatible with the existing trolley-stretcher system. Ambulance crews had to lift the stretcher plus patient to a position where the manual handling aid could be used. The risk to health and safety was indisputable. However, trade union attempts to seek improvement were unsuccessful. Eventually, the safety rep issued a PIN.

WorkSafe, the state's HSE, became involved. The inspector affirmed the PIN, extended its expiry date, and made it an official Worksafe notice. The Ambulance Service had to retrofit their entire fleet. The inspector served a second improvement notice requiring the employer to comply with the OHS (Issue Resolution) Regulations. The Ambulance Service was forced to include procedures for issue resolution within the Enterprise Bargaining Agreement.

at times use occupational health and safety (OHS) to fortify or alter the character of industrial disputes. Of course this happens, just as some employers and managers use financial mantras, industrial matters, staffing ratios and fear of job loss to fortify doing 'bugger all' about OHS."

She concludes: "Given the management preroga-

tive history in both UK and Australian work cultures, the appeal to trade unions of this system of power-sharing and hesitation amongst industrialists are understandable sentiments.

"However, the anecdotal evidence suggests that the experience of OHS rep 'enforcement' in practice has shaped an approach char-

acterised by caution."

The report concludes: "PINs and other OHS rep sanctions, supported by issue resolution legislation, appear to have much to offer the UK system of worker participation..."

"The system also appears to have potential benefits for HSE itself. The rep sanctions appear to provide genuine opportunities for workplaces to manage health and safety internally, without recourse to HSE, freeing up HSE to concentrate on proactive initiatives and the enforcement of recalcitrant employers.

"And the issue resolution arrangements provide HSE with the option of becoming involved only when a health and safety dispute arises and issue resolution measures are exhausted, ie. when internal negotiation fails."

References

Worker participation in health and safety: A review of Australian provisions for worker health and safety representation, HSE, July 2002. www.hse.gov.uk/workers/index.htm
 Sarah Page, *The old Australian ways*, exPress, the in-house magazine of the Health and Safety Executive, edition 161, May 2002.
 PINs and UINs: For examples of PINs, UINs and more background, see: www.hazards.org/notice

Something to PIN your hopes on?

In Australia, PINs have been a major success – the HSE research and the surveys done by Australian trade unions prove that, says TUC safety specialist Owen Tudor.

Few PINs are challenged (and most of those are upheld by the inspectors), but real success happens where the union rep doesn't even have to serve the notice, because PINs have created a culture where the rep's view matters.

That's the cultural shift that the TUC would like to see in Britain. We know that safety reps' chief complaint is that asking management to act over breaches of health and safety is all too often like banging your head against a brick wall.

Would it work over here? Bluntly, nobody knows, which is why the TUC is testing out a voluntary approach to start with. Union Inspection Notices (UINs – Hazards 76) were launched a year ago, with pilot safety rep training earlier this year.

Anecdotally, there have already been successes (Hazards 78). Some managements have welcomed UINs, as the TUC expected. But we need to do a proper survey of the experiences of the safety reps trained on the pilot courses.

If that survey shows positive results, the TUC will be pressing for UINs to be entrenched in health and safety laws. No one can stop us serving them anyway – but we need a legal duty on employers to respond.

And we need to check whether the HSC's enforcement policy statement and HSE's enforcement management model, both of which say that safety reps' warnings should be heeded by inspectors, are working.

The TUC would be interested to hear of any experiences – good or bad, because there's always room for improvement – safety reps have had with UINs over the past year. Contact Owen Tudor at otudor@tuc.org.uk or at the TUC, Congress House, Great Russell Street, London WC1B 3LS.

ACTU safety rep survey 2001

A 2001 national safety reps' survey by ACTU, Australia's "TUC", found:

- ◆ Just 10 per cent say they have issued a PIN or default notice – 95 per cent say it was effective in resolving the health and safety issue.

- ◆ Only 16 per cent of reps say they have either issued a cease work order or stopped work for health and safety reasons – 98 per cent say it was effective in resolving the issue.
- ◆ Around a quarter (24 per cent) of the health and safety reps say that they have been pressured by the employer/management not to raise health and safety issues.

- ◆ Almost one in five (19 per cent) say they have been bullied or intimidated by the employer/management as a result of raising health and safety issues.

ACTU safety website: www.actu.asn.au/public/ohs/