

THE DAILY HAZARD

UCATT wins jobs back with 'whistle blower' law

The construction union, UCATT (Union of Construction, Allied Trades and Technicians), has won a landmark victory using new legislation which is meant to protect workers who refuse dangerous work.

In mid January 1994, a small gang of labourers was working on the refurbishment of St John's Hospital, Clapham, London. The main contractor on the site was Ruddy Construction but the labourers were employed by sub-contractor Bomac Construction. The building contained asbestos and specialist removal contractors had been working on the site.

A Bomac foreman told the labourers to clear out part of the building. During the work they came across a material they believed to be asbestos and they refused to touch it. The foreman told them to get on with clearing it, adding, "If you don't work, you're ****ing sacked!".

The labourers stuck by their refusal, saying they suspected it to be asbestos and its removal was covered by the Control of Asbestos at Work Regulations and must be done in controlled conditions by trained workers in full protective clothing. They were sacked.

The labourers, who were members of UCATT, contacted regional organiser Dominic Hehir who said: "Under new legislation these workers had the right to refuse to put themselves at what they suspected was such an obvious and serious risk. They should have been rewarded for pointing out the potential danger — not sacked."

UCATT Organiser Mick Cummins went to the site and explained to the labourers that they were protected in such circumstances by Section 28 of the 1993 Trade Union Reform and Employments Rights Act and he would negotiate reinstatement

with a claim for full loss of earnings.

Mick discussed the sackings with Bomac who refused point blank to negotiate but the main contractor, Ruddy, took the issue more seriously. Ruddy Construction accepted what the labourers had done and insisted Bomac reinstate the labourers. The labourers were reinstated with no loss of earnings.

The labourers were right to refuse to touch the suspect substance: the Health and Safety Executive declared recently that if a substance is suspected of being asbestos then it must be treated as asbestos until it has been identified. The labourers had good reason for caution because almost all old public buildings such as hospitals, schools, and town halls either have contained, or still contain, substantial quantities of asbestos, some of it in very poor condition.



Deadly dust death

Eight years ago the Centre warned about asbestos in London schools and about ILEA's disastrously slow programme to protect teachers and students. We also warned,

"ILEA's confidence in its (so called) medical advisors is not

shared by many Union safety reps."

The death of a teacher at Plumstead Manor School from mesothelioma last Autumn, shows that safety reps views can be more reliable than medical advisors. It also shows that Greenwich are as coy as ILEA

were: a spokesperson for the Council said,

"There is no evidence to link her death with asbestos at the school"

Following our 1987 warning (see *Daily Hazard* no.12), Hackney school governor Dr Gerard Bulger advocated leaving the asbestos in place; this year the Government condemned school populations to asbestos exposure by refusing to fund the local council's capital programme for repair, upgrading and refurbishment of schools to the levels needed to make them safe. Greenwich asked for £8 million and got only £275,000.

Despite the fact that Greenwich Council says the teacher's death is not linked to asbestos at the school they are currently commissioning an asbestos survey and that alone, before a single fibre is moved from a single school, will cost them £100,000, almost a third of this year's capital grant.

At the same time Greenwich are pursuing parents through the courts when they keep their children away from asbestos-contaminated schools such as Boxgrove. They are behaving like an irresponsible employer — the kind that threatens employees with the sack when they legitimately refuse to expose themselves to workplace risks.

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Compensation coup for RSI victim

Mr Justice Prosser, who believes that repetitive strain injury (RSI) does not exist, has become a footnote in history with the speed he deserves. His rejection last year of a claim brought by National Union of Journalists member Rafiq Mughal against Reuters threatened to halt the progress being made by RSI sufferers in obtaining compensation for their injuries. But the latest out-of-court settlement has swung the balance again. Inland Revenue Staff Federation member Kathleen Harris received £79,000 compensation for permanent injury sustained by keyboarding for 7.5 hours per day at a rate of 15,000 keystrokes per hour.



RSI victims can expect rough justice from Judge John Prosser

While out-of-court settlements continue to be frequent, it is now more than two years since the last favourable judgement on keyboarding. It is vital that in-court victories are achieved in order to maintain pressure on employers to introduce proper preventative measures or at least pay decent compensation. Little can be gained by unions in financial difficulty putting forward weak cases and there is an overwhelming argument for unions to co-ordinate their efforts in this area. Hopefully, support for this approach will be

strengthened by the TUC's RSI campaign which is now under way round the country. The campaign in London and the South East was launched at a well attended meeting in Congress House in February. There were sufficient ideas and enthusiasm to make a real impact, but with only £1,000 available to spend, it may well be that the campaign will be stifled through lack of resources.

One of the demands of the London campaign is that the Hazards Campaign should be

invited to participate in the national co-ordinating body. It was agreed at the last Hazards Conference to set up an RSI Group and the inaugural meeting was duly held in Sheffield in January. RSI campaigners from round the country agreed to meet every three months and elected a small committee to prepare a statement of aims and to begin fund-raising. It was also agreed to become involved in the TUC's campaign wherever possible.

• Anyone who would like to get involved in the Hazards Campaign RSI Group should contact Carol Holt, c/o Sheffield Trade Union Safety Committee, Mudford's Building, 37 Exchange Street, Sheffield S2 5TR; 0742 753834, for information on future activities.

Fudge and chips

The Chemicals (Hazard Information and Packaging) Regulations, the CHIP Regulations, came into force in September 1993. They cover the supply and transport by road of chemicals used in work. The Regulations and associated material are of mind-staggering complexity, such that the Health and Safety Executive (HSE) has issued six separate publications, one of them in five hefty parts, and two computer disks in an effort to explain what they are all about.

There is little change in the present road transport Regulations, though with more legislation in the pipeline, the requirements will alter in due course. Most of the new material covers the supply of chemicals. Suppliers must now classify chemicals according to their hazards, give information about hazards to customers and package chemicals safely. To classify a chemical, a supplier must decide it is dangerous, what the hazards are, and allocate it a "risk phrase". S/he may also allocate it a "safety phrase". Risk phrases give information on hazards and safety phrases advice on precautions. Suppliers can consult an Approved Supply List, published by the HSE, of safety information on common industrial chemicals or self-

classify their chemicals. Suppliers must exercise "all due diligence" in making classifications.

The self-classification procedures are enormously complicated — there are 59 risk phrases and 61 safety phrases, many of which can be used in combination. Even employers who go about it in good faith will get it wrong. There will be no independent checking of classifications and it would be virtually impossible to enforce the law, even if the HSE had the heart to do it. It is therefore open to question whether the classification requirement will affect safety standards.

Suppliers must now provide data sheets, in a standard format, with dangerous chemicals for use at work. The HSE has provided

good advice on what kinds of information should go into data sheets. The duty on suppliers is to provide "sufficient" information to permit the chemical to be used safely. But it is the supplier who decides whether the chemical is dangerous and there is no independent checking of the contents of data sheets nor any requirement to submit them to an independent authority.

From the viewpoint of safety representatives and workers, the CHIP Regulations are full of holes. Without the voluminous documentation to hand, it would be impossible to decide if suppliers have complied with the law. Even then it needs knowledge of chemistry, possibly even to degree level. And, in practice, suppliers will have a free hand in deciding how dangerous their chemicals are and what precautions are needed when using them. We have in fact been presented with the CHIP Deregulations.

SAFETY DATA SHEETS

Under CHIP, safety data sheets must be dated and contain the following headings:

1. identification of the substance/preparation and company/undertaking
2. composition/information on ingredients
3. hazards identification
4. first-aid measures
5. fire-fighting measures
6. accidental release measures
7. handling and storage
8. exposure controls/personal protection
9. physical and chemical properties
10. stability and reactivity
11. toxicological information
12. ecological information
13. disposal considerations
14. transport information
15. regulatory information
16. other information

SAFETY REPRESENTATIVES' RIGHTS

Although trade unionists' rights have been weakened in many ways during recent years, health and safety still remains an area of strength. Recent developments in law and in management strategies bring new opportunities — and threats.

To take advantage of opportunities, trade unionists must elect safety representatives and make sure they are able to exercise their powerful legal rights under the 1978 Safety Representatives and Safety Committees (SRSC) Regulations.

The SRSC Regulations were introduced under the 1974 Health and Safety at Work Act, and have the same legal force as the Act itself. Where there is a recognised trade union, the members are legally entitled to elect at least one safety rep. The employer must then comply with the Regulations and may not negotiate anything less than the statutory provisions set out in them. The Regulations are accompanied by an Approved Code of Practice and by Guidance, which spell out more clearly how the Regulations themselves are to be interpreted — this is what is commonly known as "the Brown Book".

Safety Reps have rights, or "functions" — not duties or any more responsibilities than ordinary employees, although increasingly employers attempt to use trade union safety reps as unpaid company safety officers. Those rights allow reps to:

Inspect

- make a formal, planned inspection of the workplace at least every three months
- investigate accidents, diseases and dangerous occurrences
- investigate complaints from members
- carry out extra inspections where there is to be, or has been, a change in the working conditions, or where new hazards information has become available.

Get information

- this means any information held by the employer that relates to health, safety and welfare (unless it identifies a particular member of staff)
- reps have the right to see and take copies of any document that the employer is required to keep by law, such as risk assessments, safety policy, fire certificate, accident book etc.
- reports from the enforcement authorities
- information on any plans or proposed changes that might affect the health and safety of members

Training

- paid time off to attend courses "as shall be necessary for the purpose of undergoing such training in aspects of those functions as may be reasonable."

Beware! trade union training is now coming under threat because of Government funding cuts and pressure to change to "distance learning" and National Vocational Qualifications for trade union reps. For the moment, normal provision of trade union education will be in place, but get trained up — the sooner the better, contact your union or the TUC for details.

Safety committees

- where there are two or more elected trade union safety reps (not necessarily from the same union), the employer must set up a joint trade union/management safety committee if the safety reps request one in writing. This must be done within three months, and membership must be balanced between management and union sides.

Facility time

- reps must be given sufficient paid time off during working hours to carry out their functions under the Regulations.

Enforcement

Although the SRSC Regulations are part of a criminal statute, the enforcement authorities do not want to get involved in disputes between management and unions regarding interpretation of these Regulations. Safety reps should use the provision in the Regulations to take disputes about time off for training, or for carrying out functions, to an industrial tribunal. Any question about

whether a rep has been appointed by "a recognised trade union" should be referred to the conciliation service, ACAS.

A 1993 survey of safety reps rights by Labour Research Department concluded that the main problems were getting paid release to attend any further courses after the Stage One TUC reps' training, getting time off to carry out inspections and in getting adequate information from employers and from enforcement officers.

New rights

In January 1993 there was a shake up in health and safety legislation with the introduction of the Management of Health and Safety at Work (MHSW) Regulations and five other new sets of Regulations. The MHSW Regulations provide a useful extension of safety reps rights.

The crucial point is that employers must consult with safety reps "in good time" as to:

- any changes in the workplace that may affect the health and safety of employees they represent
- the appointment of "competent" persons
- any health and safety information the employer is required to give to employees
- the planning and provision of any health and safety training for employees
- the health and safety consequences of new technologies

Safety reps should press home these new requirements on employers. If possible, they should negotiate the right to be present at any induction training for new employees, to talk to them about the role of the trade union in maintaining good health and safety standards in the workplace. They should also press for the use of trade union and labour movement materials in the provision of information and training for all employees.

Trade Union Reform and Employment Rights (TURER) Act 1993

This legislation is intended to weaken trade union rights, but there is an important part (Section 28), which is supposed to protect employees from victimisation because of health and safety activities.

There are five sets of circumstances under which the employer must not

disadvantage workers. "Disadvantage" can mean disciplinary action, the sack or any kind of victimisation.

1. If the employee is designated as a "competent" person, or is given particular health and safety responsibilities and is carrying them out
2. if the employee is a safety rep or member of a safety committee and is carrying out some function in that capacity
3. an employee points out a hazard or shortcoming in safety arrangements
4. the employee leaves the workplace (or a dangerous part of it) because they believe there is serious, imminent and unavoidable danger
5. the employee takes reasonable steps to protect themselves or others from such a danger.

If an employee suffers any disadvantage as a result, they can take the case to an industrial tribunal (IT), regardless of length of service or hours of work.



This is the UK government's interpretation of the European Framework Directive's clause which gives the right to refuse dangerous work. The Directive gives complete protection against dismissal, the UK only gives the right to appeal to IT for unfair dismissal — after you've had the sack. Since IT's cannot re-instate workers and can only award compensation, it still allows employers to get rid of "troublemakers" who raise concerns about health and safety. That is hardly adequate protection, and does not meet the spirit or the letter of European law.

New management techniques

With the introduction of management duties to carry out risk assessments, employers increasingly want to rope in safety reps to take on

management responsibilities in the workplace. This combined with the current pursuit of "Total Quality Management" and BS 5750 certificates is resulting in pressure from employers for a changing role for safety reps.

For example, in an effort to reduce accidents in their Teesside plant, British Steel called in consultants from Surrey University, who identified the role of safety reps as a key element in any successful strategy.

Quite right too, but what happened next is becoming increasingly common. The company first supported safety reps' TUC training, but this was followed up by in-house training to "explain the new approach." Since this involved taking on management responsibilities a number of safety reps resigned, whilst those remaining and newly elected were put on full time safety duties. They are now functioning more as safety managers than as safety reps and are taking the burden off

supervisors. The safety reps carry out training of contractors and are representing all employees, regardless of whether or not the employees are members of the union.

The SRSC Regulations provide a good machinery for management and safety reps to cooperate. Safety reps all too often have to struggle for management recognition of this machinery, or for management to take their health and safety concerns seriously. There is no need for new mechanisms and reps should ask what motives employers have for proposing them.

References

'Safety reps rights at work', *Bargaining report* 130, July 1993.

'Total quality is no accident for British Steel', *Health and Safety Information Bulletin* 215, November 1993.

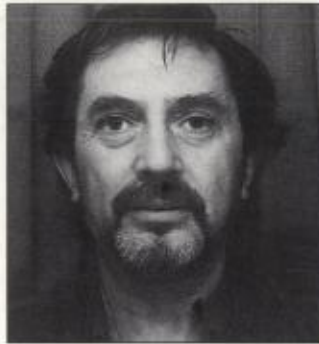
The Government published its Deregulation Bill in January and the main provision regarding health and safety is a clause enabling repeal of "redundant" legislation. Before repeal, the Department of Employment would have to consult with the Health and Safety Commission (HSC) and anyone else considered appropriate and there would have to be a debate in both Houses of Parliament.

The GMB claimed victory when the Bill was published, but closer inspection shows that the real battle has still to be fought. There are two task forces looking at changes in safety law, one set up by the Department of Trade and Industry (DTI), the other by the HSC. The HSC has tried to show some independence from the Government but has now been told what it is expected to do. The DTI group has now reported and wants changes in the European six-pack introduced last year, COSHH, the Electricity at Work Regulations, and accident reporting, first aid and prosecution procedures.

There are real signs of a growing campaign in the trade union movement. A successful meeting in South London on 26 January attracted about 60 people and laid the basis for further plans. Much attention is now being focused on 28 April, Workers' Memorial Day, when the Construction Safety Campaign intends to hold a march through central London. Support is now growing for a broad-based lobby of Parliament that day. It is likely to be round about that time that the HSC will report and the Government will try and push its legislation through the House of Commons.

Changes of face at the London Hazards Centre

Roslyn Perkins, who has worked at the Centre since 1985, has left to become Health and Safety Adviser at Save the Children Fund. Roslyn first came to the Centre from Shelter as a specialist in community campaigns on asbestos, but extended her skills to all areas of health and safety. Recently she did a lot to develop the Centre's links with homeworking campaigns, and to set up the training programme which has helped us to cushion the effects of grant cuts.



New Advice and Training Worker, Mike Merritt

Mike Merritt takes over her post in the Advice and Training team. Mike has long experience in trade union teaching and was heavily involved in starting up the Portsmouth Trades Council Work Hazards Group.

We also say what we hope is a temporary goodbye to Fiona Murie, who is taking a year's unpaid leave. Fiona will be settling in Spain where she will be working with members of the European Hazards Network.

WORKERS' MEMORIAL DAY

28th April

Remember the Dead — Fight for the Living!

Once again we will be linking up with workers in Europe and America to publicise the endless toll of avoidable deaths and injuries at work, and to call for effective prevention.

The main event in London will be a march organised by the Construction Safety Campaign to oppose the weakening of health and safety law by deregulation.

Contact the CSC: 255 Poplar High Street, London E14; 071 537 7220.

PUBLICATIONS

- ▲ **VDU Work and the Hazards to Health.** August 1993. £6.50
- ▲ **Protecting the Community: A worker's guide to health and safety in Europe.** May 1992. £9.95
- ▲ **Basic Health and Safety: Workers' rights and how to win them.** June 1991. £6.00
- ▲ **Repetition Strain Injuries: Hidden harm from over-use.** January 1988. £3.00*/£6.00
- ▲ **Out in the Open** (supplement to Repetition Strain Injuries) January 1993. £1.00 (free with Repetition Strain Injuries)
- ▲ **Sick Building Syndrome: Causes, effects and control.** June 1990. £4.50
- ▲ **Fluorescent Lighting: A health hazard overhead.** March 1987. £2.00*/£5.00
- ▲ **Toxic Treatments: Wood preservative hazards at work and in the home.** January 1989. £5.95
- ▲ **After the Sprayer: investigation and treatment of ill-health caused by wood preservatives and how to get help.** January 1992. Factsheet. £1.00
- ▲ **Factpack:** Set of factsheets from the Daily Hazard. £5.00
- ▲ **Daily Hazard** complete run: £25.00

* Price to community/tenants/union groups.

Prices include postage. Discounts for 10 or more copies. All orders must be accompanied by a cheque made payable to London Hazards Centre.

HAZLIT is London Hazards Centre's library database. For information about on-line access, contact the Centre.

Money matters

The good news is that our main funder, the London Boroughs Grants Committee, has voted to fund us at the present level for the next three years. The bad news is that they only cover about half our budget, so we will need to carry on looking for other sources of money, including our supporters and affiliates.

Our appeal for donations and affiliations has brought in £700 so far. We still need about £4,000 to avoid a deficit this year. If you haven't yet done so, please ask your union branch to donate.



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