NEWS FROM THE LONDON HAZARDS CENTRE NO. 57 JANUARY 1998 • 40P

THE DAILY HAZARD

Communication Workers put Safety First

Communication Workers Union (CWU) members have struck a major blow for workplace safety by rejecting a national agreement on the introduction of new technology into the Royal Mail. The agreement, negotiated by senior CWU representatives and top management, covered the operation of Integrated Mail Processor technology involving optical character recognition/ video coding system (OCR/ VCS) tasks. This means sitting in front of a screen and entering address codes via a keyboard as a letter flashes up every 2-3 seconds.

According to CWU rules, major agreements on terms and conditions have to be put out to a ballot of the members affected. In this case, the members rejected the agreement nationally by a 2:1 majority. Opposition was particularly strong in London; activists in the London North West branch reckon that only one of their 700 members actually voted for the agreement. The branch had successfully moved a key amendment at the CWU conference earlier this year covering the health and safety aspects of any proposed agreement. This called for a proper ergonomic checklist for the equipment to be introduced, a health survey of all VCS coders to be carried out nationwide, the results to be evaluated by independent experts as the basis of a national agreement, and for the exercise to be repeated annually to enable arrangements to be reviewed. When these conditions did not appear in the negotiated agreement, they campaigned strongly for its rejection.

The London North West reps have clear views on the introduction of new technology. They are not opposed to negotiating an agreement per se, in fact they recognise that new equipment and procedures are going to come in. But what they want is protection for their members according to the best knowledge and experience available. They are already aware of a significant number of repetitive strain injury (RSI) cases among their members who use keyboards, not to mention widespread vision problems, headaches and fatigue. They are not prepared to support agreements when the long-term health effects are uncertain.

"No-one with the members interests at heart could have come up with this agreement"

In fact, the management's approach was more productivity than health based. At the end of training, VCS coders would have to achieve a rate of 8,260 keystrokes per hour. That amounts to reading the most obscure and ambiguous addresses on about 25 letters each minute and entering the post code. After 40 weeks on the job, coders were expected to push the rate up to 10,431 keystrokes per hour, about 30 letters per minute. This is well above the speeds workers can achieve on their present equipment. Once through training, coders were expected to achieve 99 per cent accuracy at all speeds.

The sting came in the "appropriate remedial action" designed for coders who do not achieve the required performance. Described as the "Counselling Process", this amounts to a disciplinary procedure. In a six-stage process, coders can go from an initial to a final warning in five weeks if they are not meeting prescribed targets. They can then be given another period to improve at their manager's discretion, at the end of which they can be removed from the job. There is a right of appeal at which they can be represented. Along the way, managers should provide counselling "in a suitably private place." That may be an improvement on being bawled out in front of your mates but the opportunities for bullying are manifest.

The London North West reps were also concerned by the break patterns proposed in the agreement. These amounted to a break of 10 minutes in every 70, in addition to meal and other breaks. In a full shift of 8 hours 18 minutes, 6 hours 18 minutes would be spent on the keyboard. In a half-shift of 4 hours, 3 hours 25 minutes would be spent coding. The reps considered this to be the absolutely minimal interpretation of the Display Screen Equipment Regulations and not appropriate for their particularly intense type of work.

There were also worries that the arrangements for reviewing the agreement would lead to ratcheting up the speeds as time went on and possibly open the door to piece rates. Despite a guarantee of no compulsory redundancies, it was also likely that there would be significant job losses.

The reps expected no better from the Royal Mail but were scathing about the performance of their own negotiators, saying that, "No-one with the members' interests at heart could have come up with this agreement." They were especially incensed by the breach of their Conference policy. The wide margin in the vote still came as something of a surprise but reflects the fact that members are fully aware of the implications for their safety at work.

They now expect the Royal Mail to try and negotiate local deals in offices round the country where the opposition is less well organised. However, they expect continued support from their members when they campaign for the highest possible standards of safety and when they insist that these should not be bargained away in productivity deals.

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Pinning down employers

Trade union safety representatives complain that their efforts to ensure that the employer is complying with health and safety law are obstructed by managers who are unaware of their duties under health and safety legislation. Employers ignore legal requirements, safe in the knowledge that they are unlikely to be visited by a factory inspector or by the other enforcement officer, the local authority Environmental Health Officer (EHO).

A system operating in Australia would, if adopted in Britain, go some way to solving this problem. Deborah Vallance, Health and Safety Adviser for the Australian Manual Workers Union, visited Europe in September and told London Hazards Centre staff of a procedure which allows workplace safety representatives to serve an Improvement Notice on their employer.

Since 1985, under Australian Safety Law, reps have had the right to issue a Provisional Improvement Notice (P.I.N.) to their employer or manager. The P.I.N. identifies the hazard and the breach of legislation which relates to the hazard, and proposes measures to either eliminate or reduce the risk. After the notice is served on the employer, the proposed improvements must be implemented within 14 days. The amount of time wasted in the UK arguing about safety improvements frequently runs into months. In the Australian state of Victoria, 80% of serious workplace hazards are sorted out within two weeks.

If an employer fails to implement the safety rep's proposals then the Health and Safety Department (HSD) Inspector (the equivalent of our factory inspectors) can intervene and initiate a prosecution.

After the P.I.N. has been issued the employer has 7 days to appeal to the H.S.D. Inspector. The Inspector can validate, amend or cancel a P.I.N.

Deborah said that while some employer organisations were opposed to the use of P.I.N.s, only twice during the twelve years that the system has been in operation had safety reps been justifiably criticised for using the system.

Deborah said that for their own protection her union recommended that reps receive three days training before exercising this function.

During a separate discussion, at the London Hazards Centre, safety representatives from local government, the health service, the post office, the civil service, the retail industry and manufacturing industry discussed what they saw as the potential advantages and pitfalls of the P.I.N. system in Britain. Reps were concerned about the role of the enforcement agencies in upholding complaints by safety reps. One commented,

"The last people I would expect support from would be the local EHOs"

Other reps referred to the "employer friendly" legislation in Britain arguing that the introduction of the P.I.N. system would fly in the face of the goal-setting, non punitive, "reasonably practicable" ethos which permeates health and safety legislation.

All agreed that the main benefit to reps was the required response time of 14 days, imposed on the employer by the P.I.N.

Another rep added, "For the PIN system to work here, we need a complete change in workplace culture, a change in the attitude of management to health and safety"

Reps felt that manager training in health and safety would have to be stepped up, and regulated, so that they could properly address issues which would be raised in a P.I.N. One rep commented, "It wouldn't be any use complaining that they were breaching a regulation, if they've never heard of the regulation in the first place."

Given cutbacks in the HSE and the current emphasis on Inspectors acting as advisers rather than enforcers, the P.I.N. system would be a practical, economic and useful additional function of Safety representatives and a positive way forward in the development of workplace of safety management systems.

The London Hazards Centre is currently organising a meeting to discuss the issue early in 1998. Details are available from the Centre on 0171 267 3387.

Safety tribunal win - but worker still loses his job

An Industrial Tribunal has awarded a bus driver £10,500 after unanimously ruling that he was unfairly dismissed. His then employer, London United Busways Ltd, dismissed David McGinty in 1994 after he raised safety concerns about the company's buses.

Mr McGinty was employed at the Shepherds Bush Garage and although not a Safety Representative, was a member of the T&GWU Union Committee. Between 1990 and 1993 the company were installing new engines in the old Routemaster buses and the union raised safety concerns, including problems with gears and steering, and with excessive diesel fumes, with the employer and the manufacturer, Cummins. In 1993 the Labour Party published a report calling for an enquiry into safety standards on London buses. Mr McGinty was interviewed on television and complained about conditions in bus cabs caused by excessive heat from the engine.

After the interview, he was charged with bringing London United Busways Ltd into disrepute. He was given a final caution and twelve months special probation. Mr McGinty unsuccessfully appealed against the probationary period and was further disciplined for unsatisfactory attendance while on sick leave. After exhausting the appeals procedure the case was referred to an I.T.

It was found that London United Busways Ltd had wrongly accused Mr McGinty of lying to the press and reporting faults which did not exist. In reality the company failed to respond to Mr McGinty's reports while complaints remained in-house. Engineering inspectors had pressured him to desist from reporting faults on buses which he drove.

The I.T. found the final warning given to Mr McGinty was "unreasonable and excessive and the further award of special probation was difficult to justify." It also found Mr McGinty had a clear record and nothing he said at the original disciplinary hearing was untrue or disputed by his employers.

The panel members had sympathy with Mr McGinty's actions in reporting safety defects to his employer and felt he had been treated harshly by the company which treated Mr McGinty and his complaints "merely as a nuisance" and did not follow set procedures. The Tribunal's verdict was that London United Busways Ltd "did not act reasonably in treating Mr McGinty's conduct and Health and Safety complaints as a sufficient reason for dismissing him."

Tony Pullen, a barrister at Hammersmith and Fulham Community Law Centre, representing Mr McGinty said, "David McGinty was entirely vindicated by the Tribunal's verdict. However, unless the Government introduces legislation which fully protects whistleblowers, then employees will continue to be vulnerable to this kind of victimisation."

Asbestos in the Home – Part 2

This factsheet, the second in a series of two, addresses the legal responsibilities of landlords and local authorities, and the rights of tenants and residents. The first factsheet in Daily Hazard 56, describes the hazards of asbestos, where it is found and how it should be dealt with.

The Law

Laws regulating asbestos are divided into those which can be used by tenants to pressure landlords into taking action and those which place a responsibility upon employers to protect the health and safety of their employees and the public.

Landlords and statutory nuisance

Although the law does not place specific duties on a landlord in respect of asbestos in their property, The Environmental Protection Act (EPA) 1990 defines statutory nuisance as "any dust...likely to cause injury...to the public". The Act gives local authorities, through Environmental Health Officers (EHOs), the power to serve abatement notices where premises are in such a state as to be prejudicial to health, or a nuisance. If an Environmental Health Department is not acting upon a complaint, residents should contact their local councillor to add weight to their case. However, local authority tenants must approach the Health and Safety Executive (HSE) regarding statutory nuisance as local authority EHOs do not police the authority they work for. If you are unsure who would be able to act in your case, ring both the local HSE office and the Environmental Health Officer at the Town Hall.
Action to abate a statutory nuisance may also be taken by an individual through the Magistrates' Court. Anyone considering such action should seek advice from the Magistrates' Court, their local Law Centre or Citizens Advice Bureau.

Workplace safety laws and asbestos

The measures required to protect people whose work may bring them into contact with asbestos will, if properly implemented, usually prevent exposure of the public. There is a general responsibility under Section 3 of the Health and Safety at Work etc Act 1974 and a specific requirement under Regulation 3 of the Control of Asbestos at Work Regulations 1987 to protect the health and safety of the general public who may be affected by work activities.

- The Control of Asbestos at Work Regulations 1987 require employers to assess the risk of exposure to asbestos dust and to record the assessment, before work begins. The regulations require an employer to prevent exposure or to reduce it as far as reasonably practicable. An employer is required to prepare a safe working method statement detailing the equipment to be used to protect those carrying out the work and "other persons on or near the site". For example, the method statement should detail whether a protective enclosure will be erected and the proposed methods of safe disposal. Although tenants have no rights in law to see the method statement, private landlords and local authorities should be pressed to release it to tenants.
- You should check whether contractors have an HSE licence under the Asbestos (Licensing) Regulations which they need for certain types of removal or if they are a member of the Asbestos Removal Contractors Association (ARCA).
- The Defective Premises Act 1972 requires a dwelling to be fit for habitation after the work is completed .
- Section 82 of the Building Act 1984 gives local authorities the right to impose conditions on the demolition of buildings.

Action

Tenants have achieved a number of successes in forcing local authorities to identify, locate, remove or encapsulate asbestos.

- **Southwark**
  Local authority pledges to spend £7m to remove asbestos from the Heygate Estate and to survey 10% of its 54,000 homes to establish the likely location of asbestos.
- **Waltham Forest**
  Tenants of three tower blocks with asbestos in the walls vote to have them demolished. Tenants to be rehoused.
- **Hackney**
  Tenants on the Kingshold estate mount a campaign for the safe management of asbestos to reinforce a longstanding campaign to force local authority action on repairs.
- **Southampton**
  Improvement notice served on the city council when a tenant called in an HSE inspector after being exposed to asbestos during rewiring work. Contractor fined £3000 plus costs. Southampton city council fined £26,000 plus costs. A representative survey of council premises will create a database of materials containing asbestos in council properties.
- **Birmingham**
  150 right-to-buy home owners take legal action against the local authority after asbestos is discovered in their homes. Removal will cost £1.5 million.

Ombudsman

Council tenants can complain to the Local Government Ombudsman. In 1997, the Ombudsman required the London Borough of Tower Hamlets to take immediate action to identify the location of asbestos in their properties and to inform the occupants of their findings.
The tenant who complained also received £300 compensation for "worry and inconvenience". The Ombudsman's decision was based partly on a 1985 report produced by the Association of Metropolitan Authorities (AMA). The report recommended that local authorities should survey all properties for the presence of asbestos and instigate a management plan. Although the report placed no regulatory requirement on local authorities to survey and manage the asbestos in their properties, the Ombudsman gave it a very strong emphasis in setting this precedent.

Compensation

To make a successful claim for compensation under civil law, the defendant must have suffered an injury. Therefore, currently, an individual must have an asbestos related disease to stand a chance of winning a compensation case. A number of people are pursuing cases where there has been exposure to asbestos but no injury as yet. It is unclear yet whether any of the current cases will succeed.

Duty to survey

The HSE are to report early in 1998 on the cost of introducing a legal duty on owners of buildings to survey their properties. Government estimates for such a survey are as high as £4 billion although other agencies have suggested much lower costs. Current details of proposals are unclear and the huge cost will mean that there will be resistance to such a duty.

Asbestos Management Programme

- Full survey of all properties
- Removal or encapsulation of all asbestos found in an unsafe condition
- Record location of remaining asbestos on a public register
- Inform tenants of the location of any remaining asbestos
- Reinspect asbestos frequently and if asbestos is found in an unsafe condition either remove or encapsulate and update public register
- Involve tenants and Tenants Associations at all times
- Encourage tenants to report any damage.

Contacts

Health and Safety Executive:
to find out where your local HSE office is, phone the HSE Infoline on 0541 545500.

Local Government Ombudsman
21 Queen Annes Gate, London SW1H 9BU. 0171 915 3210.

Asbestos Removal Contractors Association (ARCA)
Friars House, 6 Parkway, Chelmsford, Essex CM1 1BE. 01245 259744.

Resources

Managing Asbestos in Workplace Buildings.
HSE. Free. IND(G)223(L). HSE Books 01787 881165.
Excellent booklet setting out how asbestos in buildings must now be dealt with. Relevant to workers and tenants.

Report on an Investigation Into Complaint No 95/A/2081 Against The London Borough of Tower Hamlets.
Free. Local Government Ombudsman, 21 Queen Anne's Gate, London.

AMA. Asbestos. Part 1: Policy and Practice in Local Authorities.
September 1985. AMA now the Local Government Association, 36 Old Queen St, London SW1H 9JE. 0171 222 8100.

Asbestos guide - photographic supplement.
GMB. Free to GMB members, £5 to non members. GMB, 22-24 Worple Road, London SW19 4DD. 0181 947 3131.

Will Labour deliver on health and safety?

"This Government is determined to give health and safety a much higher profile. We need efficiency and productivity but not at the cost of the blood of our people. Accidents at work and occupational ill health are neither inevitable nor acceptable", claimed Michael Meacher, Minister for the Environment at an open meeting organised by the London Hazards Centre prior to the Centre's Annual General Meeting at the House of Commons on 26 November.

He recognised that "the level of fines is insulting and unacceptable" and maintained that "the real problem is not the law, it is enforcing it". He pointed to the massive increase in small and medium sized companies (doubled since 1979) and the fragmentation of responsibility caused by the wide use of contractors as obstacles in the way of effective enforcement. The Minister insisted on the fundamentally important role of safety reps in improving workplace health and safety and said that the Government is committed to ensuring the statutory recognition of trade union safety reps.

On the vexed question of asbestos, Mr. Meacher promised a ban on the import of white asbestos. However, he told the meeting that in an attempt to protect its own asbestos industry, the Canadian Government was threatening to complain to the World Trade Organisation that any ban would break international trade agreements signed by the United Kingdom Government.

On other points, Mr. Meacher maintained that the Working Time Directive will be treated as health and safety legislation and said that he personally felt that Crown immunity, which gives unfair protection to public employers, must be phased out.

But will Mr. Meacher and Labour deliver on health and safety?

Many of the 60 safety reps and other delegates from trade union branches, tenants' associations and campaigning organisations present at the meeting felt that the Government's decision to stick to Tory spending plans was a serious obstacle to making any significant headway on health and safety standards. Delegates recounted tales of Health and Safety Executive (HSE) disinterest in visiting the site of serious incidents and drew attention to the alarmingly small number of major injuries that are investigated by the HSE. Only 20 per cent of major injuries were investigated last year; only 6 per cent of accidents which resulted in blindness, and only 26 per cent of accidents which resulted in major amputation. The HSE should be treating these incidents as "serious crimes", not "accidents". A much larger number of cases should be going straight to the Crown Prosecution Service and the courts should be able to choose from a wider range of penalties for "violent corporate crime".

Delegates warmly applauded the open, straightforward attitude of Mr. Meacher. But will this traditional friend of the Hazards Movement be replaced by somebody with a less emphatic commitment to health and safety and a greater willingness to accede to the pressures and demands of industry ? Or will ministers allow the officials at the Health and Safety Executive to set the agenda on safety legislation thus ensuring a continuation of the goal setting approach which has let employers act with profit rather than people in mind.

INTERNATIONAL DIRECTORY

Readers wishing to extend their contacts further afield may find it useful to get hold of a copy of the International Directory of Workers' Occupational Health Contacts, edited by Gill Brent and published by Workers Health International Newsletter, 1996.

The directory includes contact details and information on the particular interests of trade unions, education and research organisations and statutory bodies worldwide.

The cost is £10 to trade unions. To order a copy, write to WHIN, PO BOX 199, Sheffield S1 4YL.

LONDON HAZARDS CENTRE HEALTH AND SAFETY TRAINING

London Hazards Centre courses are aimed at people interested or involved in workplace or community health and safety. Our trainers draw on experience of advising and supporting safety representatives and voluntary organisations to provide practical training which you can apply in the workplace.

General Health and Safety

Thursdays 5th February and 30th April

This general course covers hazard spotting at the workplace, the law, employer and employee responsibilities, safety representatives and safety committees, getting information and organising and negotiating to achieve best practice. Participants will learn about the identification of hazards and how to organise to eliminate them, as well as gaining a firm grounding in basic health and safety law.

Introduction to Risk Assessment

Thursday 26 March

The Management of Health and Safety at Work Regulations now supplement the Health and Safety at Work Act to form the basic framework of health and safety law. Incorporating a practical risk assessment exercise, the course covers employers' and employees' legal duties, provision of information and training, welfare requirements, hazards identification and important related regulations.

Cost: £40 per person

Place: Interchange Studios, Dalby Street, Kentish Town, London NW5 (Full access for people with disabilities)

Time: 1 day, 10.00 to 4.30

We can also design and run training at the Centre or your own site. We run local courses with several voluntary service councils and local authorities. Topics we teach include VDU assessment, chemicals, construction, asbestos, and stress. Call us to discuss your needs.

Now you can search

LHC DATA ON THE WEB

at www.lhc.org.uk

Our Web site contains two databases:

- HAZLIT
  our library catalogue
- HAZTEXT
  full text of most of our books, factsheets and newsletters.

If you're an affiliate/subscriber you have free access to these databases. E-mail<lonhaz@mcr1.poptel.org.uk> for your password. Organisations with which we exchange information can also get access. We'd like to thank UNISON and poptel whose support has allowed us to set up this site

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