

Cooperation or resistance? Representing workers' health and safety in a hazardous industry

Abstract

This study considers the actions of worker health and safety representatives in coalmines in Queensland, where there is little evidence of the facilitating role of management previous studies have associated with the successful operation of worker representation in occupational health and safety. It examines how worker representatives deliver their pluralist representational role in a context characterised by essentially unitary thinking amongst their employers; and the effectiveness of the strategies they use.

Introduction

In most advanced market economies statutory arrangements for workers' representation and consultation on occupational health and safety (OHS) were implemented during the last three decades of the 20th century. These provisions governed the selection, rights and functions of workers' representatives, facilities employers were to afford them, and their part in risk assessment and OHS management (OHSM) procedures. Subsequent research on worker representation suggests this essentially pluralist approach, when implemented with adequate support, is likely to result in improved OHS outcomes (Nichols and Walters 2009).

The introduction of these statutory measures coincided with a period of economic and political development — the so-called 'golden years' of the post-war compromise — when preconditions necessary for its successful operation were at their zenith. Times have changed.

The political economy in which these arrangements for workers' OHS are situated has altered fundamentally. Consequently, some of their institutional supports have eroded. Employers and many OHS practitioners have embraced a different approach to worker engagement in which there is limited room for autonomous representation of workers' interests in OHS. These more unitary approaches emphasise individual worker engagement with corporate values and organisational culture, and assume an identity of interest between workers and managers in improving OHS performance. Improvements are largely operationalized through the application of management systems orientated towards behaviour modification, individual accountability and monitoring.

Others who have examined participative approaches to OHSM in mining have argued that one reason for the limitations in its contribution to improving trends in OHS recently are the hostile labour relations in the industry — which they suggest lead to mistrust between managers and union representatives (Gunningham and Sinclair 2012). They conclude this undermines participative engagement, and this in turn stalls progress on OHS. However, this interpretation assumes the existence of common interests in health and safety shared between workers and their employers, fails to take into account the historical, pluralist basis of the relevant regulations, and also fails to acknowledge wider and equally long-standing reasons for the hostile labour relations that characterise the mining industry.

The core interest of this paper therefore concerns what happens when workers seek to represent their OHS interests where the regulatory ideal is undermined both by poor labour relations and managerial aspirations to pursue a unitarist approach. To do this, we have examined the role and activities of union OHS representatives in coalmines in Queensland, Australia.

Participation in a cold climate — conflicting models and limited outcomes?

In many countries, statutory measures provide workers and their organisations with rights to appoint/elect representatives and support their OHS functions within their workplace, including rights to be consulted, participate in joint health and safety committees, receive information, inspect workplaces, accidents and incidents, and to receive training and time to undertake these tasks. Representatives often have rights to accompany regulatory inspectors during visits and receive information from them. Details vary by country, sector and establishment size. Similar provisions are outlined in supra-national measures such as ILO Convention 155 and the EU Framework Directive 89/391.

Studies have found these participatory arrangements are associated with improved OHSM practices and these findings generally hold for both direct performance indicators, such as injury or illness rates, as well as indirect measures, like OHSM practices (see for example Yassi et al 2013; Walters and Nichols 2007). A recent UK study concluded (Robinson and Smallman, 2013:689):

The empirical modelling of workplace injuries also reveals that representative participation matters. Participation is associated with lower levels of injuries and conversely, non-participation is associated with a higher incidence of injuries. This adds to the empirical literature on institutional arrangements by linking union effectiveness to the level and access to participation they enjoy vis-a-vis management. Specifically this perspective reveals that some participation is

better than none, higher is better than lower and that the alignment of voice between management and unions is fundamental to success.

In sum, the weight of evidence indicates better outcomes are likely when employers manage OHS with representative worker participation and that joint arrangements, trade unions and worker representation at the workplace are positively associated with such outcomes.

However, to be effective this representation requires a set of preconditions to support its implementation, central among which is the facilitating support of management (Walters and Nichols 2006; Nichols and Walters, 2009).

Studies in several countries indicate both representatives and managers base their ideas about how participation should occur on statutory requirements (Nichols and Walters 2009). While labour inspectors generally prefer an advisory rather than enforcement approach to monitoring statutory measures, both managers and representatives perceive inspectors' engagement as a strong support for effective participative arrangements (Walters et al, 2012). Qualitative studies frequently point to the importance of training in making representatives more effective and a correlation between the activities in which trade union health and safety representatives (HSRs) are engaged and their experience of training (Warren-Langford et al, 1993; Walters et al, 2001). Union support for HSRs is another facilitating factor cited in many studies.

But it is the facilitating effect of senior managerial commitment to participative approaches to OHS arrangements that research generally finds to be most critical to their success. This finding applies irrespective of whether the studies examined the operation of joint OHS committees; dialogue between middle managers/supervisors and representatives; or

representative involvement in inspections, investigations, receiving information, reviewing safety systems, raising complaints, or receiving training, time off and facilities to do these things (Walters et al 2012).

This finding should not be surprising. Participative approaches to OHSM were embedded in OHS regulation in most advanced market economies from the 1970s. The shift to ‘regulated self-regulation’ (or ‘enforced self-regulation’ (Ayres & Braithwaite 1992, ch 4)) at national and supranational level (such as in the EU Framework Directive 89/391 and ILO Convention 155) included requirements for worker representation and consultation as an integral part of more systematic approaches to managing OHS risks (see Frick et al eds. 2000). In the systematic management of OHS, arrangements for representative participation help drive a statutory ‘prevention triangle’, argued to be the basis for its effectiveness (see, for example, Dawson et al, 1988). Its three vertices comprise: competent employer engagement, with responsibility for evaluating and controlling risks; worker representation contributing practical knowhow and monitoring management functions; and state regulation and inspection. In this triangle employers occupy pole position, with arrangements for worker representation being dependent on the co-operation of managers; and regulatory inspection offering general guidance, occasionally with a more formal response to non-compliance (see for example Bruhn 2006; Quinlan et al 2009).

However, this model of regulated self-regulation is far from universally applied. Extensive research indicates it is seldom found in smaller firms that constitute the vast majority of enterprises. Even amongst larger organisations, approaches to OHS management include those where worker representation arrangements are reduced, or absent, often because unions have insufficient presence or power to require them. In these situations, despite regulatory

provisions, worker participation in systematic OHSM may amount to little more than following behaviour-based rules set by management (Frick and Kempa 2011).

Behaviour-based safety (BBS) approaches to managing OHS are widely favoured by corporate interests and increasingly attract substantial support from OHS professionals/practitioners as well as regulatory agencies, although evidence for their success is mixed (Dalrymple et al, 1998; Frick et al, 2000; Hopkins, 2000, 2005a, b). Frick and Kempa (2011) summarise concerns with this approach:

The prevention described more often revolves around control of ‘safe’ procedures than the prescribed upstream prevention of eliminating risks at the design stage. And the worker participation described in these examples is more a top down communication on why and how to obey management safety procedures than a genuine dialogue between management and workers on ends and means in a MS [Management System] which aims to reduce occupational risk.

Where ‘worker engagement’ is viewed by management as compliance with corporate rules, the preconditions for effective worker representation according to pluralist regulatory models are often undermined. Further, the scope for employers to dictate conditions at work in neo-liberal political economies has facilitated the proliferation of more unitary systems, where behaviour-based management has substituted for systems for autonomous worker representation even though regulatory frameworks supporting the latter largely remain in place (Quinlan, 2014).

These changes beg a number of questions concerning the continued relevance of the statutory arrangements for worker participation, as well as how workers' representatives and unions respond to the challenges of unitary systems.

Where the preconditions don't apply — coalmining in Queensland

Mining is a hazardous industry with a high incidence of fatal injury. Queensland is one of two Australian states where coal is mined extensively. With around 40 mines (both open-cast and underground), Queensland is a major coal producer and exporter. Notwithstanding improvements, mining remains one of four sectors with the highest incidence of fatal injuries (Quinlan 2014; Safe Work Australia, 2013).

Queensland mines include strong representation of large corporations with extensive global mining interests and corporate OHSM strategies. Labour relations are contentious.

Coalmining companies employ aggressive and often uncompromising human resource strategies, attempting, among other things, to marginalise the position of organised labour. At the same time, miners are comparatively highly organised and the position of the miners' trade union is significantly embedded not only in the mines but in the mining communities in which they are situated. Aided by wider reforms in the systems for Australian industrial relations, during the 1990s mining companies were able to establish increased managerial control over work regimes and increase the use of contractors and non-union contract labour as well as to some extent disconnect them from the social communities of the miners they employed (Bowden and Barry 2015; Waring, 2003). Nevertheless, although mines are frequently situated some distance from communities, they are not entirely remote, so drive-in drive-out arrangements are common. Corporate organisational strategies also encourage

considerable movement among senior mine managers, resulting in regular turnover amongst managers responsible for OHS.

Australia has a federal system of government where the power to regulate OHS is vested in state jurisdictions. In Queensland, coalmining safety regulation shifted to process-based measures with the introduction of the Coal Mining Safety and Health Act 1999. Reductions in coalmining injuries and fatalities occurred around this time, which have been favourably compared internationally (Yang, 2012) and linked to these regulatory changes (Gunningham and Sinclair 2012: ch 2).¹ Characteristic of Queensland mining regulation is the link made between these systematic approaches to OHS risk management and representative worker participation (though the latter long predates the former). Statutory provisions give workers the right to elect two Site Safety and Health Representatives (SSHRs) per mine and the miners' union (the Construction, Forestry, Mining and Energy Union (CFMEU)) to appoint three Industry Safety and Health Representatives (ISHRs). ISHRs must be qualified mine deputies and their remit (including rights of access) extends to all Queensland mines. The rights of both types of representatives include the usual HSR functions of inspection, consultation and representation. They also have powers to review mines' OHSM systems, stop processes they consider dangerous and stop production altogether if necessary. The statutory provisions also limit the activities of representatives to OHS (as opposed to industrial relations) issues and emphasise their activities should not impede production. As coalmining is highly unionised, in practice the vast majority of SSHRs have always been union representatives.

¹ State-based, Australian general OHS legislation has largely been harmonised under a Model Act since 2011 but efforts to harmonise mine safety legislation have stalled.

The study upon which this paper draws examined the role and effectiveness of both types of representatives in addressing OHS on behalf of their constituencies; their relations with these constituencies and with mine managers (Walters et al 2014). This paper focuses on evidence of the ways worker representatives operate in situations where labour relations are unsupportive of a co-operative approach and where employers' preferred OHSM systems generally operate to marginalise representative.

Methods

The study's research methods linked analysis of documentary evidence of mine safety representative activities in Queensland (i.e. SSHRs and ISHRs) with interviews with representatives. Analysis of ISHRs and SSHRs' inspection records, as well as those of government mines inspectors (from the Queensland Government Department of Natural Resources and Mines), was undertaken in relation to approximately half (19) of Queensland's coalmines. These reports covered 1998 to 2013 (although a small number were from an earlier period). Inspection records must be maintained by law and were made available to researchers by the CFMEU. Twelve of the mines were open-cut and seven were underground. Most were large or medium-sized (nine open-cut and eight underground mines respectively). Union density was greater than 75% in the majority of the mines included in the study. In four mines, one third to half the miners were union members, while in three there was no significant union presence.

For the documentary analysis each report was scrutinised to identify why an inspection had taken place, what was inspected and the outcome. Information concerning representatives' functions under the Act (such as issuing notices, stopping work or reviewing OHS

management procedures), as well as other relevant background details, were also recorded. Particular attention was paid to inspection of ‘fatal risks’. In mining the nature of fatal risks is well-known and documented (Saleh and Cummings, 2011; Walters et al 2014; Quinlan 2014). The aim of our documentary analysis was to examine representatives’ activities and particularly the extent to which they addressed serious risks and OHSM systems. The intention was to build a detailed picture of representatives’ role in preventing or ameliorating work-related ill-health, injury and death.

Further details on representatives’ activities were obtained from interviews with a sample of 18 SSHRs, 14 employed in mines where inspection reports had been analysed and 4 from other mines. In addition, five ISHRs (three current and two who had held the position during the time covered by the reports) were interviewed, along with a senior Queensland Government mines inspector. We also observed sessions conducted by ISHRs at the annual CFMEU-organised training event for SSHRs. Two senior national CFMEU officials were also interviewed, but no representatives of employers/management agreed to participate. As well as investigating their activities, interviews sought to understand how representatives construed OHS issues on which they could legitimately represent miners’ interests, how they perceived the boundaries between such issues and labour relations matters, and the strategies they adopted for resolving any conflicts. Interviews were undertaken in two union offices in Queensland and during training event. Interviews took 1-1.5 hours, were recorded and subsequently transcribed and analysed in relation to the above themes.

Representing workers’ interests on health and safety in a climate of hostile labour relations — A success despite the odds?

We focused on four main aspects of the nature and role of the HSRs in our study:

- Who the representatives were and their commitment to their role.
- What kinds of risks they addressed and how they did so.
- The support they received from managers, inspectors and workers.
- The use made of their statutory powers of intervention.

We reasoned that taking this approach would allow an exploration of representatives' motivations and how they framed their role within the wider labour relations contexts in which they operated. It would enable an analysis of the risks they addressed to help determine whether these were serious health and safety matters or whether representatives were using their position to pursue other labour relations issues as is sometimes claimed. It would further enable a consideration of the level of support they received in carrying out their activities on OHS and in this respect it would especially allow an exploration of how representatives positioned themselves in relation to co-operation or conflict with their employers/managers. Finally, it allowed us to examine the ways in which they used their statutory powers, especially those enabling them to stop work in scenarios they deemed to be unsafe where such actions might be against the wishes of their employers/managers. Focus on these issues therefore enabled an exploration of how, and with what effects, pluralist or even conflict orientated strategies for worker representation functioned in an environment driven by unitary corporate notions of participation/engagement in OHS issues.

The representatives

The representatives were experienced miners, most with both underground and open-cut experience. Most SSHRs had been in post for several years or considerably longer and had not held other union positions. Prior to becoming representatives some had undertaken OHS-related roles like being members of emergency rescue teams. A strong sense of purposeful dedication to representing fellow workers emerged from interviews with both SSHRs and ISHRs. For example, explaining why he moved from mines rescue to take on the role, one SSHR said:

I basically thought we can improve things... 'cos we're reactive as rescue. We turn up and fix the situation somebody had a broken leg, a heart attack or an injury of some sort. And I thought... we'll look at doing something better and helping people out before they get hurt.

(7120040 - SSHR)

Commitment to coping with the demands of the role was also evident among SSHRs. Many talked about how representative activities frequently extended into their lives outside work. This sense of dedication was even more evident in the responses of ISHRs who all had considerable experience of both coalmining and OHS representation:

...its a huge drop in wages. And you've just doubled your hours of work to do the role!... You do it for the love and passion. And you might get weekends off every sixth weekend, 'cos you're on call.

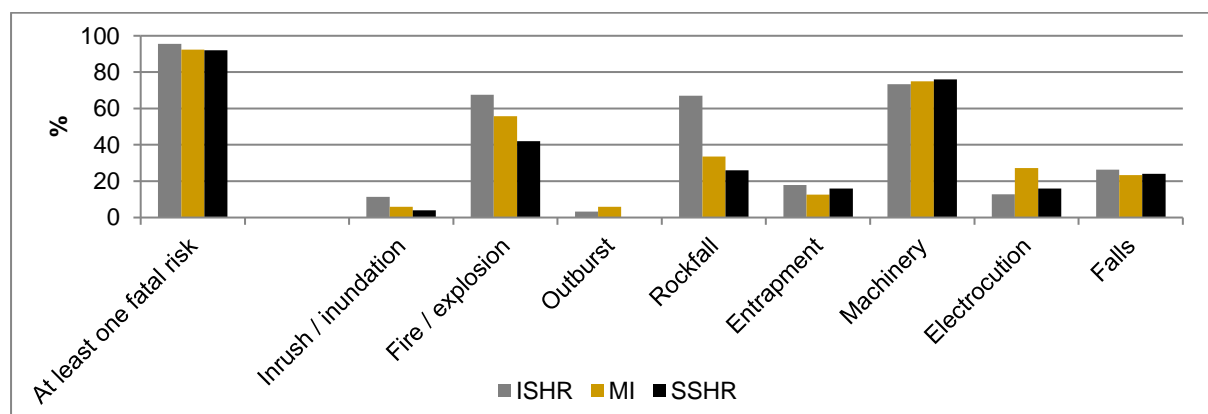
(71200033 — former ISHR)

The risks

What takes up so much of representatives' time? Do they use their functions and powers responsibly and commensurate with the risks addressed? To address these questions we first analysed documentary records of their activities in relation to Quinlan's (2014) classification of fatal risks. Based on an extensive review of the literature, this classification presents a typology of the common risks of injury or death resulting from coalmining incidents according to their seriousness, with those that commonly result in fatalities ranked as the most serious. Almost all the reports (94%) of the inspections undertaken by the representatives concerned the inspection of at least one such fatal risk. Moreover, although there were some differences in the risk types inspected, there was little difference between representatives and regulatory inspectors in the high proportion of their reports concerning such risks (Figure 1).

Figure 1

Inspection of Fatal risks



With regard to documentary records of serious incidents, we found many of the incidents that were reported to the representatives, and the subsequent investigations they reviewed, were classified as High Potential Incidents (HPIs).. The legislation defines a HPI as ‘an event, or a series of events, that causes or has the potential to cause a significant adverse effect on the safety or health of a person’ — thus such incidents usually fit among Quinlan’s (2104) fatal risks. Mines are required to report HPIs to SSHRs, ISHRs and the mines Inspectorate. Many ISHR reports referring to HPIs were written following such notification and show ISHRs’ involvement in and support for the investigation and subsequent learning processes.

Both types of representatives were also informed of serious accidents and reviewed the subsequent company investigation reports. In total 16% of the ISHR and SSHR reports we analysed referred to representatives assisting with investigations into serious accidents or HPIs, and all of them referred to at least one of the more serious risks included in Quinlan’s category of fatal risks. Again this activity is empowered by the Coal Mining Safety and Health Act 1999.

From the interviews it became clear that representatives’ main concern was to ensure investigations were rigorous and addressed underlying causes, consistent with robust OHSM systems and regulation. Overall, ISHRs were more concerned with the wider implications of the incident and investigation process, while SSHRs were more focused on preventing a recurrence. Although ISHRs were sometimes involved in investigation of these incidents, more typically they undertook an oversight/monitoring role:

...they ring up...this is what’s occurred, okay, you may ask a few questions: what have you done to stop it from reoccurring, how bad is the injury, where has he gone to hospital, that

sort of stuff, then at some stage they have to send a form, 1A it's called, they send it to the inspectors and to us.

(7120027 - ISHR)

SSHRs were commonly kept informed of investigations undertaken, with more significant involvement depending on management:

...depends who the management are. If there is...like a major incident, then sometimes we go and investigate it as well but it depends who it is. Sometimes we don't get invited and sometimes we don't get told about it.

(7120013 - SSHR)

Investigating incidents in which injuries or fatalities had occurred, for which legal responsibilities may apply for the company, sometimes led to perceptions of a conflict of interest with the senior managers responsible for OHS (site senior executives (SSEs)). Representatives commented on difficulties performing their roles in such situations:

SSEs have got their different ways. Some are good, because I've been involved in, what four deaths, on a mine site...Three of them it was good, the fourth one was...you're not allowed there, don't do this, don't do that...I've done what, three investigations courses with the police. So in other words I know what I'm doing when I go on to a scene. But they don't want that. They just do their own thing because they think we're going to blame them.

(7120020 - SSHR)

Supporting and facilitating consultation

In some mines senior management was perceived to give 'reasonable help' to a SSHR 'in carrying out the representative's functions' as required under section 99 of the 1999 Act. However, in many others acceptance of their role by management was seen as the outcome of a hard-won struggle. Parallel BBS systems were not helpful. Representatives reported having limited facilities; problems securing reasonable time to undertake investigations and inspections; poor responsiveness from managers to remedying issues; and general hostility to their role. Similarly, while some had positive experiences in reviewing OHSM systems and procedures, others reported a lack of consultation and managers choosing other workers for consultation on procedures, thereby marginalising representatives:

....you sometimes find that the company will select people to do those risk analysis and they're not always people on the job, fully relevant to what's going on.

(7120035 – SSHR)

ISHRs also spoke about the range of managerial attitudes experienced by SSHRs and how this affected the support they were able to offer. They frequently gauged their approach to helping SSHRs to match the responsiveness of particular mines' management, going to some lengths to persuade them of the value of greater consultation with SSHRs. Many of these situations reflected the emphasis on BBS and its focus on direct engagement with individual workers, where it was difficult for worker representatives to gain a purchase in participative approaches to OHS, obliging them to be reactive in defending workers' interests in the face of poor OHSM. They acted from outside a management system from which managers had effectively excluded them.

Interviews with representatives also highlighted the considerable time taken up with reactive responses to complaints from miners. Asked how often matters were raised one respondent stated:

Every day, every day. They have a doubt every day. They might come up and say look, has there been a risk assessment done on this? And I will say look I wasn't involved in it but I will find out and get back to you...every day, without a doubt.

(7120014 - SSHR)

However, it was clear that the boundaries between reactive and proactive work were blurred: one often led to the other.

There was evidence that raising issues with SSHRs also occurred outside the workplace:

I don't finish work when everyone else finishes work, I go home, I have a meal at night, you go and sit down for dinner, I get three, four people sometimes, I've had them stand in line, to talk to me. They all come to me with an issue, this happened today, this. I say well...talk to your supervisor, yes I did, but that supervisor doesn't want to know about it, alright, well leave it to me...I'll go and have a talk to the supervisor, get him away, say listen, yesterday this happened, how and why did that happen, did anybody mention anything to you, ..., so I can have a talk to them, I can sort it out that way.

(7120025 - SSHR)

As the quote illustrates, approaches outside working hours reflected the number of issues representatives addressed and/or the affected worker feeling that manager matter had not been

properly dealt with. Other complaints came to SSHRs outside work time and off-site because workers were afraid of the repercussions:

...you've got this massive culture of people that are scared or intimidated to raise concerns...Contractors and permanents as well. There's the culture if you speak up...you'll be given crap jobs or you know, you'll be put in the corner...a lot of people are intimidated to speak up, and that's the culture that [company] has created.

(7120022 - SSHR)

This quote further illustrates the pervasive effects of individualised behavioural approaches to safety management, which contribute to feelings of insecurity and mistrust in managers, especially among workers in already insecure work arrangements (see Gunningham and Sinclair 2102: ch 4).

While representatives' views about the support they received from managers were mixed at best, the vast majority felt they received strong support from fellow miners. This was often implicit in how they described investigating complaints or making representations on behalf of miners. It also manifested in fellow miner confidence in their decision-making during confrontations with management:

...they were told to go back to work and they refused to go back until I gave them direction. That sits very highly in my book, that they had management telling them to do something and they wouldn't do it. They were waiting for my instruction. That tells me that they believe in what I am doing.

(7120021 - SSHR)

Relations with the mines inspectorate were somewhat more equivocal. According to the senior mines inspector interviewed:

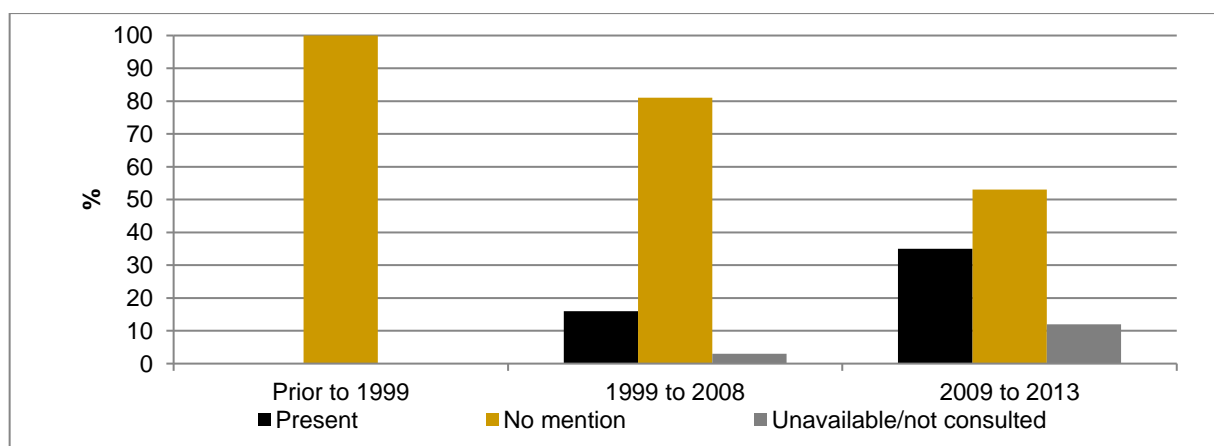
What should happen is that the SSHR should be able to accompany the Inspector on his inspection.

(7120032 – Senior Mines Inspector)

But in over half of the reports of inspections undertaken between 2009 and 2013, there was no mention of whether a SSHR had been present., This is an improvement over earlier years but the most likely inference is that SSHRs remain excluded from a substantial proportion of mines inspectors' visits (Figure 2).

Figure 2

Reference to SSHR presence during inspectorate mine visits over time



Representatives reported a mixed experience concerning notification of inspectors' visits of inspectors. Some believed they were always informed in advance, and they generally accompanied

the inspector during the inspection. Others felt their managers were less forthcoming with this information. It was also felt that the likelihood of SSHRs meeting inspectors was influenced by inspectors' attitudes:

Depends on the inspector. Some inspectors are pretty proactive about that and some aren't.

(7120034 - ISHR)

Inspectors are often mining engineers who have previously worked as managers. This, and the practice of some individuals moving back and forth between positions in the industry and the inspectorate, led representatives to question their impartiality: a concern recognised by the senior mines inspector interviewed. Despite this, there was considerable mutual respect for the roles each played in OHS surveillance.

Using statutory intervention powers

The most disputed statutory provisions for SSHRs and ISHRs are the capacity to suspend work where there is a serious risk of injury or ill-health. The Coal Mine Safety and Health Act 1999 gives SSHRs authority to order suspension of all mining operations, stop specific operations, or require supervisors to stop them, if they reasonably believe there is an immediate danger. Similar powers are given to ISHRs as powers to issue a directive under section 167. Representatives also have statutory powers to order management to undertake certain actions. For example, they must advise the SSE if they believe the OHSM system to be inadequate and inform a mines inspector if they are not satisfied this advice has been appropriately addressed. The mines inspector is obliged to investigate and report this in the mines record.

In a hostile labour relations climate, where representatives felt they received limited support, it might be anticipated they would often have recourse to these statutory powers. We examined the documentary evidence and questioned representatives concerning their use. Analysis of the former showed that ISHRs rarely stopped work: only 5% of reports in our sample referred to suspension of operations.

Suspension of the entire mine operation, as opposed to operations in particular areas or using specific equipment, was even rarer: there were only six such suspensions in the records we analysed (1% of all ISHR reports). All but one referred to fatal risks as the reason for stopping work. Notably, two reports referred explicitly to the ISHR supporting an earlier decision by the SSHR to suspend operations. Similarly, only three SSHR reports referred to suspending operations, all concerned fatal risks and all were from the same mine.

The CFMEU's own analysis of suspension notices for all Queensland coalmines identifies 80 served since the 1999 Act was introduced (CFMEU, 2013). Our data were less complete, but the percentage of suspension notices identified was broadly what would be anticipated from the CFMEU data.

There were too few suspension directives in our data to draw reliable inferences concerning patterns or trends over time. However, the CFMEU (2013) analysis, of all Directives issued since the 1999 Act, indicated they have been increasingly used at the management systems level. It noted that until recently mining company objections to the directives were rare. Even when appeals were lodged, the actions of ISHRs have been upheld, or the Mines Inspectorate has issued a Directive under section 166 in their place, which requires remedial action but allows the process in question to continue while such action is taken. The CFMEU pointed out that had the ISHRs had the power to issue a section 166 Directive, they would have done so themselves in these cases.

In addition to suspension orders, other formal notifications by ISHRs were also rare (8%). Again, some (11%) were explicitly supportive of prior actions by the SSHR. Many identified weaknesses and required corrections to OHSM systems (for a more detailed analysis see Walters et al 2014:67-77).

Several relevant points emerge from this documentary evidence. First, orders made by the ISHRs in relation to inadequate OHSM systems represent a very small proportion of their activities. Second, orders have been used to address significant risks, including inadequacies in emergency response procedures and equipment, ventilation, gas monitoring, machinery hazards etc. Further, they are generally used to identify the link between particular risks and deficiencies in the OHSM system responsible for controlling those risks. This feedback constitutes a procedure widely accepted as good practice in OHSM and risk prevention. Therefore, documentary evidence supports the conclusion that representatives use their powers to suspend work responsibly. They also act appropriately in relation to identifying serious failings in OHSM systems. Finally, there was no evidence that referral of these matters to Mines Inspectors resulted in representatives being deemed to have issued orders inappropriately or irresponsibly.

Interviews reinforced evidence that both ISHRs and SSHRs were cognizant of the significance of their powers to stop work and used them sparingly:

...we're pretty careful how we issue a 167...it's your final power.

(7120037 - ISHR)

Generally, they used these powers only when they felt there was no other recourse after engagement with management had failed to reduce the seriousness of the risk concerned:

...in the whole 8 years I am happy to say I have only had to do it about 4 times. But a lot of times, if something is not an immediate danger then I will try and give people the opportunity to fix it.

(7120013 - SSHR)

On other occasions representatives used suspension orders when they perceived an immediate risk of serious harm if the process or operation continued:

I issued a 167, get everyone out of the mine. And that was warranted...on that occasion, because I wanted everyone out the mine, out of the explosive range then we'll have the discussion.

(7120038/9 – Former ISHR)

Both SSHRs and ISHRs were aware of the strictures placed on their freedom to serve such notices and regulatory requirements on them not to 'perform a function or exercise a power...for a purpose other than a safety or health purpose' or 'unnecessarily impede production at a coalmine'. At the same time, possessing such powers considerably strengthened perceptions of their legitimacy amongst colleagues and bolstered their confidence they would be taken seriously by senior managers. These findings parallel those in studies of the powers of HSRs to stop dangerous work in other industries and countries. For example, in Sweden researchers found these powers were used very sparingly but were greatly valued by representatives for the legitimacy and respect for their role they conferred (Frick, 2009). Similarly, Australia an ACTU (2005) survey of HSRs found 11% had

issued a provisional improvement notice (PIN) or default notice and 91% of these said it was effective in resolving the OHS issue. There is also little Australian evidence that powers to stop dangerous work have been overused. The ACTU (2005) survey reported that 21% of HRSs reported directing that unsafe work cease, and 88% said the direction had been effective in resolving the issue.

Turning to strategies for ‘getting things done’, one prominent feature of the approach taken by both types of representatives was how they decided what fell within their remit. For example, as in other sectors, structural changes to mining work often blur boundaries between traditional OHS matters and work organisation issues, like staffing rosters, the pace and intensity of work and shift patterns, that can have OHS implications. The ways representatives dealt with such matters reflected the labour relations context and their efforts to offset managerial hostility. Their statutory mandate explicitly covered traditional OHS matters. Rather than seek a wider understanding of the work environment as the basis for their role, as often advocated by unions in other sectors, ISHRs and SSHRs sought to maintain a separation of straightforward OHS issues from those less easily defined as such. They reported doing this to retain the legitimacy of their position and avoid challenges from mining companies. When issues arose that contained ‘OHS’ and other work organisational elements, representatives worked on them with the wider union organisation to ensure there was a co-ordinated approach where other representatives could deal with ‘industrial’ matters. Regular featuring of OHS issues and reports from SSHRs at union lodge meetings were important ways of ensuring such integration:

there’s ‘safety’, there’s ‘industrial’. You get pulled into it, you end up getting shot...you’re unlucky you’ll probably get bloody prosecuted. So it’s a matter of just reinforcing that
(7120026 – SSHR)

Similarly, experience in a poor industrial relations climate taught representatives that being accused of impeding production would lead to swift reprisal from employers. Again, experienced respondents indicated they maintained a clear division of task content:

I'm conscious from the point of in my former role like I had the likes of [company] and some of the largest multinationals challenge me in particular to that, when I've shut their mines down, they're unsafe. And when they had me before the Department Inspectors...each and every time there's nothing to answer...my focus was health and safety. If it was an industrial issue, they sort it out there.

(7120038/9 – Former ISHR)

Representatives, therefore, relied on a prescriptive regulatory mandate when developing strategies appropriate to operating as worker representatives in a relatively hostile climate. This allowed them to represent the interests of workers on health and safety, despite the hostility of managers. They could do so because the wider union organisation prioritised OHS and, through good liaison/co-ordination with other workplace representatives, they were able to distribute tasks and avoid accusation of abusing their position, while ensuring wider issues with indirect OHS implications were still addressed. Thus, both ISHRs and SSHRs could identify and remedy a range of conditions, which, if left unchecked, would have constituted fatal risks to workers even in mines where the labour relations climate was hostile.

Conclusions: framing what works in an unsupportive climate

Overall, our analysis provides evidence that, with the support of fellow workers, their union and the mines inspectorate, HSRs in Queensland coalmines address serious risks and these actions are

broadly effective. This is despite a hostile labour relations climate and limited support from mining companies, whose preferred unitary approach leaves little room for pluralist forms of representative participation.

Data on occupational injuries and fatalities for Queensland coalmines over the past 20 years show an improving trend, coinciding with the introduction of a systems-focused regulatory regime (Poplin et al 2008), but which has slowed in recent years. Limitations of size and access to reliable injury/illness data for the mines in our study meant we could not correlate representatives' actions with evidence of outcome trends. However, analysis of documentary evidence, along with qualitative interviews, indicates representatives' actions addressed serious risks and contributed to their control/amelioration. Taken together with evidence from quantitative studies elsewhere (see for example Boal 2009; Morantz 2011), it supports the conclusion that there is a strong association between the actions of union representatives and improved OHS performance, and this occurs despite hostile labour relations contexts.

While Gunningham and Sinclair (2012) conclude hostile labour relations lead to mistrust between managers and union representatives and this undermines participative engagement in OHSM, stalling progress on OHS, we think this interpretation rather misses the point. Our findings suggest that while hostile relations and limited trust between workers and their representatives and managers are certainly present, from a pluralist perspective, it is clear that representatives are working within these limitations to successfully give voice to their constituents' OHS interests. Our findings further demonstrate that by careful use of their statutory powers, representatives operate effectively in identifying and requesting corrections to address fatal risks; reviewing and suggesting modifications to OHSM systems where necessary; and very occasionally ordering the stoppage of work in situations where consultative approaches have failed or serious and immediate risks are evident.

What is actually occurring, therefore, cannot be explained effectively by arguments concerning the 'limitations of trust' on the achievement of effective co-operation in jointly managing OHS. Such arguments assume an identity of interest in such situations, which is not supported by workers' experience of their employers, their corporate values or their means of implementing them (Walters and Frick 2000, Hall et al 2006). The strategies of representation we have observed are better understood as expressions of organised resistance to the experience of unsafe and unhealthy work, which corporate strategies to unilaterally impose BBS rules have failed to prevent or control. These attempts to dictate workers' safety behaviour are applied in labour relations contexts in which corporate values of production and profit are prioritised while workplace union organisation expends considerable efforts protecting workers' jobs, pay and working conditions. This, coupled with workers' long-term experience of work-related injury, ill-health and death in coalmining, undermines any collective faith in unitarist company safety regimes. Where regulated self-regulation is interpreted to mean a free hand to impose regimes with little room for autonomous representation of workers' interests, we would argue the absence of trust observed by Gunningham and Sinclair (2012: ch 4) is hardly surprising and is not the primary cause of poor implementation of participative approaches to OHSM. Rather, it is more correctly identified as one of its consequences.

These findings have wider salience. Ideas about the 'regulation of self-regulation' of OHS, in which participative approaches to OHS management are embedded, originated at a time when the balance of power in labour relations was more evenly distributed. As a result of this growing imbalance, there has been a subtle shift in meanings attributed to 'regulated self-regulation'. Within this shift of focus, corporate confidence in its power to overcome resistance from organised labour has acted to increasingly control the agenda in which conflict occurs and, in combination with the hegemony of pro-business interests within the state and society more generally, to manipulate the meaning of

‘participation’ in OHS to one more suited to corporate interests. Notions of ‘safety culture’ are synonymous with the organizational culture determined by corporate management. Within such approaches BBS systems requiring worker participation in an agenda set by managers have grown in popularity over other approaches to managing health and safety. In these systems, there is little place for understanding workers’ representatives as a collectivist regime based on workers’ own experiences. None of these developments has served to improve labour relations or enhance workers’ trust in their managers or the corporate organisations for which they labour.

In such situations, exemplified by the Queensland mines we studied, the strategies adopted by workers’ representatives are more appropriately understood as efforts to resist the perceived harmful effects of corporate power than they are examples of worker-management co-operation. Our evidence indicates that far from being unsustainable, these strategies contribute to ‘getting things done’ to improve OHS. This is even more evident when account is taken of the ways representatives are careful to remain within the boundaries of the legal definitions of their role and how they work with other union representatives to achieve this. We suggest this is a response to the realities of workers’ experience. Furthermore, the resurgence of unitary strategies for engaging workers in corporate efforts to manage safety is widespread in other sectors. In such scenarios preconditions for effectiveness of worker representation identified in previous studies serve more as explanations for why things are not happening than to explain what makes things happen in current political and economic contexts (Nichols and Walters 2009).

In the coalmines we studied, the actions of representatives offering the strongest possibility for protecting workers’ interests were more in line with organised resistance than with notions of trust and co-operation. Such approaches may be effective strategies for representation in other sectors too,

where the balance of power has shifted markedly in favour of corporate interests and where safety management regimes marginalise arrangements for representative participation in OHS.

Acknowledgements

The financial support and co-operation of the Mining and Energy Division of the CFMEU is acknowledged for the research on which this paper is based.

References

Australian Council of Trade Unions (ACTU) (2005), A Report on the 2004 National Survey of Health and Safety Representatives, Australian Council of Trade Unions, Melbourne

Ayres, I and Braithwaite, J, 1992, Responsive Regulation: Transcending the Deregulation Debate, (Oxford)

Boal, W.B. (2009) 'The Effects of Unionism on Accidents in U.S. Coal Mining, 1897-1929', *Industrial Relations*, 48 (1): 97-120.

Bowden, B and Barry, M (2015) Re-casting industrial relations: Productivity, place and the Queensland coal industry, 2001–2013 *Journal of Industrial Relations* Vol. 57(1) 48–71

Bruhn, A (2006) Inspectors dilemma under regulated self-regulation, *Policy and Practice in Health and Safety* 4 (2) 3-23

CFMEU (2013) Submission to Queensland's Mine Safety Framework, Consultation Regulators Impact Statement, <http://www.mines.industry.qld.gov.au/assets/qusf-submissions/75-124pdf> (Accessed 6 June 2013)

Dalrymple, H., Redinger, C., Dyjack, D., Levine, S. and Mansdorf, Z. (1998) Occupational Health and Safety Management Systems - Review and Analysis of International, National, and Regional Systems and Proposals for a New International Document. International Labour Office: Geneva.

Dawson, S., Willman, P., Bamford, M. and Clinton, A. (1988). Safety at work: the limits of self – regulation: Cambridge University Press, Cambridge.

Frick, K., Jensen, P.L. Quinlan, M. and Wilthagen, T. (eds.) (2000) Systematic Occupational Health and Safety Management – Perspectives on an International Development. Pergamon: Oxford.

Frick, K. and Kempa, V. (2011) Occupational Health and Safety Management Systems — When are they good for your health? Report 119. European Trade Union Institute: Brussels.

Gunningham, N. and Sinclair, D. (2012) Managing Mining Hazards: Regulation, Safety & Trust. Federation Press: Sydney.

Hall, A., Forrest, A., Alan Sears A., & Carlan, N (2006), “Making a Difference: Knowledge Activism and Worker Representation in Joint OHS Committees”, *Relations Industrielles/Industrial Relations*, 61 (3): 408-36.

Hopkins, A. (2000) Lessons from Longford: The Esso Gas Plant Explosion. CCH Australia: Sydney.

Hopkins, A. (2005a) 'What are we to make of safe behaviour programs?' *Safety Science*, 44:583-597.

Hopkins, A. (2005b) *Safety, Culture and Risk*. CCH: Sydney.

Morantz, A. (2011) *Coal Mine Safety: Do Unions Make a Difference*. Stanford Law and Economics Olin Working Paper No 43: Stanford Law School.

Nichols, T. and Walters, D.R. (2009) 'Worker Representation on Health and Safety in the UK - Problems with the Preferred Model and Beyond'; in Walters, D. and Nichols, T. (eds.), *International perspectives on representing workers' interests in health and safety*. Palgrave Macmillan: Basingstoke.

Poplin, G., Miller, H., Ranger-Moore, J., Bofinger, C., Kurzius-Spencer, M., Harris, R. and Burgess, J. (2008) International evaluation of injury rates in coal mining: a comparison of risk and compliance based regulatory approaches, *Safety Science*, 46: 1196-1204

Quinlan, M., Johnstone, R. and McNamarra, M (2009) Australian health and safety inspectors' perceptions and actions in relation to changed work arrangements, *Journal of Industrial Relations* 51 (4) 559-75

Quinlan, M (2014) *Ten Pathways to Death and Disaster: Learning from Fatal Incidents in Mines and Other High Hazard Workplaces* Sydney: The Federation Press

Robinson, A. and Smallman, C. (2013) 'Workplace injury and voice: a comparison of management and union perceptions', *Work, Employment and Society*, 27 (4):674 -693.

Safe Work Australia (2013) *Key Work Health and Safety Statistics*. Safe Work Australia: Canberra.

Saleh, J. and Cummings, A. (2011) 'Safety in the mining industry and the unfinished legacy of mining accidents: Safety levers and defense-in-depth for addressing mining hazards', *Safety Science*, 49:764-777.

Walters, D. and Frick, K. (2000) 'Worker Participation and the Management of Occupational Health and Safety: Reinforcing or Conflicting Strategies?'; in Frick, K., Jensen, P.L. Quinlan, M. and Wilthagen, T. (eds.) *Systematic Occupational Health and Safety Management – Perspectives on an International Development*. Pergamon: Oxford.

Walters, D., Kirby, P. and Daly, F. (2001) *The impact of trade union education and training in health and safety on the workplace activity of health and safety representatives*. CRR 321/2001, HSE Books: Sudbury.

Walters, D. and Nichols, T. (2006) 'Representation and consultation on health and safety in chemicals: an exploration of the limits to the preferred model', *Employee Relations*, 28 (3):230-254.

Walters, D. and Nichols, T. (2007) *Worker Representation and Workplace Health and Safety*. Palgrave Macmillan: Basingstoke.

Walters, D., Wadsworth, E.J.K., Davies, O.R., Lloyd-Williams, H. and Marsh, K.L. (2012) Analysis of the findings of the European Survey of Enterprises on New and Emerging Risks on the effectiveness and support for worker representation and consultation on health and safety. European Agency for Safety and Health at Work, Research Report.

Walters, D., Wadsworth, E., Johnstone, R., Quinlan, M. (2014). A study of the role of workers' representatives in health and safety arrangements in coal-mines in Queensland.
<http://cfmeu.com.au/the-role-of-worker-representatives-in-health-and-safety-in-qld-coal-mines-new-study>.

Warren-Langford, P., Biggins, D. and Phillips, M. (1993) 'Union Participation in Occupational Health and Safety in Western Australia', *Journal of Industrial Relations*, 35:585-606.

Waring P (2003) The nature and consequences of temporary and contract employment in the Australian black coal mining industry. *Labour & Industry* 14(2): 83–96.

Yang, B. (2012) *Regulatory Governance & Risk Management: Occupational Health and Safety in the Coal Mining Industry*. Routledge: London.

Yassi, A., Lockhart, K., Sykes, M., Buck, B., Stime, B. and Spiegel, J.M. (2013) 'Effectiveness of joint health and safety committees: A realist review', *American Journal of Industrial Medicine*, 56 (4):424-438.