

Just So You Know—

At last week's ISRI Safety & Environmental Council, attorney Mark Lies of Seyfarth Shaw discussed the following new OSHA development:

Deputy Assistant Secretary Richard E. Fairfax recently released a standard interpretation guidance letter which finds that workers without a collective bargaining agreement may designate a person affiliated with a union or a community organization to act on their behalf as their walkaround representative during an OSHA inspection.

Fairfax' interpretative guidance letter states that where employees are not represented at a workplace by a union, one or more employees may designate anyone they choose to be their walkaround representative. This designee may include a non-employee of the facility, for example, a representative of union or a "community representative", a technical person, etc. This re-interpretation of the OSHA's Field Operations Manual provisions opens the doors to a union filing an OSHA complaint regarding an employer, or on getting an employee union organizer at the facility to file a complaint. Then when OSHA shows up at the facility, workers may request that the compliance safety and health officer (CSHO) allow a representative of the union who is not an employee to come into the plant and to be the employee walkaround representative.

Similarly, a community representative (activist), who is not an employee, could be designated. Such individual could have interests that are adverse to the employer's. The CSHO does not have to allow this individual if he feels the person will be disruptive, but in our opinion that scenario is less likely.

Employers should note that this new interpretative guidance is an invitation to get union representatives in-front of employees at a non-union facility to discuss the union and potential organizing.

For the full text of this Letter of Interpretation, go to:

http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=INTERPRETATIONS&p_id=28604

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