

Right to Refuse Unsafe Work

Thousands of workers die or are injured because of on-the-job accidents each year. Many more are exposed to unhealthy conditions that cause serious illnesses years later.

When does a worker have the right to refuse dangerous work?

On February 26, 1980, the United States Supreme Court issued a landmark ruling which more clearly defined a worker's right to refuse work where an employee(s) has (have) reasonable apprehension that death or serious injury or illness might occur as a result of performing the work. The unanimous decision came in a 1974 case against Whirlpool Corporation in which two workers refused to crawl out on a screen from which a co-worker had fallen to his death only nine days earlier. A Cincinnati, Ohio appeals court ruled in favor of the worker's rights in "Whirlpool" and the Supreme Court affirmed that decision. (At the time the Supreme Court took the Whirlpool case, there were two other appeals court rulings that had been decided the opposite way. These cases were issued by courts in New Orleans (1977) and Denver (1978).

The two workers in the "Whirlpool" case were told to go out on a screen 20 feet above the floor to retrieve small appliance parts which had fallen from a conveyor belt system above. The screen was in place to protect workers in the plant from falling parts. The retrieval assignment had resulted in other workers falling partially or completely through the screen. Claiming that the screen was unsafe, two employees refused to carry out the assignment. Whirlpool supervisors sent the workers home for the day and withheld about six hours pay.

In its decision, the court emphasized that the OSHAct provides a worker with the right to choose not to perform an assigned task due to reasonable apprehension of death or serious injury coupled with a reasonable belief that no less drastic alternative is available. Further, the Court held that a worker who utilizes this OSHAct protection may not be discriminated against for such action.

However, the Court also indicated that an employee who refused work based on the regulation runs the risk of discharge or reprimand in the event a court subsequently finds that she/he acted unreasonably or in bad faith.

As noted, the employer docked the two workers about six hours pay in the Whirlpool case. The Supreme Court ruled that the OSHAct does not require an employer to pay a worker who refuses to perform an assigned task in the face of imminent danger. Rather, the Act simply provides that in such cases the employer may not discriminate against the involved worker(s). Thus, the Court has left this issue to be decided by labor and management through collective bargaining. Members of unions that do not negotiate the necessary protective language in their contracts should not expect to be paid for the refusal to work period. This will be true even where an employer is found guilty of violating the OSHAct.

In light of the Supreme Court's decision, what should CWA members who are faced with an imminent danger situation do?

The Supreme Court has said that a worker may refuse unsafe work where she/he has refused the job in good faith. Good faith may be interpreted as an honest belief that the job was unsafe and unusually and objectively dangerous.

Good faith can be demonstrated by the manner by which you refuse unsafe work:

- Explain the hazard to the supervisor and your steward,
- Offer to do other, safe work until the hazard is corrected,
- Give management a chance to respond before doing anything else,
- If the condition isn't corrected, call OSHA and request an "imminent danger" inspection,
- Do not walk off the job. If management won't fix the hazard, force them to take the next step. Make sure you have expressed your reasons for refusing the job and your willingness to do other work, clearly and in the presence of your steward and/or other workers.

If you're fired or disciplined:

- File a grievance immediately,
- File an unfair labor practice charge with the NLRB immediately but within 180 days, and
- File a Section 11(c) discrimination complaint with OSHA immediately but within 30 days.

The bottom line is to stay cool. Don't let management provoke you into rash action that could hurt your case later.

Proving that your job was "abnormally and objectively dangerous" is a matter of documentation:

- Was the job one you'd never done before? Or, had the conditions of the job changed recently?
- Did you protest the job before?
- Did other workers protest the job before? Did others refuse to do the job?
- Was the company in violation of OSHA, state, or local safety and health regulations?
- Many chemicals and conditions are clearly dangerous but aren't covered by any standards. Have workers been injured or made sick doing your job? Just what chemicals were you working with?

If any CWA member refuses unsafe work, she/he should notify the local union president. In turn, this information should be made available to the CWA Representative and the CWA Occupational Safety and Health Department.

What Can You Do?

All CWA members should make sure that their employer is maintaining a safe and healthful workplace. The key to making the workplace safe for all CWA members is strong, active local safety and health committees. The committee can identify dangerous conditions at the workplace and discuss them with management. If the employer refuses to cooperate, the committee can request an OSHA inspection. The committee should always coordinate its activities through the local officers, the CWA Representatives, and negotiated safety and health committees.