

THE POWER TO STOP UNSAFE WORK

What are the powers and rights of certified committee members when a dangerous circumstance is reported?

- A worker certified member has the right to investigate a complaint by a worker that danger exists in the workplace. **Sec. 48**
- If both management and worker certified members agree that a danger exists, they may order that the work stop. This is known as a bilateral work stoppage. **Sec. 45, Sub. 4**

When can the power to stop work be exercised?

- When both certified members agree that a dangerous circumstance exists. **Sec. 45**

What is meant by a “dangerous circumstance?”

- A dangerous circumstance means that there has been a contravention of the Act or regulations which poses a danger, and any delay in controlling the danger may seriously endanger a worker. **Sec. 44**

What is the procedure for a bilateral work stoppage?

1. The certified member requests that the supervisor investigate the dangerous circumstance.
2. The supervisor must investigate immediately in the presence of the certified member.
3. If the certified member is not satisfied with the supervisor’s investigation, another certified member is called in to investigate.
4. If both certified members agree that a dangerous circumstance exists, they can order a work stoppage.
5. The employer must follow this order immediately.
6. If the certified members cannot agree, the work cannot be stopped, but an inspector can be called in to investigate.

7. Following the investigation, the inspector will issue a written decision to both certified members.
8. If a certified member does not agree, he or she can appeal to the Ontario Labour Relations Board within 30 days of the decision.

What can be done if the bilateral work stoppage provision is not working to protect workers, or if the employer has bad safety practices?

- A certified member or an inspector can apply to the OLRB for a declaration or recommendation. The OLRB can order that the certified worker member be given the unilateral power to direct a work stoppage or recommend that the government assign an inspector to the workplace on a full time or part time basis at the employer’s expense. **Sec. 46, Sub. 1 to 8**
- In considering an application for a declaration the OLRB must be in accord with the criteria set out in Regulation 243/95. This would include consideration of the employer’s safety record (i.e. complaints, convictions, inspection records, etc), injury and illness records, safety policies and practices, pattern of bad faith with the joint committee, etc.
- In addition to having this ordered by the OLRB, unions can negotiate a unilateral stop work provision with the employer. Should the employer agree to such a provision, a worker certified member will have this power when the employer so advises the joint committee. **Sec. 47, Sub. 1(b)**

What is the procedure for unilateral work stoppage direction?

- If the OLRB has issued a declaration that a certified worker can unilaterally stop work, or if the employer has adopted a unilateral work stoppage process, the following steps are followed.

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- Should a certified member find a dangerous circumstance he or she can order the employer to stop the work operation in question. **Sec. 47, Sub. 2**
- The employer must immediately comply, and immediately investigate.
- After investigating and taking corrective action, the employer may ask the certified member to cancel the order.
- If the employer and certified member cannot agree, then an inspector can be called in to investigate.
- Following the investigation, the inspector will issue a written decision which may include a cancellation of the stop work order.

Are certified members subject to any liability under this provision?

- Yes. Anyone can file a complaint with the OLRB within 30 days alleging that a certified member exercised or failed to exercise this power recklessly or in bad faith. The OLRB can take whatever action it considers appropriate, including decertifying the certified member. **Sec. 49**

Are workers paid during a work stoppage order by certified members?

- There is no guarantee that workers affected by a safety shutdown will be paid.

