

BEFORE THE ARBITRATOR

In the Matter of the Arbitration  
of a Dispute Between

LOCAL 995, AFSCME, AFL-CIO

and

COLUMBIA COUNTY (HIGHWAY  
DEPARTMENT)

Case 161  
No. 52214  
MA-8873

Appearances:

Mr. David White, Staff Representative, Wisconsin Council 40, appearing on behalf of the Union.

Mr. Donald Peterson, Corporation Counsel, Columbia County, appearing on behalf of the County.

ARBITRATION AWARD

The Union and the County named above jointly requested that the Wisconsin Employment Relations Commission appoint the undersigned to hear the grievance of James Voigtlander. A hearing was held in Wyocena, Wisconsin, on April 12, 1995, at which time the parties presented their evidence and arguments and the record was closed.

ISSUE:

The parties ask:

Did the Employer have just cause to issue the written reprimand dated October 27, 1994? If not, what is the appropriate remedy?

BACKGROUND:

The grievant is James Voigtlander, a master mechanic in the County Highway Department since 1987. He is one of nine employees who regularly work in the shop of the Highway Department.

On October 27, 1994, 1/ Voigtlander was working with a piece of machinery called a belt

sander. (The parties also call this piece of equipment a belt grinder, or a disk grinder with a belt sander on it.) Voigtlander's supervisor, Craig Steingraeber, came into the welding shop and saw him working on the belt sander while wearing gloves and told him not to use gloves when working with the belt sander. Steingraeber gave Voigtlander a written warning which states:

I observed Jim Voigtlander working with the belt sander wearing a loose fitting pair of cloth gloves. I told him to take them off. I said if his gloves got caught in there it would take a second to tear his fingers off, and I have told him at least twice before this not to wear gloves when working with this type of machinery. He slammed down a piece of metal and said "what the hell am I supposed to do, just burn my hands?" I replied, "why do you always have to argue with me when I tell you to do something?" He said, "I do everything you tell me to do." So I said, "well then just do it."

Voigtlander is grieving that written warning. Voigtlander has had experience with belt sanders since he was 10 or 11 years old. He has no formal training on belt sanders at the County or other places, but he has used this equipment a lot and believes that there is a reason to wear gloves -- to protect one from being cut or burned. He testified that whether one should wear gloves when working on a belt sander depends on the type of job, and that it is difficult to fashion a hard and fast rule. In some jobs, fingers would get close to the belt, and then one should not wear gloves. In other jobs, the metal is sharp and could cut someone not wearing gloves, or hot pieces of metal would burn one's hands and arms when not wearing gloves. Steingraeber agrees that there is a risk of getting burned but that the risk of being pulled into machinery is worse than the risk of being burned.

In 1992, Voigtlander was injured while working on a lathe when the jaws on the lathe caught both of his gloves and pulled his hands into the lathe. He was told by Steingraeber not to wear gloves when working on the lathe and the drill press. However, he did not understand Steingraeber's order to include not wearing gloves to work on the belt sander. The first time he realized it was on October 27th when he was reprimanded for wearing gloves. At that point, he told other employees not to wear gloves with the belt sander. Before his reprimand, he estimated that everyone in the shop has worn gloves at one time or another when working on the belt sander.

Voigtlander acknowledged that the belt sander is a moving piece of equipment, but that one could not have an accident similar to the accident he had with gloves on the lathe. On the belt sander, there is no room to get your hands sucked into the machine, although a glove could grind off.

Steingraeber has told employees not to wear gloves or loose clothing in working with equipment where things can get caught in the machinery. OSHA's position is that any loose fitting clothes, jewelry, rings, long hair, or gloves are not to be worn around equipment where those things can get caught in moving pieces.

After Voigtlander was injured on the lathe, Steingraeber specifically told him not to wear gloves on the lathe and reminded him about the drill press. He thought all equipment is

machinery, and when he told Voigtlander not to wear gloves when working with this type of machinery, he thought Voigtlander understood. He has not seen other employees wearing gloves with the belt sander, or he would have told them to remove them.

There are no written work rules in the shop. If something is brought to the supervisor's attention, he relays it to employees by talking to them.

Other employees used gloves with the belt sander before Voigtlander's reprimand. Steve Mael, a patrolman in the Highway Department, uses the belt sander about once or twice a week in the summer to sharpen mower blades. Before the October 27th incident with Voigtlander, he usually wore some type of gloves or protection to protect himself from sparks. He was not aware of any problem using gloves and used welder gloves. He thought most employees used gloves. Mael was in the shop when Steingraeber warned Voigtlander, and so he no longer uses gloves. Mael was aware of the rule about not wearing loose clothing or gloves or having long hair when using the lathe and drill press. He learned about those machines from a high school course.

Thomas Borgkvist, a truck driver with the Highway Department, has also used the belt sander at the shop and worn gloves before Voigtlander's reprimand. He did not know it was against the rules to wear gloves and first learned about it when this grievance was filed.

#### THE PARTIES' POSITIONS:

The County asserts that it acted within its management rights to enforce reasonable work rules for the benefit of employees. This rule was part of OSHA rules as well as common sense. The County put the Grievant on notice that it was inappropriate to use gloves on this "type" of machinery, with movable turning pieces. The supervisor warned employees about wearing gloves after the Grievant's injury, and his warning was not limited to only the lathe and drill press, but to that type of machinery. The County believes that the Grievant was afoul of the work rule, and that gave the County just cause for discipline. A written reprimand is reasonable discipline in this case.

The Union argues that the work rule was not effectively communicated to employees, and that after the supervisor warned the Grievant not to wear gloves when using this "type of machinery," the Grievant no longer wore gloves. But the Union finds it unreasonable to stretch the rule to the belt sander. There was no posted rule, and three experienced mechanics viewed the lathe and drill press as grabbing equipment, different than the belt sander. Accordingly, the rule, given by word of mouth, was too vague, and the Grievant was not on notice that his conduct was contrary to the rule.

#### DISCUSSION:

The parties' collective bargaining agreement provides a just cause standard for discipline in Article 3, Management Rights. The same article provides management with the right to create and enforce reasonable work rules.

Management may make reasonable rules and make them known to employees by telling them the rules. The work rule here is not claimed to be unreasonable, although employees express some concern about safety aspects of the rule against wearing gloves.

Work rules do not always have to be written and posted. However, when management chooses to tell employees of a rule by word of mouth, it risks misunderstandings or later disputes about what was said to whom.

Everyone agrees that Steingraeber told employees not to wear gloves when using "this type of machinery." He told the Grievant so on two occasions. When he used the term "this type of machinery," he was certainly referring to a lathe, since the direction came following Voigtlander's injury on a lathe. He was logically referring to the drill press, which has moving parts similar to a lathe that could catch gloves or loose clothing. The question here is whether Steingraeber's communication was sufficiently clear to warn employees not to wear gloves when working on a belt sander.

I find it was not. Instructions, directions, or work rules need to be clear enough so that employees know what is expected of them. The direction here was not clear enough, and at least three employees misunderstood it, perhaps more. The rule was too vague, and the discipline cannot stand under these circumstances.

#### AWARD

The grievance is sustained.

The County is ordered to rescind the written warning dated October 27, 1994, issued to the Grievant, James Voigtlander, and remove it from personnel files.

Dated this 8th day of May, 1995 at Elkhorn, Wisconsin.

By Karen J. Mawhinney /s/  
Karen J. Mawhinney, Arbitrator

