

**IN THE MATTER OF ARBITRATION
BETWEEN**

) Issue: Personal Protective
) Equipment Policy
)
ELECTROLUX HOME PRODUCTS, INC.)	FMCS Case No.: 08-0214-53204-3
)
“Company”) Hearing Site: St. Cloud, MN
)
and) Hearing Date: June 13, 2008
)
INTERNATIONAL ASSOCIATION OF) Briefing Date: July 31, 2008
MACHINISTS AND AEROSPACE)
WORKERS, DISTRICT LODGE 165) Award Date: September 12, 2008
)
“Union”) Arbitrator: Mario F. Bognanno

JURISDICTION

Pursuant to the relevant provisions in the parties’ 2006 – 2009 Collective Bargaining Agreement (“CBA”), this case was heard on June 13, 2008, in St. Cloud, Minnesota. The parties were represented through their designated representatives. Both sides were given a full and fair opportunity to present their cases. A verbatim transcription of the proceedings was taken. Witnesses were sequestered and witness testimony was sworn and cross-examined. Exhibits were introduced into the record. The evidentiary part of the hearing ended with a plant tour, during which the Arbitrator made note of relevant plant-floor facts. The parties filed timely post-hearing briefs on July 31, 2008. Thereafter, the Arbitrator took this matter under advisement.

APPEARANCES

For the Grievant:

Lewis Neuman, Jr., Directing Business Representative

Janice Lehr, Safety Committee Member and Steward

Ron Roske, Health and Safety Chairperson

Roger Laudenbach, Safety Committee Member

Colleen Murphy-Cooney, Shop Chairperson

For the Employer:

Keith L. Pryatel, Esquire

Carol Young, Director, Human Resources

I. FACTS AND BACKGROUND

Electrolux, the Company, owns and operates a freezer and commercial refrigerator manufacturing facility located in St. Cloud, MN. The plant's Union, IAM, District Lodge 165, represents approximately 1,400 hourly employees who work the facility's 3-shifts. The Company and Union are parties to a CBA. (Joint Exhibit 1)

The St. Cloud facility is part of the larger intra-Electrolux corporate business group, namely: The North American Major Appliance Group ("Group"). The Group includes production facilities located around the United States, Canada and Mexico and, as the Group's name suggests, these facilities produce a range of appliances, including washers, dryers, dishwashers, stoves and refrigerators. (Company Exhibit C)

It is uncontroverted that the language in Article 1, § 1.6 of the CBA was newly added during the current CBA's round of negotiations. This language recognizes that the St. Cloud facility finds itself in an "extremely difficult and competitive environment," and, as such, the parties agreed to work together "to provide a safer working environment..." (Joint Exhibit 1) Several years earlier, the parties established a joint Safety Committee, with a paid, full-time unit member who serves as the Health and Safety Chairperson, as referenced in Article 2, § 2.3 and § 2.4, and Article 20, § 20.1. (Joint Exhibit 1) Article 20, § 20.1, *inter alia*, provides that the Safety Committee is to "investigate and make recommendations for the correction of unsafe conditions," and "formulate rules and regulations necessary to insure safe working conditions for all Employees." (Joint Exhibit 1)

On a quarterly basis, the Group conducts safety team meetings and the Human Resource Managers of the different facilities are provided data bearing on safety goals. (Company Exhibits A, C and D) At these meetings, plant-level Total Case Injury Rate (TCIR) goals are established; actual worker-injury rates are compared thereto; and possible remedial measures are discussed. The St. Cloud plant's TCIR goal was 3.7 injuries per 100,000 employee work hours in 2007-I, which compared favorably to its experience rating of 2.57. However, in 2007-II, the plant's experience rating shot up to 4.78, exceeding that quarter's TCIR goal of 3.5, and the St. Cloud facility reported far more injuries *vis a vis* the Group's other eleven (11) North American facilities on a YTD basis. (Company Exhibit A)

On June 30, 2007, the last day of 2007-II, a plant-wide memorandum from Pat Best, EHS Manager, was sent to all employees (“Best Memo”). Ron Roske, Health and Safety Chairperson, and Tim Nebosis, Plant Manager, as well as Mr. Best, signed the memorandum, which dealt with changes to the Company’s personal protective equipment (“PPE”) policy. The memorandum states:

Due to the recent PPE assessment (completed 21 Jun 07) of the entire factory and the unacceptable number of recordable injuries, the Personal Protective Equipment requirements will be changing throughout the facility. (see PPE Matrix).

A reasonable amount of time will be given to transition to the new compliance. Hearing Protection changes effective immediately, Plant wide mandatory pants will be July 16, 2007, Gloves/ Sleeve requirements will be July 16, 2007, or as soon as the proper glove/sleeve stock is in (check crib for availability), Steel toe requirements by 23 Jul 07 (shoe truck will be here 19 July 2007).

Please make sure that the SWI (standardized work instructions) or the JDS (job detail sheets) are changed to reflect any change in the PPE requirements.

Thank you for your support in protecting this factory and its workers.

/signed by/

Pat Best
EHS Manager

Ron Roske
Union Safety Rep

Tim Nebosis
Plant Manger

(Company Exhibit B; emphasis added)¹

Notwithstanding the implemented changes identified in the Best Memo, the 2007-III TCIR again fell short of goal: 4.07 *versus* 3.4. (Tr. 156; Company Exhibit C) Further, by the end of 2007-III, the St. Cloud facility still led the Group in terms of recordable injuries, representing nearly 28% of the twelve (12) facility Group’s total number of recordable injuries. (Company Exhibit D) Accordingly, Carol Young, Director of Human Resources, initiated PPE policy changes that

¹ The Matrix attached to Company Exhibit B indicates that gloves and sleeves are to be either “cut resistant” or “as required per SWI.”

went beyond the Best Memo's innovations. Specifically, on January 14, 2008, Ms. Young issued a memorandum entitled, "NOTICE," wherein she observes that injuries due to "lacerations" were a leading cause of work-related injuries and, thus, effective February 1, 2008, "... all production employees (excluding Maintenance and Tool Room employees), visitors and suppliers must wear the following PPE when they are in the production areas of the facility:

- Long pants
- Solid leather shoes
- Safety glasses with side-shades
- Cut-resistant sleeves
- Cut-resistant gloves or special application gloves as specified in SWI's."

(Employer Exhibit H; Joint Exhibit 3; emphasis added; "Notice Memo") The (nearly) universal requirement that everybody on the production floor (including salaried personnel) must wear cut-resistant sleeves and gloves ("S/G PPE") was new, in that the Best Memo did not require same of all employees. Moreover, the Best Memo *versus* Ms. Young's Notice Memo did not specify that (1) except during rest/lunch breaks in "designated" areas, sleeves and gloves (whether or not cut-resistant) must be worn from the time employees enter the plant to the time they leave it;(2) the Company would issue the sleeves and gloves to all free of charge; and (3) employees must take their sleeves and gloves home with them each day and bring them to work each day, as they do their safety glasses. (Company Exhibit B and Joint Exhibit 3) To show cause for requiring that all wear

S/G PPE while on the production floor rather than just when at work stations, the Company introduced a number of pictorial exhibits, showing sharp edged and sharp cornered inventory stocks and appliance shells and other parts that are situated adjacent to the facility's pedestrian aisle ways. It further established that the facilities' aisle ways are three (3) or four (4) feet wide, with "yellow" lines separating them from wider tow-motor traffic aisle ways. (Company Exhibits F and G) In addition, the Company showed that on October 3, 2007, Abdirahman Rooble cut his wrist on a metal liner, while rushing through the "Compact Assembly" production area to exit the plant, rather than using the appropriate walkway. (Company Exhibits E and H; Tr. 158) Lastly, the Company contends that the hundreds of production workers who exit the plant at the end of their 1st and 2nd shifts often walk in groups, side-by-side, breaching the parameters of the pedestrian aisle ways.² (Tr. 58, 112)

On February 13, 2008, Ms. Young issued a second memorandum entitled, "AMENDED PPE NOTICE – 2/13/08" ("Amend Memo"), wherein she specifies changes to the January 14, 2008, Notice Memo. In relevant part, said changes were as follows:

Exceptions Permitted:

- Hot Work Operators ... not required to wear cut-resistant sleeves at their work stations until heat resistance sleeves are provided. Must wear cut-resistant sleeves when not at their work stations.
- Tube Mill Welding Operators – not required to wear cut-resistant sleeves at their work stations until heat resistant sleeves are provided. Must wear cut-resistant sleeves when not at their work stations.

² On June 9, 2008, the Company employed 693 1st shift production workers; 501 2nd shift production workers; and 91 3rd shift production workers. In addition there are maintenance employees crews that number from 14 to 20, per crew. (Union Exhibit 3)

- Jobs where finger tip and manual dexterity is a premium (such as peeling stickers) three finger tips cut off no more than at the knuckle is permissible.
- Jobs using solvents and/or corrosive materials such as Inspector, Cleaning Cabinets, Waste Handling.
- Maintenance/Tool Room employees must wear cut-resistant gloves and sleeves when coming into/going from the plant to and from their lockers unless they are already wearing their long-sleeve maintenance uniforms. Maintenance uniforms must have long sleeves all year.
- Employees may remove their PPE while on breaks only in designated break area and/or the lunchroom. If employees choose to take break in an area other than the designated break areas or the lunchroom, they must continue to wear their PPE while on break or lunch.

(Joint Exhibit 4)

On January 21, 2008, the Union grieved the Notice Memo, alleging:

The Co. PPE Policy issued 1-14-08 is unreasonable.

The Union Safety Committee did not have input as per contract.

We request the Co. issue a reasonable PPE policy and the Safety Committee have the right to make recommendations.

(Joint Exhibit 2) On January 31, 2008, the Company replied to the Union's grievance, stating in relevant part:

The PPE (Personal Protective Equipment) change is a result of Company policy because of corporate safety initiative and St. Cloud's historical continuing unsatisfactory safety performance. In addition to talking with various Health and Safety Representatives, a pre-release copy of the changes in the policy was given to the Health and Safety Chairperson to review and provide input.

* * *

/Signed by/

K. C. Fleming
Labor Relations Manager

(Joint Exhibit 2) On that same date, the Union moved the grievance to arbitration and, ultimately, the instant arbitration proceeding was scheduled and commenced.

II. STATEMENT OF THE ISSUES

The parties jointly stipulated to the following statement of the issue:

Whether the Company's January 14, 2008, announced PPE rule, as subsequently amended on February 13, 2008, violated the CBA? If so, what is an appropriate remedy?

RELEVANT CONTRACT AND POLICY PROVISIONS

Article 1 Purpose

Section 1.6 The Union and Company recognize the extremely difficult competitive environment for manufacturing in the United States and the critical need for productivity improvements if the St. Cloud facility is to survive. For that reason, the parties will work together to implement and to maintain the Electrolux Manufacturing System ("EMS") to provide a safer working environment, enhanced production stability, to provide processes, to eliminate waste, and to accomplish positive cultural change.

Article 2 Recognition

* * *

Section 2.3 The functions of the Health and Safety Chairperson shall include the promotion of health and safety within the workplace, the control of health insurance costs, and the values expressed in Section 2.4 of the Article. The Health and Safety Chairperson shall regularly attend safety meetings, Labor/Management Team meetings, and other meetings as designated by the Company.

Section 2.4 The parties realize that in order to provide maximum opportunity for continuing employment, good work conditions and good wages, the parties must be in a strong marketing position, which means we must produce efficiently and at the lowest possible costs consistent with fair labor standards. The parties assume responsibility for cooperating in the attainment of these goals. The parties therefore agree that they will cooperate to insure a full day's work on the part of employees, that they will combat absenteeism and any other practice which restricts production; that they will strive to improve production, eliminate waste in production, conserve materials and supplies, improve the quality of

workmanship, prevent accidents, and strengthen good will between the employer and employees, the customers, the union and the public. All the above to be within the framework of the collective bargaining agreement.

Article 6 Management Rights

Section 6.1 The Company retains the sole right to manage its business ... to establish and enforce reasonable policies... subject only to such restrictions governing the exercise of these rights as expressly provided in this Agreement.

Article 20 General Provisions

Section 20.1 A Safety Committee composed of Company and Union representatives shall be established and maintained by the Company to investigate and make recommendations for the correction of unsafe conditions. This committee shall formulate rules and regulations necessary to insure safe working conditions for all employees. A Union member of the Shop Safety Committee shall be included on all shop inspections by the State and Federal governments. The Company will give a written report of all safety tours and written answers to written requests from the Shop Safety Committee for correction of unsafe conditions. There shall be only one (1) safety inspection per month with a member of the Shop Safety Committee present on the inspection. There shall be a safety meeting with a Company representative following the inspection. Time spent on safety tours and Safety Committee meetings with the Company during the Union members' regular work schedule will be paid by the Company

(Joint Exhibit 1)

III. POSITION OF THE UNION

The Union's basic claim is that the Notice Memo and Amend Memo include S/G PPE requirements that are "unreasonable," in violation of Article 6, § 6.1. Moreover, the Union claims that the Company's 2008 safety memos unilaterally expanded the Best Memo in many ways and it did so without the involvement of the Union members of the Safety Committee, violating Article 20, § 20.1, which was first negotiated in 1965. (Union Exhibit 1)

Where demonstrably needed, the Union does not challenge the S/G PPE safety rule when unit employees are on duty, at their work stations. However, the

Union contends that it is unreasonable to require unit employees to: (1) wear S/G PPE upon entering the plant and before reaching their work stations and, with few exceptions, to continue to wear the S/G PPE until leaving the plant, at the end of their shifts; (2) wear S/G PPE even when walking along pedestrian aisle ways between their work stations and restrooms; (3) wear S/G PPE even when walking along pedestrian aisle ways between their work stations and designated break areas and the lunchroom; and (4) wear S/G PPE at all times when in “non-designated” break areas, even while eating lunch.

The Union acknowledges that under the new S/G safety rule unit employees may doff S/G PPE, while using the restrooms, resting or eating in designated break areas, and outside the plant (where there are tables for employee use, weather permitting). However, for several reasons, the Union urges (1) ~ (4) are unreasonable aspects of the 2008 S/G PPE policy. First, with respect to points (1), the Union argues that the Employer did not conclusively prove that on-the-job injuries and, in particular, lacerations, occur when unit employees walk along pedestrian walkways either from a plant entrance to their work stations or from their work stations to a plant exit. Company Exhibit E, pertaining to Mr. Rooble's injury, notwithstanding, because the as the Union points out, Mr. Rooble was not leaving the plant along a pedestrian aisle way but, rather, he was cutting through a production areas when he tripped, injuring himself. To conclude, the Union notes that it is uncontroverted that the S/G PPE is often dirty, saturated with solvents and other chemicals and smelly. Accordingly, the Union argues, that to require unit employees to don S/G PPE

upon entering/exiting the plant is an unreasonable interference with personal freedom, particularly when said equipment does not impinge on plant safety, *per se*. (arbitration precedence provided)

Second, with respect to point (2), the Union argues that to require unit employees to don S/G PPE when not operating machinery and when walking between work stations and restrooms is unreasonable because the Company did not even attempt to prove that lacerations occur on pedestrian walkways when employees move between their work stations and restrooms. Further, the Union notes that the Company's Muslim employees doff their G/S PPE in order to wash their hands (in restrooms) before proceeding to religious services in designated prayer areas. Ridiculously, the Union continues, these same employees are then to don dirty/greasy/smelly cut-resistant sleeves and gloves, after having washed their hands, in order to walk along pedestrian aisle ways in route to the designated prayer areas, where the G/S PPE maybe doffed: They re-contaminate themselves.

Third, with respect to point (3), it is equally ridiculous to require unit employees to wear S/G PPE when walking from/to work stations (and restrooms) and designated break areas and the lunchroom. That is, to require employees to don S/G PPE after washing one's hands in route to a designated break/lunch area is self-defeating. Finally, to require unit employees to wear S/G PPE at all times when in non-designated break areas, even while eating lunch, is not only an unreasonable infringement on employee liberty, but it is unhealthy.

In addition, the Union makes two (2) related observations. First, if employees were to remove their S/G PPE in non-designated break areas or while coming/going between their work stations and designated break/lunch areas, said employees would be in violation of the S/G PPE safety rule and, as a result, they would be subject to discipline. Second, there is an insufficient number of seats in designated break/lunch areas to accommodate all of the employees on the 1st and 2nd shifts. Assuming four (4) people per lunchroom booth and counting the number of chairs placed around the table situated in the designated areas, Mr. Roske determined that the lunchroom can accommodate only 104 individuals at any given time and that the non-lunchroom designated areas can accommodate another 328 individuals. In total, Mr. Roske testified that the plant's designated areas can accommodate 432 individuals, implying that the 1st shift is short 261 seats and the 2nd shift is short 64 seats.³ (Union Exhibits 3 and 4) Thus, the Union argues, the short seated individuals are forced to break/dine in non-designated areas and, by threat of discipline, to break/dine with their soiled G/S PPE on their hands and arms.

Finally, because the wearing of S/G PPE during non-productive time is unreasonable under Article 6, § 6.1 of the CBA, and because the Safety Committee was not a party to "formulating" the safety rule changes, as required by Article 20, § 20.1, the Union requests: (1) that a plant-wide PPE job assessment be ordered to determine the jobs on which the S/G PPE is genuinely needed; (2) elimination of the need to wear the S/G PPE during non-productivity times, such as, when walking in pedestrian walk aisles and when moving

³ During good weather, unit employees may use the 124 "outside" seats. (Union Exhibit 4)

between work stations and restrooms/break/lunch room designated areas; (3) eliminate the need to take the S/G gear home at the end of shifts; and (4) retroactively (from February 1, 2008) reimburse employees for the time it took them to don and doff S/G PPE while on scheduled breaks. (Union Exhibit 5)

V. POSITION OF THE COMPANY

The Company begins by pointing out that, *inter alia*, under Article 6, § 6.1, the Employer has retained the right to manage its business, and establish and enforce policies, provided that they are “reasonable;” Article 1, § 1.6 commits the parties “to provide a safer working environment;” and Article 2, § 2.1 states that the Health and Safety Chairperson’s job is the “promotion of health and safety within the workplace,…” (Joint Exhibit 1)

In lieu of both its retained and contractual rights, the Company contends that Ms. Young gave a “draft” copy of the 2008 PPE rule to Mr. Roske, Health and Safety Chairperson, well in advance of its final distribution: After examining it, Mr. Roske commented that “employees won’t like it;” he inquired where unit employees would be able to store their S/G items; and he stated that the “portal to portal” aspect of the rule was unnecessary. (Tr. 83, 106-109, 177-178) Further, the Company points out that it (1) notified employees of the 2008 PPE rule on January 17, 2008, when it was distributed along with paychecks; (2) delayed the rule’s effective date until February 1, 2008, to give employees time to acclimate to the new rule; (3) applied the rule in a non-discriminatory manner, across-the-board to production and salaried workers, independent contractors, visitors and so forth; (4) provided the PPE in question to employees free-of-charge, with

reasonable provisions for free replacements; (5) posted in large, prominent signs at the front, rear and office entrances to the plant the words “PPE Required Beyond This Point;” and (6) showed that the intent of the 2008 PPE rules has been realized: namely, to reduce laceration-type injuries – (A) through 2007-II, the plant experienced six (6) lacerations *versus* through 2008-II, the plant experienced one (1) laceration; and (B) through 2007-II, the plant experienced 23 recordable injuries *versus* through May 2008, the plant experienced eleven (11) recordable injuries. (Joint Exhibit 3, Company Exhibits A, F, H and I) Still further, the Company notes that the Notice Memo (January 14, 2008) and the Amend Memo (February 13, 2008) differ. For example, Janice Lehr, Safety Committee Member and Steward, demonstrated that some tasks require more finger-dexterity than do others, and she suggested that the finger tips of the formers’ cut-resistant gloves should be cut off: The Amend Memo changed the PPE rule to make this accommodation. (Tr. 117-119) To cite another example, Ms. Lehr, recommended that three sets of cut-resistant gloves be offered as options to the workforce: The Employer also adopted this recommendation. (Tr. 53-54; 178-179)

Given the previously discussed roll-out of the 2008 PPE rule, relevant precedence and recognizing that the joint Safety Committee’s authority is limited to making “recommendations,” whereas, the Employer’s has the authority to establish policies, the Company argues that it has met its burden of demonstrating that the rule in question is reasonable.

Next, with regard to the Union's "lack of input" claim, the Company observed the following: first, the Safety Committee's role includes that of making "recommendations;" second, previously the Employer has acted unilaterally to establish safety policies (e.g., with respect to the plant-wide requirement that all wear safety glasses)(Company Exhibits J and K); third, Ms. Young gave Mr. Roske a draft copy of the 2008 PPE rule and he subsequently supplied her with "input" (although he apparently did not share it with other Union-side members of the Safety Committee); and fourth, Roger Laudenbach, Safety Committee Member, testified that the Safety Committee was given the opportunity to propose additions to the rule in question, including Ms. Lehr. (Tr. 133-136)

The Company demurs, with regard to the Union's claim that the 2008 PPE rule is "unreasonable" because said equipment must be worn at all times unless in designated break/lunch room areas and in restrooms. The Company argues that the on-the-job donning and doffing of the G/S gear by employees represents a *de minimus* allocation of their time, and that its break/lunch seating analysis shows that the plant can accommodate nearly 900 seated employees, obviating "sanitary" concerns (Company Exhibit M); and its pedestrian aisle ways are lined with sharply edged inventory, parts and product, and its employees often walk four (4) or five (5) abreast when entering and exiting the facility.

Finally, for the above discussed reasons, the Company urges that the grievance be dismissed.

VI. DISCUSSION

The Union claims that the Company-issued 2008 Notice (January 14, 2008) and Amend (February 13, 2008) Memos include G/S PPE requirements that are, in critical respects, unreasonable in violation of Article 6, § 6.1. Further, the Union alleges that the unreasonable aspects of the G/S PPE requirements in question are those that were unilaterally formulated by the Company in violation of Article 20, § 20.1, and in breach of the parties' long standing practice of jointly formulating safety rules: A practice dating back to 1965. Each of these claims is next evaluated, beginning with the alleged violation of Article 20, § 20.1.

The record shows that on June 30, 2007, a joint Union-Company safety memorandum was issued – the Best Memo. This memorandum was distributed to all employees and it states that upon assessing the “entire” factory, it was determined that an unacceptable number of recordable injuries were occurring and, as a consequence, *inter alia*, it references a matrix that identifies the specific departments where cut-resistant gloves and/or cut resistant sleeves are either required or not. Ms. Young's Notice and Amend Memos went beyond the G/S PPE requirements in the Best Memo. Ms. Young's memos: (1) require all employees, except for Maintenance and Tool Room employees and the employees who regularly handle solvents and/or corrosive materials (i.e., Inspectors, Cleaning Cabinets and Waste Handling), must wear G/S PPE; and (2) specify when and where the G/S PPE must be donned and may be doffed, namely: they must be worn from the time employees enter the facility until they

leave it, except that the G/S PPE may be doffed when in restrooms and when they take breaks and eating lunch in designated areas.

The first issue is to discern the role, if any, that the Union members of the Safety Committee played in formulating the content of the Notice and Amend Memos and whether their Article 20, § 20.1 rights were impermissibly denied. Mr. Roske – the safety liaison between the Union and the Company – testified that he did not “meet and negotiate” the safety rule in question; rather, he stated that the Safety Committee had “some input,” but expected more. (Tr. 83) Mr. Roske also testified that on or about November 15, 2007, Mr. Best told him that the rule was being prepared. (Tr. 83) And that sometime before the Notice Memo was issued; Ms. Young gave him a draft copy of the Notice Memo. (Tr. 107) He also stated that after reading the draft document he told her that “[T]here are certain areas that do not require them [the S/G PPE];” that he was critical of the fact that the Company was not providing storage space for the S/G PPE; and that there was no need to don the protective gear from the time of entering to exiting the plant. (Tr. 107-108) In this vein, Ms. Young testified that, while in her office, she hand-delivered a draft copy of the Notice Memo to Mr. Roske, asking him for “any input or feedback that he had.” (Tr. 177) Ms. Young confirmed the nature of Mr. Roske’s feedback. (Tr. 177)

Mr. Laudenbach testified that the unit members of the Safety Committee were given an opportunity to propose changes to the G/S PPE rule. He testified that the Safety Committee discussed the Notice Memo with Ms. Young, while it was in draft form. He testified that the Union member’s of the Safety Committee

wanted lockers as an alternative to having to bring the G/S PPE to and from home; and that the Union wanted every job in the plant evaluated regarding the need for G/S PPE (Tr. 133-136) Moreover, Mr. Laudenbach admitted that the Company had on previous occasions unilaterally imposed safety rules, like the rule requiring that safety glasses must be worn on the plant floor. Further, Mr. Laudenbach admitted that in 2006 the Company unilaterally mandated cut-resistant gloves and sleeves for employees who drop “the liner into the shell” and that after the fact, the matter was brought to the Safety Committee – akin to the sequence of events that occurred in this case. That is, Mr. Laudenbach admitted that after the Notice Memo was issued on January 14, 2008, it was reissued on February 13, 2008, in the form of an Amended Memo, that included changes based on problems raised by the Safety Committee. Specifically, for example, the fingertips were cut off the gloves of some employees; and as an alternative to storage lockers for the G/S PPE, the Company provided employees with a tote bag to carry the G/S and safety glass PPE to and from home. Finally, Mr. Laudenbach observed that the Safety Committee includes five (5) Union and five (5) Company members and that when the two (2) sides “deadlock” on an issue, the final decision is made by the Plant Manager, although he could not recall such an intervention. (Tr. 133-145)

The above review of relevant testimony shows that while the parties did not “meet and negotiate” the safety rule changes in question, the Company did not issue the Notice Memo on January 14, 2008, with abandon and disregard for the views of the Safety Committee’s Union members. Mr. Roske was consulted

and provided feedback and so too was Mr. Laudenbach who independently provided input. It is also clear from the record that subsequent to the issue of the Notice Memo, the Safety Committee and its members continued to provide input that ultimately was heeded by the Company, at least in part, as evidenced in the February 13, 2008 Amend Memo. In addition, the record suggests that the nature of the parties' joint safety deliberations are more akin to "meet and confer" meetings than they are to "meet and negotiate" meetings, as Mr. Laudenbach admitted under cross-examination. That is, he acknowledged that previously the Company has acted on its own initiative and then, in *post hoc* fashion, the Company brought the matter to the Safety Committee for deliberations. Article 20, § 20.1 states, in part:

A Safety Committee composed of Company and Union representatives shall be established and maintained by the Company to investigate and make recommendations for the correction of unsafe conditions. This committee shall formulate rules and regulations necessary to insure safe working conditions for all Employees. ...

(Joint Exhibit 1; emphasis added). The plain language of this section makes it clear that the Safety Committee is an organizational entity that is "maintained by the Company," for the purpose of making "recommendations [to the Company]," which is the role of "advisory" or "meet and confer" entities, in general. That is, the Safety Committee is not independently vested with decisional authority over safety rule-making, independent of the Company's concurrence.

This interpretation is corroborated by four (4) material facts. First, is to candidly recognize that it is the Company that is legally mandated to address and legally responsible for the occurrence of workplace injuries. Second, the Union

has previously challenged the Company's Article 20, § 20.1 rights in two (2) grievances, one filed in 2004 and the other in 2006. The Company denied both of these grievances, as in this case, and the Union withdrew both grievances "without prejudice." (Company Exhibits J and K) Third, Article 6, § 6.1 clearly states that the Company retains the sole right to manage its business and to "establish and enforce reasonable policies," such as safety policies and this rule-making right is not limited by the above-quoted part of Article 20, § 20.1. Finally, Mr. Laudenbach candidly and correctly acknowledged that a "deadlocked" Safety Committee would turn to Plant Manager (i.e., the Company) for a final decision, even though such an occasion has never arisen to his knowledge.

In conclusion, with respect to the first issue raised, the Union members of the Safety Committee were not impermissibly deprived of their proper role in regard to the issuance of the Notice and Amend Memos.

The second issue goes to the heart of the instant grievance. Namely, whether the Notice and Amend Memos include G/S PPE requirements that are unreasonable, as the Union alleges, pointing to Article 6, § 6.1 for contractual support. The Union contends that to require unit employees to wear G/S PPE from the time they enter the plant to the time they leave the plant, with some exceptions, is an unreasonable application of the rule. Further, the Union contends that to require unit employees to wear G/S PPE while coming-and-going between work stations and restrooms, designated break areas and the lunchroom is unreasonable. To prove its claims, the Union points out that injuries occur at work stations and not in pedestrian walkways and that the G/S PPE is

(usually) dirty, chemical laden and smelly. For these reasons, the Union concludes, it is unreasonable to require that the G/S PPE be worn upon entering/when exiting the plant and when away from work stations during the workday. The Union argues the ridiculousness of doffing the G/S gear to wash hands and then having to don them again, re-contaminating one's hands, before proceeding to a designated prayer area, break area or lunchroom, where they may again be doffed. Finally, the Union urges that there are not enough seats at the tables located in designated break areas and in the lunchroom to accommodate all 1st and 2nd shift employees, forcing some employees to take rest breaks and to eat lunch with filthy gear on their hands and arms.

On the other hand, the Company argues that it properly exercised its Article 6 rights in this case and that the new G/S PPE rule is reasonable and it was properly rolled-out. Specifically, it urges that (1) the Union, in the person of Mr. Roske, was advised of the rule change well in advance of the rule's plant-wide distribution: His input was sought; (2) employees were given nearly two (2) weeks to acclimate to the administration on the G/S PPE rule; (3) the new rule was applied and administered in a non-discriminatory manner; (4) the G/S PPE items were provided to employees free-of-charge, with reasonable provisions for free replacements; and (5) the G/S PPE rule is prominently displayed at the front, rear and office entrances as a reminder to all that said items must be donned. Moreover, the Company argues that the rule in question was a necessary and business-related policy and that it has been proven effective in reducing the number of laceration-type injuries.

These Company arguments are well taken and, as a general matter, the G/S PPE rule has improved workplace safety, as it was designed to do.⁴ The Company showed that the number of lacerations that occurred at work stations has fallen. And it suggests that if Mr. Robbie would have exited the plant *via* a pedestrian walkway, he would not have tripped, cutting his wrist, or if he had been wearing G/S PPE at the time, the fall would not have resulted in his laceration injury.

However, the Company did not and could not impeach the Union's contention that the G/S PPE is filthy, chemically laden and reeking. As the Arbitrator witnessed first-hand during the plant tour, by in large, the G/S PPE is soiled, as characterized. Further, the Company did not establish that laceration injuries occur when workers walk from/to work stations to/from restrooms, designated break areas and the lunchroom. In fact, the Company did not identify a single occurrence of injury in a pedestrian walkway, as employees' traffic between work stations the referenced areas.

Further, in the opinion of the undersigned, for two (2) reasons, the designated area seating survey that was conducted by the Company is less than accurate. First, the Company's survey assumed that six (6) individuals can sit at each of the 134 "inside" tables, accommodating 804 individuals. (Tr. 165) Combining "inside" and "outside" tables, the Company estimates that there is seating for 900 individuals at any given time. (Company Exhibit M; Tr. 162) However, this estimate is biased upward. It is unrealistic to think that six (6)

⁴ During the first half of 2007, six (6) laceration injuries were reported; whereas, in comparison, during the first half of 2008, one (1) laceration injury was reported.

adults can comfortably sit at the lunchroom's 22 booths, given that the area is not air conditioned and workers are likely to want "elbow room" because they would be hot and perspiring during several months out of the year. The Arbitrator reached this conclusion during the course of the plant tour. According to the Company, the lunchroom can accommodate (26 x 6 =) 156 individuals: A more realistic number is 104 individuals, as the Union contends. (Union Exhibit 4) Second, the Union's designated area seating survey is premised on more realistic assumptions, elevating its credibility level, relatively speaking. That survey indicates that there exists 432 "inside" and 124 "outside" seats for a total of 556 seats, too few to accommodate the 693 individuals who work the 1st shift and during the winter months, too few to accommodate the 501 individuals who work the 2nd shift.⁵ (Union Exhibit 4) From this analysis, it is clear that some workers on some occasions must take their breaks and lunches in non-designated areas, implying that if they doff their G/S PPE, they risk disciplinary consequences.

Ultimately, the Arbitrator concludes that to require unit employees to wear the G/S PPE gear when leaving one's work station to use the plant's restrooms and other designated areas and when returning to one's work station from these locations exceeds the limits of sound judgment, in the absence of proven business-related reasons to the contrary. Further, to insure that there is sufficient designated area seating to accommodate the breaking/lunching needs of the

⁵ These seating-count conclusions are corroborated by the Union's post-hearing submission of a July 31, 2008 letter and "J – Attachment."

unit's workforce, the parties are directed to jointly conduct a seating survey, adding tables and chairs where needed.

When leaving the facility at the end of shifts, the best evidence is that workers often walk side-by-side – perhaps four (4) or five (5) abreast – breaching the parameters of the facility's narrow walkways. Indeed, the Arbitrator witnessed as much during his plant tour when as few as two (2) or three (3) individuals were walk side-by-side. Moreover, as also witnessed, at several places throughout the facility, sharp edged and sharp cornered stock, parts and product are stationed adjacent to pedestrian walkways, creating the risk of injury. Thus, at the end of each shift, when employees are likely to leave in the plant in a rush and when they are likely to spill outside the limits of the walkways or to cut through production areas (as in Mr. Robble's case), it is reasonable to require that they wear their G/S PPE until they exit the facility. For this same concern and reason, it makes sense that the G/S PPE be donned at the plant's entrances, at the beginning of each work shift, with hundreds of workers entering the plant at the same time. (These occasions are differentiated from instances of rest/lunch breaks because employees scatter throughout the plant to use its numerous restrooms and designated areas. (Company Exhibit M))

The undersigned gave careful consideration to the Union's remaining remedial requests and found them to be both unpersuasive and unsupported by credible and convincing evidence.

VII. AWARD

For the reasons discussed above, the grievance is sustained in part and denied in part. The announced 2008 G/S PPE rule, in part, violates the CBA's Article 6, § 6.1 proviso that Company policies must be "reasonable."

Specifically, it is unreasonable for the Company to require employees to wear the G/S gear when leaving work stations to use the restroom and when returning to their work stations from the restroom. In it also unreasonable for the Company to require employees to wear the G/S gear when leaving work stations to go to designated break and lunch areas and when returning to their work stations from these areas. These aspects of the 2008 G/S PPE rule are hereby rendered null and void, and the Company is directed to cease the enforcement of same. Further, the Company is directed to initiate, in conjunction with the Union members of the Safety Committee, a designated area seating survey to establish where and how many seats and tables must be added to the existing complement of same to insure that all unit employees may take scheduled breaks/lunch without having to wear G/S gear.

For the limited purpose of overseeing the implementation of this Award, the undersigned shall retain jurisdiction over this matter until 5:00 PM on October 31, 2008.

Issued and Ordered on the 12th day of
September, 2008 from Tucson, Arizona.

Mario F. Bognanno, Labor Arbitrator