

WITNESSES TESTIFYING

Called by the Union

Keith Bakken, Grievant
Safety and Sanitation Lead Person

Roger Delage,
President – Local 267G

Called by the Employer

Roger Delage,
President – Local 267G

Keith Bakken, Grievant
Safety and Sanitation Lead Person

David B. Enget,
Warehouse Supervisor
Formerly Crookston Plant
Shift Supervisor

David Gravalin,
Production Supervisor Moorhead Plant
Formerly Employee Relations Manager

David Walden,
Director of Operations – Crookston Plant

Sharon Connell-Rick,
Employee Relations Manager
Formerly Human Resources Manager

Rebuttal:
David B. Enget,
Warehouse Supervisor
Formerly Crookston Plant
Shift Supervisor

ALSO PRESENT

For the Union

Roger Cox,
Union Committeeman

For the Employer

No others were present

JURISDICTION

The issue in grievance was submitted to James L. Reynolds as sole arbitrator for a final and binding resolution under the terms set forth in Article IX of the Collective Bargaining Agreement between the parties (Joint Exhibit 1) and under the rules of the Federal Mediation and Conciliation Service. The Arbitrator was mutually selected by the parties from a list of names of arbitrators submitted to them by the Federal Mediation and Conciliation Service. The parties stipulated at the hearing that the Arbitrator had been properly called, and that the grievance was properly before him for a decision.

At the hearing the parties were given full and complete opportunity to examine and cross-examine witnesses and present their proofs. Final argument was by post hearing briefs which were timely received. With the receipt of the post hearing briefs the record in this matter was closed. The issue is now ready for determination.

STATEMENT OF THE ISSUE

The issue in this case was stipulated to by the parties as whether or not the Grievant was suspended for just cause, and if not what shall the remedy be? The grievance is dated February 21, 2007, and was entered into the record of this hearing as Joint Exhibit 2.

It reads in relevant part as follows:

Based on (but not limited too [sic]) Articles VII and IX of the Master agreement.

The company has unjustly disciplined me, denying me the opportunity to work. Further, they have offered absolutely no documentation or evidence of the infraction they allege and/or accuse me of, which was sited [sic] by management to suspend me.

What I want is to be made whole. Necessary to do that (but not limited too [sic]), would be the following; 1) I be compensated for the days I was

denied work and/or suspended. 2) All records (including the Disciplinary notice, and any other documents/letters/etc referencing this issue) now placed in my personnel file, or any other company file, be removed and destroyed.

The Company replied to the grievance on March 6, 2007 as follows:

Keith was appropriately disciplined according to Section 7.1 of the Master Agreement for “just cause” and according to Company Work Rule Group B, #2 Insubordination. Keith was repeatedly insubordinate to his immediate supervisor. The grievance is denied.

On April 18, 2007 the Shop Steward commented on the grievance as follows:

We feel that Keith not insubordinate to the supervisor and be made whole.

Subsequently, the Plant Superintendent answered the grievance as follows:

Employee was disciplined for just cause. Grievance denied.

The sections of the Collective Bargaining Agreement that bear on the issue are found in ARTICLE I – RECOGNITION, ARTICLE VII – DISCIPLINE AND DISCHARGE, and ARTICLE IX – GRIEVANCE AND ARBITRATION. In relevant part they read as follows:

ARTICLE I – RECOGNITION

* * * *

1.7 Management Rights: The Company shall have full power and authority to determine all matters in connection with plant operations,

* * * *

ARTICLE VII – DISCIPLINE AND DISCHARGE

7.1 The Company reserves the right to discipline or discharge employees for just cause.

* * * *

ARTICLE IX – GRIEVANCE AND ARBITRATION

* * * *

9.7 The arbitrator shall have authority to act only with respect to grievances which relate to the interpretation and application of the provisions of this Agreement and his decision shall be final and binding on all parties.

* * * *

In addition to the above cited contract language the Company issued in 2005 an employee handbook that contains, at Section 7, certain work rules that bear on this case.

In relevant part they read as follows:

7. WORK RULES

Outlined below are the work rules for your facility and the method of enforcement of these rules. These rules are published for your benefit and well as a guide for management.

GROUP A – WORK RULES

The rule infractions of Group A rules will result in immediate discipline up to and including discharge. Multiple violation of the same Group A rules shall be the basis for progressive discipline. In addition, multiple violations of different Group A rules shall also be the basis for progressive discipline.

* * * *

6. Insubordinate Behavior – Employees are expected to behave appropriately in their actions and dealings with their Foreman or Supervisor.

* * * *

There may be other conduct which is not specifically listed in any of the rules which will warrant disciplinary action or discharge depending on the seriousness of the offense and the detriment to the company or fellow employees. The merits of each case will determine what and when any disciplinary action is to be taken.

GROUP B – WORK RULES

The following rules infractions will normally result in either a suspension or termination depending upon the seriousness of the situation.

* * * *

2. Insubordination – Refusal to follow direct order from Supervisor

* * * *

There may be other conduct which is not specifically listed in any of the rules which will warrant disciplinary action or discharge depending on the seriousness of the offense and the detriment to the company or fellow employees. The merits of each case will determine what and when any disciplinary action is to be taken.

FACTUAL BACKGROUND

Involved herein is a grievance that arose when the Company suspended the Grievant on January 31, 2007 for violation of work rule Group B #2 – Insubordination. Specifically, the Grievant was suspended for refusing to stop tape recording a meeting with his supervisor, David Enget, on January 29, 2007. The Company is an agricultural cooperative that manufactures sugar products at its plant in Crookston, Minnesota where the incident giving rise to this grievance took place. The Union is the exclusive bargaining representative of the production and maintenance employees whose job classifications are shown starting at page 82 of the Collective Bargaining Agreement. The parties have had a collective bargaining relationship for many years.

For all relevant times, the Grievant was covered by the Collective Bargaining Agreement between the parties. The Agreement was made effective on August 1, 2004 and remains in full force and effect through July 31, 2011.

The Grievant is a long term employee with the Company, having worked there for approximately 30 years. Up to the time of the instant grievance he had no significant prior disciplinary history. At the time of his suspension he was working as a Safety and

Sanitation Lead Person in the Crookston, Minnesota facility. His duties involved maintaining safety equipment and performing safety and sanitation procedures. In addition, the Grievant has held positions as shift steward and chief steward for the Union.

In October 2003 the Grievant filed a worker's compensation claim. The Company contested that claim, and the matter led to litigation. At the time of the arbitration hearing the Grievant's worker's compensation claim was still pending resolution. The Grievant asserted at the arbitration hearing that Supervisor Enget accused him of lying in regard to his worker's compensation claim, and was browbeating him in regard to it. The Grievant went on to assert that for those reasons he had to "protect" his interests by tape recording meetings and communicating with Mr. Enget only in writing through e-mails.

In 2005 the Company published an employee handbook (Joint Exhibit 6) that contained work rule B2 that the Grievant stands accused of violating. That work rule provides that insubordination will be found to exist if an employee refuses to "follow a direct order from [a] Supervisor". The penalty for insubordination provided under Group B is either a suspension or termination "depending upon the seriousness of the situation". The record shows that the Grievant declined to sign an acknowledgement of having received the Employee Handbook containing the work rules. It is not disputed, however, that he was given a copy of handbook in 2005. Moreover, the Grievant testified at the arbitration hearing that he was expected to abide by the rules contained therein. The work rules in the employee handbook do not contain a specific ban on tape recording meetings held on Company premises.

At the arbitration hearing the parties stipulated that the Company has a right to establish reasonable rules and regulations that are not in conflict with a provision of the Collective Bargaining Agreement. The Union did not challenge the right of the Company to establish such rules.

The record testimony of Sharon Connell-Rick shows that on December 2, 2005 she was, in her role as Human Resources Manager, interviewing the Grievant in connection with an investigation. Ms. Connell-Rick testified that at that meeting the Grievant produced a tape recorder and asked if he could record the meeting. She denied permission and the Grievant did not record. At the arbitration hearing the Grievant testified that Ms. Connell-Rick only expressed a preference that no tape recording be made, and did not specifically direct him to not record.

Director of Operations David Walden testified that in 2006 he held a meeting where the Grievant and Union President Delage were present. Mr. Walden testified that the Grievant attempted to tape record that meeting, but was told that tape recording any meeting at the Company was not allowed. For his part, the Grievant testified on this point that the directive from Mr. Walden may have been given, but he did not recall it.

On January 15, 2007 the Grievant met with his Supervisor, David Enget. Among other matters discussed at that meeting, Mr. Enget directed the Grievant to meet with him twice a week to discuss matters related to the Grievant's work and job duties. Prior to that

directive the Grievant communicated with Mr. Enget primarily using the Company's email system. The first face to face meeting held under Mr. Enget's directive occurred on January 18, 2007. The Grievant brought a tape recorder to the meeting. He turned it on and placed it where Mr. Enget's comments would be recorded. Mr. Enget told the Grievant that it was not necessary to tape record the meeting, and that he should turn the recorder off. Mr. Enget testified at the arbitration hearing that the Grievant asked Mr. Enget if he was afraid he would say something he would regret. Mr. Enget then told the Grievant that if he did not turn off the recorder, the meeting would be over. Upon the Grievant not turning off the recorder, Mr. Enget advised the Grievant that the meeting was over. The Grievant then left Mr. Enget's office. Following that meeting Mr. Enget counseled with Mr. Gravalin, the Employee Relations Manager for the Company in regard to whether or not an employee could be prevented from tape recording a conversation with a supervisor. Mr. Gravalin advised Mr. Enget that the Company does not allow such tape recordings. He further advised that the Grievant should be clearly told that he was not allowed to tape record meetings.

Subsequently, Factory Manager David Walden learned of the events that occurred at the January 18, 2007 meeting between Mr. Enget and the Grievant. He convened a meeting with Mr. Enget and Union Local President Roger Delage. Mr. Walden directed Mr. Delage to advise the Grievant that tape recording of meetings was not allowed. The exact date when the meeting occurred in which Mr. Walden directed Mr. Delage to discuss the tape recording issue with the Grievant is disputed. Mr. Walden testified at the arbitration hearing that the meeting took place on January 25th, but Mr. Delage, after first

testifying that he did not recall when the meeting took place, later testified that the meeting did not take place until January 30th. The significance of the date is that if the meeting with Mr. Walden did not occur until January 30th, Mr. Delage could not have advised the Grievant until after the meeting the Grievant had with Mr. Enget on January 29th. Mr. Delage testified at the arbitration hearing, however, that he did subsequently talk to the Grievant advising him that tape recording was not allowed.

The second meeting between the Grievant and Mr. Enget was to have been held on January 22, 2007. That meeting did not occur. Mr. Enget testified that he paged the Grievant three times to come to his office, but he did not show up. The Grievant on the other hand testified that he did come to Mr. Enget's office, but that Mr. Enget was not there. A meeting scheduled for January 25, 2007 was also not held because Mr. Enget was working a different shift on that date.

The meeting of January 29, 2007 was the next meeting that was held between the Grievant and Mr. Enget. The Grievant came to that meeting with his tape recorder and attempted to tape record the conversation with Mr. Enget. It is not disputed that the Grievant had his tape recorder in plain sight at the meeting, and that a red light on the recorder was on. There is a dispute, however, in regard to whether or not Mr. Enget directed the Grievant to turn off the recorder. Mr. Enget testified that he directed the Grievant to do so three times and the Grievant refused. The Grievant, on the other hand, testified that Mr. Enget never ordered him to turn off the recorder. The Grievant testified that he perceived that it was Mr. Enget's "preference" that a tape recording not be made,

but that no direct order was given. In any event the meeting was not substantively held because the Grievant did not turn off the recorder, and the Grievant left Mr. Enget's office.

The hearing record shows that a tape recording was made by the Grievant of the meeting with Mr. Enget on January 29th. The tape recorder and the tape were produced at the arbitration hearing pursuant to subpoena. The tape was not however, a complete record of what was recorded by the Grievant at the meeting. The Grievant testified that he subsequently tried to replay the recording of the meeting for his wife and pushed the wrong button thereby erasing the majority of the recording made on January 29th. Mr. Enget adjourned the meeting when the Grievant refused to turn off the tape recorder. The only portion of the meeting that remained on the tape recording was Mr. Enget asking the Grievant to leave the meeting.

Following the meeting the Grievant was suspended for nine working days in the period from January 31, 2007 through February 12, 2007. During that period the Grievant had additional surgery that was related to an earlier job related injury. The Grievant was summoned to the Company on or about February 5, 2007 to receive a memorandum outlining the conditions for his return to work (Joint Exhibit 4). He declined to return until February 13, 2007. At that time he was served a disciplinary notice (Joint Exhibit 5). The Grievant challenged the basis of the Company issuing his suspension, and the instant grievance was filed on February 13, 2007. The grievance proceeded through the

required steps of the grievance procedure without resolution, and was heard in arbitration on July 9, 2008.

POSITION OF THE PARTIES

Position of the Company

It is the position of the Company that it had just cause to suspend the Grievant. In support of that position the Company offers the following arguments:

1. The Grievant has been aware of the Company work rules since March 14, 2005 at which time he was given a copy of the revised employee handbook that contained the rules.
2. The Grievant conceded that a refusal to follow a supervisor's order is a serious matter. He understood prior to January 29, 2007 that he could not refuse to follow an order from his supervisor and that to do so was a serious offense.
3. The Grievant knew or should have known prior to January 29, 2007 that he was not permitted to tape record a meeting with his supervisor.
4. At the meeting of January 29, 2007 the Grievant's refusal to stop tape recording the meeting after being directed by his supervisor to do so was insubordination and justified a suspension.
5. No reasonable person would conclude that Mr. Enget was merely expressing a preference that the Grievant not tape record the meeting of January 29, 2007.
6. The Grievant knew exactly what Mr. Enget was telling him on January 29th. It is not necessary for the words "direct order" be used to form a clear directive that an employee must obey.
7. The Grievant's prior experience as a steward and chief steward should have acquainted him with the accepted principle that an employee should obey a supervisory directive and then file a grievance if he believes that directive was improper or conflicted with the labor contract.
8. It is not necessary for a supervisor to recite a warning that refusal to obey an instruction will result in discipline at any prescribed level.
9. A specific work rule against tape recording meetings is not necessary for a supervisor to be able to give a direct order to stop that activity.

10. There is no credible evidence that the Company was out to get the Grievant for his worker's compensation claim or any other reason.

11. The Grievant was devious in his meeting with Mr. Gravalin on January 30th. When asked to produce the tape he had he lied by saying that didn't know if one existed.

Position of the Union

The Union argues that the Company wrongfully suspended the Grievant without just cause, and that he should be returned to work and made whole in all respects. In support of its position, the Union offers the following arguments:

1. The burden of proof is on the Company to show that Mr. Bakken's disciplinary suspension is supported by "just cause" and that burden must be met by at least the clear and convincing evidence standard.

2. By signing the last chance agreement on February 13, 2007 (Joint Exhibit 4), neither Mr. Bakken nor the Union gave up any rights to grieve either the facts giving rise to, or the disciplinary suspension.

3. Mr. Bakken had no idea that he would violate any Company rule and be subject to discipline should he tape record a conversation on Company property. Indeed, he received tacit approval of recording the conversation when he informed the plant manager, Mr. Walden, that he the intention to record the conversations with his supervisor and was not informed that he could not. Thus, even if the supervisor wanted the tape recorder off during the meeting, Mr. Bakken thought he had every right to record those meetings.

4. Mr. Bakken was not put on notice of the degree of punishment, i.e. warning, suspension, or termination, for his actions in tape recording the meetings.

5. There is no written rule prohibiting any tape recording on Company property. If, as the Company witnesses seem to insinuate, that it is "common knowledge" that tape recording is not allowed on Company property, this would seem to be something for the work rule handbook.

6. That the Company did publish a rule regarding photography on Company premises but not do the same for tape recording would certainly lead an employee to believe that there were no restrictions regarding tape recording.

7. If Mr. Bakken had been told on numerous occasions that he was not allowed to tape record, to boldly display the tape recorder to Mr. Enget at the start of each of the meetings would be foolhardy.

8. If, as Mr. Gravalin specifically states, Mr. Enget did not give Keith Bakken a direct order to shut off the tape recorder, Mr. Bakken could not have violated the work rule for which he was suspended, “refusal to follow direct order from Supervisor”.

9. Mr. Gravalin, who authored the third step response to the grievance made no reference to any prior notification issued to the Grievant that he was not allowed to tape record on Company property.

10. Mr. Bakken did not violate the Group B work Rule #2 related to insubordination and should not have been disciplined. It simply does not make sense that Mr. Bakken would refuse an order from a supervisor with whom he was having a troubled relationship. Mr. Bakken knew that action would lead to nothing but trouble.

11. Mr. Bakken is an exemplary employee with 30 years of seniority crying out for help from management and getting nothing in return. All of this as a result of Mr. Bakken having the audacity to litigate his worker’s compensation claim against the Company.

12. It is not possible that Mr. Enget’s ordered the Grievant to not record the meeting of January 29th and gave the Grievant a warning that the failure to do so would result in discipline all in the short time that was evidenced by the erased tape produced at the arbitration hearing.

13. Suspension is way too harsh a punishment for the behavior of Mr. Bakken in January 2007. Suspension for attempting to record a conversation between Mr. Bakken and his supervisor with whom he was having so much trouble is not a disciplinary offense. So, instead, the Company suspends Mr. Bakken for “refusing to follow a direct order”. Mr. Bakken did not refuse an order because one was never given. Suspension is way too harsh a punishment for Mr. Bakken’s actions.

ANALYSIS OF THE EVIDENCE

The controlling language in this grievance is found in Article VII of the Collective Bargaining Agreement. It provides for a just cause standard to be applied to discipline and discharge cases. The Union argues that the standard of proof to be applied in this

case is that of “clear and convincing evidence”. Most arbitration cases require the application of a somewhat lower standard of proof, that of a “preponderance of the evidence”. Review of the Collective Bargaining Agreement (Joint Exhibit 1) shows that the parties have not specified the standard of proof to be applied. When not directed by a collective bargaining agreement arbitrators have not consistently applied a particular standard of proof. To the contrary, many, if not most arbitrators simply do not specify what standard of proof they applied in reaching their decision. Where a specific standard of proof is mentioned in arbitration awards, it is most commonly that of a “preponderance of the evidence”. Where the higher standard of “clear and convincing” evidence is used, it is usually reserved for those cases where an employee is being disciplined for actions that could be considered criminal in nature. That is not the case here. Nothing was found in the record of this case to compel this arbitrator to utilize a higher standard than that of “preponderance of the evidence”. Accordingly, that standard was applied here. The Union correctly argues, however, that the Company is burdened to show that the Grievant actually did commit the act of insubordination of which he stands accused.

The Union does not challenge the right of the company to establish reasonable work rules that do not conflict with the Collective Bargaining Agreement. The specific rule against insubordination was not challenged as somehow being unreasonable or conflicting with the labor contract. Accordingly, this case will turn on whether or not the Grievant refused to follow a direct order of his supervisor, Mr. Enget, on January 29, 2007, and, if so, was insubordinate by violating Group B rule number 2.

In the Grievant's defense the Union makes several arguments. They argue that Mr. Enget never gave Mr. Bakken a direct order to not record the meeting of January 29th. The Union reasons that no direct order was given because the phrase "direct order" was not used by Mr. Enget. The Union then concludes that insubordination could therefore not have occurred under rule B2 because the "direct order" phrase was not used. That conclusion is misplaced. Supervisors regularly give instructions or directives to subordinates without couching them on the "direct order" phrase. Nonetheless those instructions are expected to be carried out by the employee, and failure to do so could lead to discipline.

What is required is that the instruction be readily understood, clear and unambiguous. It is not necessary to state the instruction as a "direct order" in order to make it an enforceable directive. If an employee was free to ignore reasonable instructions from his/her supervisor industrial order and productivity in the work place would be seriously compromised. An employer clearly must have the right to issue reasonable instructions and expect them to be carried out. It is not necessary, however, to phrase those instructions as direct orders.

It is not disputed that Mr. Enget did not use the "direct order" phrase when he told Mr. Bakken to turn off the tape recorder. The record of this hearing shows clearly, however, that the Grievant was told to not record the meeting. The meaning of Mr. Enget's comments was clear. No reasonable person would find confusion or ambiguity in what Mr. Enget told Mr. Bakken. Credible evidence is found in the hearing record that Mr.

Enget told Mr. Bakken three times to not record the meeting, yet he persisted in doing so. Accordingly, he must be found to have knowingly and willfully disregarded Mr. Enget's instruction. Such an act must be regarded as insubordination.

The Union also argues that Mr. Bakken had no idea that he would be violating any Company rule and would be subject to discipline if he tape recorded a conversation on Company property. The Union is correct that there is no work rule specifically prohibiting tape recording conversations or meetings on Company property. In this case, however, the hearing record clearly shows that Mr. Bakken was told by his supervisor to not record the meeting of January 29th. That was the instruction that he had to comply with. It is not necessary that a rule banning tape recordings be found in the work rules to make that instruction valid. In the course of the employment relationship supervisors regularly instruct their employees on matters not covered by specific work rules. Notwithstanding the absence of a rule based foundation, an instruction from a supervisor must generally be obeyed. In this case the instruction to not record the meeting came from Mr. Enget acting in his capacity as Mr. Bakken's supervisor, and it did not create a risk of injury to the Grievant. Accordingly, it was to be followed. If Mr. Bakken or the Union believed that the instruction was in violation of the labor contract, they could have filed a grievance after the Grievant complied with it.

It must be noted that the workplace is not really a democratic setting. The employer is fundamentally in charge, subject to the restrictions imposed by the Collective Bargaining Agreement and applicable law and regulations. In exchange for working in such a setting

employees are compensated and provided with contractual benefits. An employee refusing to comply with a reasonable supervisory instruction in this setting is disrespectful of the legitimate business interests of an employer and the essence of the collective bargaining relationship. The bottom line is that an employer may issue reasonable instructions to employees and it has a right to expect that those instructions will be carried out by the employee who received them.

Should an employee believe that the instruction would create an unsafe situation he/she can refuse the instruction. That was not the case here. Should the employee believe that the instruction conflicts with the Collective Bargaining Agreement he/she should follow the principle of “work now and grieve later”. That principle obligates the employee to carry out the instruction and then permits the filing a grievance if it is believed that it violates the labor contract. What is not allowed under the system of Industrial Relations that has developed in this country is for the employee to refuse to follow the instruction given.

The Union argues that Mr. Enget did not put Mr. Bakken on notice as to the degree of punishment that might ensue if he refused to follow Mr. Enget’s instruction to not record the meeting. Absent such notice, the Union argues that the grievance should be sustained. That argument is misplaced. The degree of punishment for a rule infraction is based a number of factors that can usually be determined only well after the violation. The prior disciplinary history of the employee, the consequences of the violation, the remorse of the employee, and the employment tenure of the employee all enter into a

judicious determination of the penalty to be imposed. Such a determination can only be done after the fact, and usually requires review and counsel by higher levels of management than the first line supervisor who was initially involved.

The Grievant claims that he was not previously warned that he could not tape record meetings. To the contrary, he claims that at a meeting held on January 16, 2007 with Mr. Walden he was granted tacit approval to tape record meetings with Mr. Enget. On that point the Grievant testified that he advised Mr. Walden that he intended to tape record meetings with Mr. Enget, and Mr. Walden did not say that he could not. From the evidence in the record it is difficult to conclude, however, that any reasonable person would have left the meeting with Mr. Walden with a clear understanding that tape recording of meetings was permitted. The record of this hearing simply does not support the Grievant's claims that he was not previously warned that he could not tape record meetings, or that he was given tacit approval from Mr. Walden to do so.

The record shows that Mr. Bakken had been previously told that he could not tape record conversations in the Company. Human Resources Manager Connell-Rick testified without serious challenge that she told the Grievant in December 2005 that he could not tape record meetings. Mr. Walden testified that he told the Grievant in 2006 that he could not tape record. Most immediately, the meeting the Grievant had with Mr. Enget on January 18, 2007 where Mr. Enget told him that the meeting was over if he did not turn off his tape recorder should have removed all doubt that tape recording was not allowed. Importantly, the record of this hearing shows that Mr. Bakken was told three times by

Mr. Enget at the meeting of January 29th to turn off his tape recorder. Clearly these instructions can be considered proximate warnings. In spite of those warnings the record shows that the Grievant continued to tape record the meeting. If the Grievant had heeded these warnings, it is unlikely that he would have been suspended, and there would be no grievance. In any event the testimony about whether or not the Grievant had been warned prior to January 29, 2007 about not tape recording meetings is not essential to a ruling in this case. What must control is that Mr. Enget told Mr. Bakken to not tape record the meeting. That clear instruction was ignored by Mr. Bakken. Even without the prior warnings that are found in the record, the instruction was clear and should have been followed. Mr. Bakken chose not to follow that instruction and that constituted insubordination.

The Grievant claims that he was a victim of an oppressive working relationship with Mr. Enget, and that Mr. Enget would “browbeat” him in regard to his worker’s compensation claim. For those reasons he claims he had to protect his interests by tape recording meetings. It is one thing to make such assertions, and quite another to present credible evidence supporting them. The record in this case contains no such credible evidence. There was no evidence that the Grievant had filed any other grievance complaining of Mr. Enget’s conduct. There was no evidence that Mr. Enget had disciplined Mr. Bakken prior to the instant case that would indicate a possible vendetta that Mr. Enget had for Mr. Bakken. Accordingly, the record of this hearing does not permit mitigation of Mr. Bakken’s conduct on the grounds of unreasonable actions by Mr. Enget.

In any given case an arbitrator may wish to apply some other sanction than what was imposed by management. The arbitrator cannot, however, impose his sense of an appropriate penalty unless the record shows the Company abused their discretion. Such abuse would be found only when there is compelling evidence that the Company was capricious or arbitrary in its action. Should such evidence have been found in this case this Arbitrator would not hesitate to reduce or set aside the discipline. Such evidence of managerial abuse of discretion was not found here. Accordingly, the Arbitrator lacks authority to set aside the discipline imposed by the Company.

IN THE MATTER OF ARBITRATION BETWEEN

AMERICAN CRYSTAL SUGAR COMPANY
Moorhead, Minnesota
Employer/Company

-and-

BAKERY, CONFECTIONERY,
TOBACCO WORKERS & GRAIN MILLERS

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| DECISION AND AWARD
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| Grievance No. CRK-07-03
| Suspension Grievance
| Keith Bakken, Grievant
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AFL-CIO, CLC
And its Local 267G
Union

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AWARD

The evidence compels a finding that the Company had just cause to suspend the Grievant.

The grievance and all remedies requested are denied.

Dated: September 30, 2008 /s/James L. Reynolds

James L. Reynolds
Arbitrator

Awd13.08