

**BEFORE THE ARBITRATOR**

---

In the Matter of the Arbitration Between

**3M COMPANY**  
**COTTAGE GROVE, MINNESOTA**

and

**UNITED STEELWORKERS INTERNATIONAL UNION,**  
**AFL-CIO, LOCAL NO. 11-00418**

**Grievant:**

**Case No.:** FMCS Case No. 12-57840-3

**Arbitrator:** Sharon K. Imes

---

***APPEARANCES:***

**Patrick J. Somers**, Plant Human Resources Manager, 3M Company, appearing on behalf of the Cottage Grove Plant.

**Gene Szondy**, Staff Representative, United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Services Workers International Union, District 11, appearing on behalf of United Steelworkers International Union, AFL-CIO, Local No. 11-00418 and the Grievant.

***JURISDICTION:***

3M Company, referred to herein as the Company of the Employer, and United Steelworkers International Union, AFL-CIO, Local No. 1-00418, referred to herein as the Union, are parties to a collective bargaining agreement effective October 30, 2006 through August 19, 2013 and thereafter from year to year unless written notice to modify, amend or terminate the agreement is given in accord with ARTICLE 15 of the agreement. Under Article 11, Section 11.03 of this agreement, the undersigned was selected to decide a dispute that has occurred between them. Hearing was held on March 14, 2013 at the 3M Cottage Grove Site, 10746 Innovation Road in Cottage Grove, Minnesota. The parties, both present, were afforded full opportunity to be heard. The hearing was not transcribed but post hearing briefs were filed. Both were received electronically on May 1, 2013. The parties granted an extension of time in which to issue the decision.

**STATEMENT OF ISSUE:**

Was the Grievant discharged for just cause in accord with the conditions set forth in a last chance agreement dated April 20, 2012. If not, what shall the remedy be?

**RELEVANT CONTRACT LANGUAGE:**

**ARTICLE 8. SENIORITY**

...

8.13 TERMINATION OF SENIORITY. Seniority shall terminate for the following reasons unless satisfactory reason is given.

- a. Voluntary resignation
- b. Discharge for proper cause

...

**ARTICLE 11. GRIEVANCE PROCEDURE**

...

11.02 Should differences arise as to the intent and application of the provisions of this Agreement, there shall be no strike, lockout, slowdown, or work stoppage of any kind and the controversy shall be settled in accordance with the following grievance procedure.

11.03 GRIEVANCE.

...

Step 6. When it is decided that an issue shall be arbitrated, a representative of the Union shall meet within five (5) working days with a representative of the COMPANY for the purpose of selecting an arbitrator.

The decision of the arbitrator shall be final and binding on all parties. The salary, if any, of the arbitrator and any necessary expense incident to the arbitration shall be paid jointly by the COMPANY and the UNION.

...

11.05 The arbitrator shall not have authority to modify, change or amend any of the terms or provisions of this Agreement, or to add to, or delete from this Agreement.

**OTHER RELEVANT DOCUMENTS:**

Last Chance Agreement

On March 30th, 2012, it was discovered that on March 26th, 2012, . . . (the Grievant) had incorrectly wired a power cord to CP162 for the Berlyn extruder on the Ace-1 Line in Bldg. 102. He wired the power supply cord directly to the power distribution terminals instead of the main panel circuit breaker. The incorrect wiring bypassed the main circuit

breaker and documented lock-out point for this equipment posing a serious safety risk to employees. It also eliminated the circuit breaker from acting as an equipment protection device.

In reviewing this matter with . . . (the Grievant), he stated that he saw how it was wired and that he had made a mistake. As an alternative to 3M seeking . . . (the Grievant's) discharge for this EHS policy violation, . . . (the Grievant), the Union, and 3M have agreed to enter into this Last Chance Agreement as a full, final, and complete settlement of this matter.

3M, . . . (the Grievant) and USW Local 11-00418 have agreed to the following:

1. . . . (the Grievant) will receive a suspension without pay for a period of 11 days to be served from Friday, April 6 returning to work on Monday, April 23, 2012.
2. . . . (the Grievant) and the Union waive their respective rights to grieve or otherwise challenge the disciplinary suspension specified in number 1 above under the Labor Agreement between 3M and the Union, or any other applicable appeal procedure.
3. This Last Chance Agreement is not precedent setting and may not be cited as precedence or referenced in future disciplinary matters involving members of the bargaining unit other than . . . (the Grievant).
4. The discipline specified in number 1 above and the other terms of this agreement provide . . . (the Grievant) with a "last chance" to correct his behavior. . . . (the Grievant and the Union agree that the terms as set forth in this Last Chance Agreement are reasonable conditions for him to comply with in order for . . . (the Grievant) to save his job and continue his employment as an Electrician with 3M. . . . (the Grievant) and the Union acknowledge and agree that if . . . (the Grievant) engages in any of the following conduct or fails to comply with or complete any one of the requirements specified below it constitutes "just cause" for his discharge from 3M's employment and such discharge will not be subject to the grievance process as outlined in the current CBA.
  - a. . . . (the Grievant) agrees that any further unsafe wiring practices will result in termination. . . . (the Grievant) shall obtain refresher training of NEC acceptable wiring practices. This training must be reviewed and approved by 3M with an agreed upon completion date. (Note: On March 30th after 3M supervision discovered the incorrectly wired power cord described above . . . (the Grievant) was instructed to wire it properly to the main circuit breaker. Upon inspection of this work it was found that the cord panel ground wire was loose and easily pulled from the back panel ground lug by hand. The cord ground wire and all three phase wires terminated at the top of the breaker were found with many conductors frayed back (hair-balled) and some were cut (hair-cut/strand cutting). This type of workmanship is unprofessional, unacceptable, and unsafe.
  - b. . . . (the Grievant) also agrees that any future violation of company policy including but not limited to guide to business conduct, safety, harassment, and/or computer usage will result in termination. This agreement will be in place until 4/23/2015.
5. . . . (the Grievant) acknowledges and agrees that he has received full, fair, and adequate representation from his Union throughout this matter that . . . (the Grievant) and the Union enter into this Last Chance Agreement knowingly and voluntarily.

(Signed and dated 4/20/2012)

### ***BACKGROUND AND FACTS:***

The Grievant, a licensed journeyman electrician, began employment as a maintenance electrician at 3M Company's Cottage Grove, Minnesota facility on November 26, 1984. At the

time of his discharge on July 19, 2012, he was an industrial maintenance electrician. In this position, his duties included maintaining, troubleshooting, repairing, modifying, calibrating and making adjustments to electrical equipment, sensors, controls, wiring systems and industrial processing systems used in production, laboratory, office and utility areas.

Prior to his discharge, the Grievant received an eleven-day suspension in April 2012 for incorrectly installing the power cord directly to the power distribution terminal block instead of to the main panel circuit breaker on March 26, 2012. Following his suspension, he was returned to work on April 23, 2012 on a last chance agreement.

On June 21, 2012, when the Grievant reported to work he received a pitch list from the Daily Pitch Board instructing him, among other jobs, to hook up electrical power for CC-1 TSE and associate on ACE 1 equipment relocated for experiment. The next day, June 22, the same work order was included on his pitch list and he and another electrician went to the job site in Building 102 to perform the work.

At the job site, the Grievant and the employee working with him met with a technician and asked what needed to be done. The technician told them they needed to power up the machine where it was located and that they had power in the trench into which they intended to plug the machine. When the trench was opened there were a number of receptacles, including a Meltric 480 volt, 100 amp three-phase plug in it but none that would fit the cord on the extruder which had a 480 volt, 100 amp three-phase Hubble plug. Since there was an engineer assigned to the project, the Grievant went to the engineer's office to talk with him about the problem but the engineer wasn't there and no blue prints were found. The Grievant returned to the job site and asked the technician if they had any plugs that would fit the Meltric receptacle and the two of them searched for and located one that would work in the receptacle. When they measured the distance from the trench to where the machine was located, however, they found they would need a 50-foot cord rather than the 6-foot one that was there so they went back to the shop to order the cord from the planner. Since the cord would not arrive until the next day, no further work on this order was done.

On June 24, the Grievant and the electrician who had previously accompanied him returned to the job site; attached the plug-in to the cord, and attached the cord to the machine. In addition, they plugged the power cord into the receptacle and tested the power to the machine

and the electrical power to the "top" of the electrical breakers in the electrical power panel on the machine. At this point, according to the Grievant and the other electrician, they believed, since they no detailed prints and the engineer had not been available either day, that they had correctly wired the machine given the instructions they had received on the pitch list; the information provided by the technician at the work site, and the fact that the machine had already been wired for 480, 100 amp/3 To the 240 volt panel attached to the machine prior to being moved. The following Monday, the engineer returned to work and found the machine had been wired for 480 volts and not 240 volts as he had intended.

When the engineer returned to work, the Grievant was on vacation. When the Grievant returned to work on July 2, 2012 a meeting was held to investigate the situation and on July 3, the Grievant was suspended pending further investigation. Since the machine as wired, when powered up, could cause internal components to fail; could shock or electrocute someone who touched the machine, or could cause a fire, the Grievant was terminated on July 19, 2012 for violating the terms of his last chance agreement.

The Union grieved the termination the same day charging the Company with violating the contract by unjustly terminating the Grievant. It is this grievance that is before the Arbitrator. The Union seeks that the Grievant be reinstated and made whole.

#### ***ARGUMENTS OF THE PARTIES:***

Applying the seven tests set forth by Carroll Daugherty in *Enterprise Wire Co.*, 46 LA 359 (1966), the Company discusses each of the tests individually and concludes it has met the industry standards needed to establish just cause to terminate the Grievant. Following is a summary of the Company's arguments pertaining to each of the standards:

- Referring to the Grievant's safety violation in late March 2012, the Company states that the Grievant committed a level five safety violation when he incorrectly wired a power cord to CP162 for the Berlyn extruder and that rather than fire him for this error it considered the Grievant's twenty-seven years with the Company and opted to give him an eleven-day suspension and return him to work on a last chance agreement. It continues that despite this willingness to give the Grievant a second chance he has again demonstrated a clear disregard for safety by performing another incorrect wiring assignment less than three months later, one that could have subjected the operator

and the equipment to a dangerous overvoltage situation, and has violated the terms of his last chance agreement.

- Addressing the notice requirement identified in the seven tests, the Company asserts that the Grievant was given adequate notice in his last chance agreement that further unsafe wiring practices before April 23, 2015 would result in termination. It adds that the Grievant's signature on the agreement indicates he understood the consequences for having another wiring incident during the life of the last chance agreement.
- Continuing, the Company asserts it conducted an adequate investigation into whether the Grievant had violated or disobeyed a rule before it disciplined the Grievant. As proof, it states that its review of the installation indicated the terminals in the circuit breaker were properly sized for the wire used in the installation and met a core requirement of the National Electrical Code (NEC). Further, acknowledging that the Grievant had said he had done like for like work and that no wiring incident had occurred when they talked with him about the incident, the Company declares that although employees are allowed to do like for like work, its investigation indicated that prior to the extruder being moved someone had incorrectly put a 480 volt plug into a 480 volt plug that was wired into a 240 volt power source but that the Grievant was the last person assigned to this work and the like for like principle does not excuse the need for the installing electrician to ensure the proper sizing of both the cord and plug device and furnishing the correct voltage. In addition, it asserts that before it decided to discipline the Grievant it had clearly established the Grievant had not followed the procedures need to insure the power source and the plugs were the right voltage and that his failure to do could lead equipment damage and/or employee injuries.
- The Company also asserts that its investigation was fair and objective and, as proof, offers the fact that neither the Grievant nor the Union ever accused the Company of conducting an unfair investigation.
- Addressing the proof standard, the Company acknowledges it has the burden to prove the Grievant violated the last chance agreement by having another wiring incident and states that as proof it must show the Grievant was responsible for the incident; knew it created a potentially dangerous situation, and that his actions endangered other

employees. As evidence it met this burden of proof, the Company points out that the Grievant agreed in his last chance agreement that another wiring incident would be just cause for termination; that the Grievant is clearly responsible for the unsafe situation created when he wired the extruder for 480 volts rather than 240 volts; that he and the other electrician working with him closed the panel for the extruder without verifying the system requirements even though the voltage was posted in two obvious locations; that the Grievant assumed he could use a like for like procedure without confirming no safety hazard would be created, and that the Grievant admits that he, as a licensed electrician, is ultimately responsible for insuring the power to the machine is the right voltage and that wiring a 480 volt power source into a 240 volt machine is an unsafe act.

- Referring to the standard regarding whether the Grievant received disparate treatment, the Company states the Union did not argue the Company has inconsistently applied its rules and policies and maintains that the Grievant's termination is consistent with how it has previously administered last chance agreements.
- Finally, addressing the penalty test, the Company argues that it considered the Grievant's length of service when it gave the Grievant a last chance agreement for having previously committed a dischargeable wiring incident and, unfortunately, he has violated the agreement less than three months later by committing another dischargeable wiring incident. In an act of leniency, however, it is suggesting the Grievant, given his length of service with the Company, be given the option of retirement since he is eligible to retire and would receive a larger pension payment than if he is discharged and a retiree medical benefit that would not be available to him if he is discharged.

The Company also addresses and rejects the Union's argument that the Company violated the last chance agreement by failing to give the Grievant additional training; that based upon the posted Management of Change (MOC) procedure referring to this incident, the installation was safe, and that the severity level of the incident related in the incident report proves the incident does not warrant termination under the last chance agreement.

As support for its argument that it did not fail to give the Grievant additional training, the Company declares that the last chance agreement places the burden on Grievant to obtain refresher training and states that the Company is only responsible for reviewing and approving the training sought by the Grievant. As evidence that the Union's argument that MOC indicates the installation was safe should be rejected, the Company states that the MOC identifies the voltage level that poses no safety risk to equipment or employees as long as the procedures are followed and the proper plugs and receptacles are installed but that even if the installation was safe based upon the MOC, it clearly violated the NEC code. It also asserts that a MOC was not needed since the Grievant was a licensed journeyman and knew the proper NEC wiring procedure and rules.

With respect to the severity level of the incident identified in the incident report, the Company argues the report was created to track and identify the root cause of the safety incident; that the safety severity rating in this report that was applied prior to the investigation is standard protocol, and that the person completing the report is not able to apply the final rating since he or she is not a safety professional and is not trained in the electrical field. It also asserts that the incident rating is independent of the installation safety infraction which is clearly an NEC violation.

The Union argues, however, that the Company failed to establish just cause to terminate the Grievant for violating the last chance agreement and that the Grievant should be reinstated and made whole. As support for its position, the Union states it disagrees with the Company's primary argument is that the electrical panel/box attached to the extruder was labeled 240 volts and that the Grievant, as a licensed journeyman, should have seen the labels and attached a 240 volt plug-in to the power cord and asserts that the Company is equally to blame for the incident since it failed to meet its responsibilities. Continuing, the Union charges that the Company failed to provide clear instructions regarding the work that needed to be done; that the Grievant was misled by the technician when he inquired as to what needed to be done; that the prints for the job, as well as the engineer in charge of the project, were not available; that the Company had not provided the refresher training the Grievant was to receive by the time of the incident; that the Company had allowed 480 volt wiring on the extruder prior to its being moved and did not consider the wiring unsafe, and that the Grievant's workmanship was correct. It also argues that the wiring practice was not unsafe and cites the MOC and the incident report in support of its argument.

Before it argues the merits of the dispute, however, the Union addresses whether the grievance before the Arbitrator is arbitrable since it and the Grievant agreed in the last chance agreement that its terms are reasonable and acknowledge and agree that if the Grievant engages in misconduct identified in either paragraph a or b of the agreement the misconduct shall constitute just cause for discharge and shall not be subject to the grievance process outlined in the collective bargaining agreement. Relying upon this language, the Union asserts that under the agreement, the Arbitrator must decide if the Grievant engaged in unsafe wiring practices before she can decide if the discharge is arbitrable but that since the Grievant did not engage in unsafe wiring practices and the Company stated, at hearing, that the matter was properly before the Arbitrator the matter is arbitrable.

Further, addressing Company Exhibits 1 through 6 submitted at hearing, the Union declares Company Exhibit 6 is the most relevant to this dispute since it shows that before the 240 volt extruder was moved it was attached with a 480 volt power cord and plugged into a 480 volt receptacle that was wired to a 240 volt power source and since it is the same practice the Grievant is now accused of violating as an unsafe wiring practice. The Union continues that since the Company allowed this unsafe wiring practice to occur before the Grievant was involved, it cannot now discharge the Grievant for doing what it has allowed in the past. It also argues that by allowing the extruder to be incorrectly wired prior to being moved the Company has contributed to the cause of the incident now under consideration.

Addressing its argument that the Company is as much to blame for the incident occurring as the Grievant, the Union charges that the instructions given the Grievant were too vague and that the Grievant did what he should have done once he went to the job site. As proof, the Union states that the pitch list only instructs the Grievant to hook up electrical power for the extruder but was not detailed enough to let the Grievant know that he was to replace the 480 volt plug-in on the power cord with a 240 volt plug-in. It also cites the fact that the Grievant did the right things when he went to the job site to hook up the power but was not able to get the information he needed. According to the Union the Grievant asked the technician at the job site what was expected and the technician gave him the information he had; pointed out where the extruder and the power source were located but did not tell him the voltage needed to be changed. It also points out the Grievant asked for the prints the technician told him he did not have any prints and

that the Grievant then went to the engineer's office to secure them only to find out the engineer was not available either of the two days during the installation and that there were no prints left for him. And, finally, the Union points out that when the Grievant discovered the 480 volt plug-in on the extruder was different from the receptacle in the power trench, the technician aided the Grievant in finding a 480 volt plug-in that would match the 480 volt receptacle in the trench and, therefore, also misled the Grievant as to the work that was expected. Further, the Union notes the technician was not disciplined for the role he played in this incident.

In further support of its position that the actual wiring was done correctly and that the Grievant's workmanship was professional, acceptable and safe, the Union declares that the Company, at hearing, initially testified that the Grievant's workmanship was proper and argues that the charge against the Grievant is not the same as the type of workmanship identified in paragraph 4.a. of the last chance agreement. Additionally, the Union rejects the Company's argument that the Grievant should have recognized the 240 VAC labels on the panel door and box and cites the fact that the Grievant testified, at hearing, that he has worked in the pilot plant many times before and found the wiring did not match the labeling on the equipment and, therefore, he had no reason to question why a power cord plug-in did not match the voltage rating on the electrical panel as support for its position. The Union also argues that if the Company wanted the extruder wired to a 240 volt plug-in it should have issued instructions to do so and since it did not the Grievant cannot be disciplined since the Company failed to provide reasonable instructions.

Finally, the Union charges that the wiring done by the Grievant was not unsafe and that the last chance agreement was not violated. In addition, it maintains that even if the wiring is unsafe, the Company was to blame since it had allowed the wiring practice prior to the extruder being moved and since it did not provide proper instructions. As proof the wiring was not unsafe, however, it cites both the MOC and the incident report. According to the Union the MOC which relates to this incident states there is no safety concern in using a 480 volt plug-in and receptacle with a 240 volt power source but that this type of wiring could contribute to a misunderstanding as to the power source needed and the misunderstanding should be eliminated. It also states that MOC makes several other similar comments and concludes, based upon the information in the MOC, that the MOC disputes the Company's allegation of unsafe wiring practices. It also cites the incident report, a record of the investigation, as further support for its position in that it gives the

incident a severity rating of one on a scale of one to one hundred and states that the incident was not caused by human performance but by the methods and procedures that were used. And, lastly, the Union, referring to union witness testimony, including that of the Grievant and the co-worker who was with him during the installation, relies upon their testimony as further proof that the Company did not provide the refresher training required of the Grievant in the last chance agreement; that the extruder was wired as it had previously been wired; that the Company had taken the position during the grievance procedures that it is not unsafe to have a 480 volt plug on the extruder as long as it is labeled 240 volts, and that the Grievant did what a reasonable person would do.

***DISCUSSION:***

In this dispute, the Grievant has been discharged for violating the terms of a last chance agreement. A last chance agreement, as the name implies, is intended to allow an employee who has engaged in misconduct meriting termination a final opportunity to correct that behavior or performance problem in return for the company's agreement not to discharge the employee immediately. Although the terms of these agreements may vary, they usually grant the employer the discretion to discharge an employee for any subsequent offense, no matter how trivial, and commonly state or imply the usual procedural protections or consideration of mitigating circumstances in imposing the remedy do not apply when determining just cause for termination. They do not usually bar, however, inquiry into the question of whether the employee committed the charged offense and consideration of strongly mitigating circumstances as cause for the charged offense may be appropriate.<sup>1</sup>

Although the Company does not raise the issue of arbitrability and agreed this dispute was properly before the Arbitrator, this question must be addressed since the Union has raised a concern about it because the last chance agreement states that if the Grievant engages in any further unsafe wiring practices or any violations of company policy or fails to obtain refresher training on NEC acceptable wiring practices his actions shall constitute just cause for discharge and the discharge will not be subject to the grievance process outlined in the collective bargaining

---

<sup>1</sup> See Elkouri and Elkouri, *How Arbitration Works*, Seventh Edition, Bloomberg BNA, 2012, pgs. 15-48 - 15-53; *The Common Law of the Workplace, The View of Arbitrators*, National Academy of Arbitrators, Second Edition, 2005, pgs. 173 - 177; *Just Cause, the Seven Tests*, Second Edition, 1992, pgs. 64-65.

agreement. After reviewing the agreement, it is determined that its terms and conditions are reasonable, a finding the Union also agrees with, and that although the remedy is not subject to arbitral review, the question of whether the misconduct actually occurred is. Consequently, the merits of this dispute will also be considered.

On the merits, the sole question before the Arbitrator is whether the Grievant engaged in an unsafe wiring practice when he wired the extruder that was moved to the ACE-1 area in the same manner as it had previously been wired. According to the Company the Grievant was responsible for the incorrectly wiring the extruder after it was moved and that the wiring was an unsafe wiring practice. The Union, however, argues not only that the wiring was not an unsafe wiring practice but that the Company was to blame for the extruder being incorrectly wired and, therefore, the Grievant should not be discharged for engaging in an unsafe wiring practice. After reviewing the record, the Arbitrator finds she must agree with the Company even though the circumstances suggest reasons for why the Grievant acted as he did.

As proof that it had just cause to terminate the Grievant under the last chance agreement, the Company relied upon the seven tests established by Carroll Daugherty in *Enterprise Wire Co.*, 46 LA 359 (1966). In that decision, the Arbitrator found that no contractual criteria existed for determining whether the company had just cause for its decision and that he needed to provide his own standards. In identifying the seven tests he applied, he stated that a "no" answer to any one of the tests he set forth as the standards means the employer's decision "contained one or more elements of arbitrary, capricious, unreasonable, or discriminatory action to such an extent" that the decision "constituted an abuse of managerial discretion" and warrants a substitution of employer's judgment by the arbitrator.<sup>2</sup> This Arbitrator, as do most arbitrators, rejects the seven tests as the standards that must be met in determining whether there is just cause to discipline or discharge an employee.<sup>3</sup> In its place, this Arbitrator has generally held that the employer is

---

<sup>2</sup> See *Just Cause, the Seven Tests*, Second Edition, 1992, pgs. 449-461.

<sup>3</sup> See *The Common Law of the Workplace, The View of Arbitrators*, National Academy of Arbitrators, Second Edition, 2005, Chapter 8, pgs. 167-180; *Arbitration 1989, The Arbitrator's Discretion During and After the Hearing*, Proceedings of the Forty-Second Annual Meeting, National Academy of Arbitrators, The Bureau of National Affairs, Washington, DC, 1990, "The Tests of Just Cause", John E. Dunsford, pgs. 23-50; ; *Arbitration 2006, Taking Stock in a New Century*, Proceedings of the Fifty-Ninth Annual Meeting, National Academy of Arbitrators, The Bureau of National Affairs, Washington, DC, 1990, "Just Cause an Evolving Concept", Richard Mittenthal and M. David Vaughn, pgs. 32-50; ; *Arbitration 2007, Workplace Justice for a Changing Environment*, Proceedings of the Sixtieth Annual Meeting, National Academy of Arbitrators, The Bureau of National Affairs, Washington, DC, 1990, "How and Why Arbitrators Decide Discipline and Discharge Cases", Laura J. Cooper, Mario F. Bognanno, and Stephen Befort, pgs. 420-473.

obligated to show that the employee, more likely than not, committed the alleged offense and that the employer complied with those due process standards needed to establish just cause when determining guilt of misconduct.<sup>4</sup>

In this instance, there is no dispute over whether the extruder was improperly wired. All parties agree that the extruder operated on 240 volts and that it was wired with a 480 volt plug-in and receptacle. In addition, there is no allegation that the wiring reflected poor workmanship, only that the equipment was improperly wired and that the wiring created a potentially unsafe situation. As a result, the question that must be answered is whether the circumstances which led to the extruder being improperly wired was the result of circumstances beyond the Grievant's control. In this respect, the Union has argued that the Grievant should not be disciplined for the improper wiring since the Company is to blame by providing instructions that were too vague given the fact that the extruder had been improperly wired prior to its being moved and the Company had allowed the equipment to remain improperly wired while in the CC-1 area; by misleading the Grievant at the job site as to the wiring that needed to be done, and by failing to give the Grievant prints for the work order and/or not making the engineer available to provide more detailed information on the wiring to be done. While the Arbitrator agrees that all of these circumstances existed, she does not find the Union's arguments relieve the Grievant of his burden, as a licensed journeyman, to know the type of wiring that needed to be done or his responsibility to determine how the problem should have been resolved once it was discovered prior to proceeding with the wiring job assigned.

Among the reasons cited by the Grievant and the Union for improperly wiring the extruder were that the Grievant failed to see the 240 volt signage on the panel/box since the door was open when he arrived; that the instructions did not specifically say that the wiring should be changed from 480 volts to 240 volts, and that since the extruder had previously been wired with a 480 volt plug-in and receptacle he did "like for like" work. While the Grievant is to be commended for his honesty, his admission that he overlooked the signage and that he did "like for like" work, and the fact that he did not received detailed instructions from the Company, does not excuse him

---

<sup>4</sup> Other criteria is also applied at times but since this is a last chance agreement, the criteria considered is whether the Company established that the Grievant, more likely than not, engaged in unsafe wiring practices and whether there were any circumstances which mitigated against a finding that the misconduct was the result of circumstances beyond the control of the Grievant.

of his responsibility to make sure the extruder was properly wired. While it appears that he initially did that which would be expected of a licensed journeyman, that is to ask what he was expected to do at the job site; to ask for prints and to seek out the engineer responsible for the project to get more detailed information, the record establishes that once he was thwarted in his efforts he proceeded to wire the extruder in a "like for like" manner without determining whether wiring the extruder with a 480 volt plug-in and receptacle could create a potentially unsafe situation and one of which, as a licensed journeyman, he should have been aware.

The Union's arguments that the last chance agreement was not violated since there was no evidence of poor workmanship or that the wiring was not unsafe are also not persuasive. While the last chance agreement cites an example of poor workmanship in the paragraph which states that the Grievant agrees that any further unsafe wiring practices will result in termination, the term "unsafe wiring practices" encompasses far more than simple poor workmanship, particularly when paired with a requirement that the Grievant obtain refresher training on NEC acceptable wiring practices. The NEC provides a standard for the safe installation of electrical wiring and equipment and, as such, does not simply address the quality of workmanship provided. Given this fact, it must be concluded that when the parties agreed to term "unsafe wiring practices" they intended the term to include knowledge about the equipment being wired and application of that knowledge as well as the quality of the workmanship.

Further, neither the fact that the Company allowed the extruder to be improperly wired while in the CC-1 area nor the statements made in the MOC nor the severity rating given the incident in the incident report is proof that the Grievant did not engage in an unsafe wiring practice. While, clearly, it would have been a better practice to have the 240 volt extruder wired with a 240 volt plug-in and receptacle when it was located in the CC-1 area, the fact that the power source was only 240 volts cannot be ignored. This means that even if the plug-in and receptacle had the capacity to accept 480 volts the extruder would not receive 480 volts of electricity when powered up since the power source did not have that capacity. Given this fact, it cannot be concluded that the previous wiring practice was unsafe but only that the extruder was improperly wired.

Further, the statements made in the MOC only confirm the above finding with respect to the situation that existed in the CC-1 area. On page 3, as the Union pointed out, the Company

stated "There is no safety concern in using a 480 volt plug-in and receptacle with the 240 volt circuit but it could contribute to a misunderstanding regarding the power needs . . . (and that) this was communicated to the group until the long term, permanent fix is implemented. This statement is not proof that the wiring done by the Grievant was not an unsafe wiring practice once the extruder was moved to the ACE-1 area where the power source was 480 volts. Instead, it only confirms that the extruder was improperly wired while in the CC-1 area and that this improper wiring could cause a misunderstanding as to its acceptable power capacity if the extruder is moved.

And, finally, the fact that the incident was given a severity rating of one on a scale of one to one hundred and that the cause of the incident was identified as a methods/procedure problem rather than a human performance problem in the incident report does not mean that the wiring practice was not unsafe since there would have been no need for an incident report if the extruder had not been improperly wired and the wiring would not have created a safety risk. In fact, the fact that the incident report listed the incident as a "near miss"; that the report described possible property loss/damage or business interruption as the type of incident, and that the severity rating was assigned after existing safeguards were put in place, i.e. the cord was locked out, is not only proof that the improper wiring was that it was also considered unsafe.

In summary, having concluded that the wiring practice was unsafe and that the Grievant was responsible for making sure the extruder was properly wired even though he did not have detailed instructions for change over, it must be concluded that the Grievant did violate the last chance agreement by engaging in an unsafe wiring practice. While this conclusion was a difficult one to reach since the Grievant was employed by the Company for twenty-nine years, the fact that he was on a last chance agreement and the violation occurred approximately three months after he had been returned to work on the last chance agreement cannot be overlooked. Under the last chance agreement the Grievant was given one more chance to modify his performance and knew he would be discharged if any unsafe wiring errors occurred between the time he was returned to work and April 23, 2015. Given this knowledge the burden was upon him to make sure the wiring he did when assigned the job of wiring the extruder was not an unsafe wiring practice. The fact that power plug-in and receptacle to the extruder was improperly wired prior to

the move does not make it okay for him to wire them in the same manner when he could not get more detailed information on the work to be done. Two wrongs do not make a right.

As to remedy for this violation, the last chance agreement does not grant the Arbitrator the authority to modify the discipline. Nonetheless, the Company, at hearing and in its brief, urged the Arbitrator to modify the discipline spelled out in the last chance agreement and to order the Grievant be allowed to retire since he had been with the Company long enough to be eligible for retirement and since retirement would grant the Grievant more benefits than those which he would receive if he were discharged. The Arbitrator interprets this urging and the arguments advanced by the Company as authority granted by the Company to modify the discipline set forth in the last chance agreement and so orders the potential for that modification.

Accordingly, based upon the evidence in the record; the arguments advanced by the parties; a finding that the Grievant violated the last chance agreement by engaging in unsafe wiring practices and a find that the Company has granted the Arbitrator the authority to modify the discipline set forth in the last chance agreement to an offer of retirement, the following award is issued:

***AWARD***

The grievance is denied. Nonetheless, pursuant to the Company's urgings, the Grievant should be offered the opportunity to retire. If that offer is not accepted by the Grievant within two weeks after it is made by the Company, the Grievant shall remain discharged.

A handwritten signature in cursive script that reads "Sharon K. Imes". The signature is written in black ink and is positioned above a horizontal line.

Sharon K. Imes, Arbitrator

July 5, 2013  
SKI: