Neil R. Luebke's Commentary on "US Parts"

Commentary On
US Parts

The main questions in this case concern misrepresentation in a contract and quality control engineer John Budinski's course of behavior relative to it. In several respects, therefore, this case is similar to the earlier case "The Price Is Right?" There are some differences, however. There is no opportunity here to make a huge profit by the substitution of a slightly inferior alloy. Moreover, unlike some other imaginable cases, there is no problem of safety, inferior production quality, overcharging, falsified test data, misrepresentation of process, or valueless warranty. The issue is simpler and more direct.

Let us follow the suggestions in the story and assume that USAWAY touts itself as offering products that are completely manufactured in the United States, that is, not only is the product itself so manufactured but all fabricated components of the product are manufactured in the USA. The problem with the bolts, therefore, is not silly or incidental. If it became known that at least a portion of a USAWAY product was manufactured abroad, USAWAY's reputation and market share would probably suffer serious damage. This damage might be the basis of a tort action against Clarke Engineering. We do not know from the case description whether the kind of product Clarke Engineering is manufacturing for USAWAY could be manufactured by a competitor with a different design not using the bolts. If any such product has to have the special bolts and they are available only through foreign manufacture, then all suppliers are in the same situation.

It is unlikely that John Budinski caused this problem. More likely, it was caused by persons drawing up the contract not being sufficiently careful to check on the origins of all manufactured parts despite USAWAY's insistence on this feature of the contract. John, however, knows of the situation and now is in the position of having to make a judgment concerning what he should do with his knowledge. It seems obvious that John should not keep this information to himself but should discuss the

problem with his superiors. Technically, the part will not meet contract compliance requirements, and it is John's job responsibility to see that standards for product manufacture are upheld.

Although it may be unlikely that those who work on repairs of the product will notice that the bolts are foreign made, it is not impossible that it might be noticed. Moreover, information on the origin of the bolts is likely to get out through other channels. In fact, in the second portion of the case description, such disclosure happens. There might be still other ways the information could come to USAWAY's attention. Clarke Engineering's supplier might incidentally pass on the information to a competitor. Possibly the competitors of Clarke Engineering already know that certain bolts are obtainable only under foreign manufacture. So the assumption that USAWAY will not find out about the bolts seems to be unfounded. Even if the bolt's origin does not become immediately known to USAWAY, there is still the problem that Clarke Engineering allowed a product to go out that did not meet a fundamental contract specification. Once known, this might put all future contracts between Clarke Engineering and USAWAY in jeopardy. In short, if John Budinski should say nothing or if his firm decides not to make a change or bring the matter to the attention of USAWAY, a significant downside risk exists for Clarke Engineering, not merely with regard to this contract but with regard to many future contracts.

It is not clear from our case description whether John has to sign off on a verification report dealing not only with the physical specifications of the product but also with the origin of manufacture of the components. If John does have to sign such a report and his superiors insist that the manufacture go ahead with the foreign parts, John has put himself in serious professional jeopardy. If he has to attest only the quality of the manufactured product and is not required to validate the domestic origin of all components, then he is personally in far less jeopardy. At this point, he still has the obligation to bring to the attention of his superiors the problem that exists with the foreign-made parts. The responsibility of ensuring contract compliance regarding the point of origin of the components would then fall to someone else within the company. John would have done what he could do in this case.

Does the situation merit whistleblowing? We have here no threat to life, property, or physical well-being, nor do we have embezzlement, thievery, or bribery. In short, the obligation to hold paramount the safety and interests of the public does not seem to be pressing in this case. On the other hand, the other standard conditions for moral obligatory whistleblowing may be directly met, providing John has attempted to

bring the case to the attention of his superiors and they have decided not to make a change in the contract relationship. There should be no difficulty in documenting the foreign origin of the bolts, and should John bring the deception to public attention, USAWAY would probably either drop Clarke Engineering immediately or bring suit or both. Should John find himself fired by Clarke Engineering for his act of whistleblowing, it is not certain that his job rights would be protected in the courts. Much would turn around the question of whether Clarke Engineering's actions were criminal. There have been a number of cases over the last 20 years in which courts in various states have found for the defendant in wrongful discharge cases when the worker was fired for refusing to do something illegal. In the 1981 Palmateer v. International Harvester case (421 N.E. 2d 876), an Illinois court found in favor of the discharged worker who was fired because he called public officials' attention to a theft inside the company.