

USAWAY

I

John Budinski, quality control engineer at Clarke Engineering, has a problem. Clarke contracted with USAWAY to supply a product subject to the requirement that **all** parts are made in the United States. Although the original design clearly specifies that all parts must satisfy this requirement, one of Clarke's suppliers failed to note that one of the components has two special bolts that are made only in another country. There is not time to design a new bolt if the terms of the contract are to be met. USAWAY is a major customer, and not meeting the deadline can be expected to have unfortunate consequences for Clarke.

John realizes that the chances of USAWAY discovering the problem on their own is slim. The bolts in question are not visible on the surface of the product. Furthermore, it is highly unlikely that those who work on repairs will notice that the bolts are foreign made. In any case, Clarke is under contract to do the repairs. Meanwhile, it can work on a bolt design so that it will be ready with USA bolts when, and if, replacements are needed.

What should John do?

- 1) Keep quiet and allow the product to go out as is.
- 2) Discuss the problem with his superiors.
- 3) Other.

II

[Following I. 1.]

John lets the product go to USAWAY with the foreign bolt. Some months later a recently dismissed Clarke employee is at a party. After several drinks, several people begin telling "war stories" about business. The former Clarke employee tells the story of how Clarke once faced a tough situation -- conceal the fact that a pair of bolts were foreign made or give up a multi-million dollar contract. Although USAWAY was not named, a USAWAY stockholder is present and contacts USAWAY officials to check out its contracts with Clarke. Prior to examining the products Clarke has supplied, USAWAY confronts Clarke. What should Clarke representatives do?

III

[Following I. 2.]

John informs his immediate superior of the problem. He is told simply to let the product go out as is. What should he do? [Suppose he does as he is told and then the former employee tells the story in II.]

COMMENTARIES

Michael Davis

John Budinski, quality control engineer, has both an employer, Clarke Engineering, and (through his employer) a

client, USAWAY. USAWAY has specified that products manufactured for it be made in the United States. Clarke contracted to provide USAWAY with a product "made to specs." Budinski has now discovered a quality control problem. Two bolts were not made in the USA. The problem may be only "cosmetic." The bolts are as safe, reliable, and durable as their American counterparts. Indeed, the problem may not even be cosmetic. The bolts are not visible from the outside of the product and even someone opening the product for repair would have to look carefully to determine where a bolt was made. Still, the two bolts do not meet specifications and part of the job of quality control is to make sure products meet specifications. What should Budinski do?

He should certainly not keep quiet. His job is to report quality problems when he finds them. He has found a problem. Deciding what to do about the problem will require consulting others, not just "his superiors," but all those responsible for producing the product or dealing with USAWAY. Cosmetic flaws are a common quality problem. They are, I believe, seldom resolved by trying to slip the product past a customer. Instead, they are usually resolved by getting the customer to waive a specification (perhaps in return for a small reduction in price).

That may not be possible for USAWAY. They may have made their reputation by selling only "All-American" products. If so, the quality problem is not merely cosmetic. The product might fail in a way that could seriously damage USAWAY's reputation. It could fail to be "All-American." The only alternative, then, is to replace the bolts now, whatever the delay and whatever the expense to Clarke, or to try to get out of the contract.

While I doubt any quality control engineer would seriously consider passing the bolts on his own authority, the plant manager might. Plant managers tend to focus too much on "getting the product out the door" and too little on the long-term effect of what they do. Timely delivery is usually important when one company considers buying from another. So is price. But just as important is quality, not necessarily quality in any absolute sense, but quality in the sense of meeting specifications. Most companies are willing to pay a bit more and to put up with some delays if the only alternative is receiving a product they may or may not be able to use. Companies without a reputation for quality are usually pushed to the margins of the market (as are companies that can't deliver on time). Clarke Engineering's reputation for quality is an important asset, one a plant manager can easily damage in an attempt to get product out the door. A reputation for quality, once lost, is hard to get back.

What then should Budinski do if his plant manager tells him to "forget it and get the product out the door"? He might begin by asking, "What happens to the contract if USAWAY finds out what we're doing? What happens to you?" To these questions the plant manager might respond, "They'll never find out." These are "famous last words," a proverbial harbinger of disaster. Budinski should unhesitatingly answer, "The Germans have a saying, 'What two know, everyone knows.' Information like this has a way of getting out. Already everyone in Quality Control knows, plus some people on the assembly line. So, perhaps it would be smarter to assume USAWAY will find out than that they won't."

If the plant manager nonetheless persists, Budinski will have to draw a line. The plant manager's conduct threatens the welfare of both Budinski's employer, Clarke Engineering, and of Clarke's client, USAWAY. Both are relying on Budinski to control quality. His okay on a shipment invites others, both employer and client, to believe that he has checked everything in the approved ways and determined that everything at least meets specifications. If he gives his okay when he knows the product does not deserve it, he is in effect lying to those relying on his judgment. So, at the very least, he must tell the plant manager: "I can't say a shipment meets specifications when it does not. Clarke doesn't pay me to lie about quality."

Budinski probably can go this far without risking his job, but he probably should go at least one step further. He should try to get the plant manager to put his proposal to the Bright Light Test. "If you want to take personal

responsibility for quality on this shipment," Budinski might continue, "you can do it. You're the manager. I won't object--so long as you inform the head office. They have a right to know you're risking Clarke's reputation." Considering his proposal under the hard light, senior management might shine on it, the plant manager may have second thoughts. For example, he may suddenly realize that, while he thought of his proposal as serving both his own interests and Clarke's, senior management might not see things that way. If anything went wrong, he would be--as the saying goes--"up a creek without a paddle." He might then draw senior management into the discussion.

What if senior management eventually approves sending USAWAY the products without notifying them of the failure to meet specifications? So long as Budinski does not have to vouch for the products' quality, he need do nothing more. The public safety, health, and welfare are not threatened. He has done about all he reasonably could to protect Clarke's reputation. He has given senior management a chance to do the right thing.

No doubt, Budinski's disappointment will be great, great enough perhaps to make him look for another job. Budinski should, however, not allow disappointment to overshadow the confidentiality he still owes his employer. He should not be the teller of "war stories" from whom USAWAY first learns of what Clarke did.

We must, I think, recognize that the temptation to "leak" something to USAWAY will be great, even if Budinski stays with Clarke. Clarke might benefit from such a leak. Letting that shipment go out over the objections of quality control will set a precedent. Clark will thereafter have more trouble maintaining quality--getting product "out the door" will trump quality--unless the USAWAY decision turns out badly. If USAWAY learns what Clarke did and responds forcefully, Clarke will not soon let timely delivery trump quality again. Clarke will have learned a lesson, one likely to make it a better company, a company its employees can respect.

Still the temptation to do good is here a temptation to do wrong. The NSPE Code II.4 recognizes Clarke's right to make business mistakes, even ones involving moral turpitude, provided they do not threaten the public safety, health, or welfare, or require an engineer's participation. (Compare NSPE Code II.1.a and II.1.e.)

Joseph Ellin

I

One should always look first at the legal question. Clarke's suppliers fail to provide certain American-made bolts and Clark is tempted to violate its contract with its customer, USAWAY, by substituting foreign bolts so that the order can be finished on time. Is the supplier of the bolts liable under the contract for failing to provide American-made parts? If so, any cost to Clarke can be recovered, so Clarke is foolish not to inform USAWAY that it can't meet its contract obligation with regard to the bolts. Clarke would be in violation of its contract with USAWAY, but the supplier will eventually have to pay the costs.

But even if Clarke will have to pay a penalty which it can't recover, it can not take the risk of concealing the violation from USAWAY, for its hopes that USAWAY will not discover that the bolts are foreign-made may prove groundless. Second, Clarke has a responsibility to USAWAY. Presumably something is at stake for USAWAY in wanting all-USA parts: patriotic image, advertising selling point, or whatever. So it needs to know if its product isn't in fact all-American. It's not fair to USAWAY and puts it in potential jeopardy not to tell it about the foreign bolts. USAWAY can then make the decision whether to use them, or wait until the American ones are available.

II

Under scenario 1, Clarke deceives USAWAY, which finds this out. What does Clarke do next? Once Clarke's deception is discovered, it's in trouble from which there is no graceful way out. This should be a lesson to somebody! Clarke people better consult with their lawyers to see what their liability is. Ethically, they have little alternative but to confess to USAWAY and try to explain and apologize.

III

Under scenario 2, John doesn't initiate the deception but is told to do it. Presumably all John's good arguments against deception fall on deaf ears at Clarke. So let John follow orders. Clarke deserves whatever it gets when the deception is discovered. (Maybe the deception won't be discovered, in which case both Clarke and USAWAY got lucky). Should John inform USAWAY? No, that's disloyal. Consumer safety and such things don't seem to be involved in this, but rather client image. This isn't important enough to justify ratting on your employer.

Carl O. Hilgarth

I

Since John Budinski is aware of the contract specifications with USAWAY, he must bring the supplier's bolt problem to the attention of his supervisor, as Clarke Engineering is responsible to meet the requirement that all parts in the product they supply USAWAY are made in the United States. I see the following as alternatives for him to present to management:

- a. Do not notify USAWAY about the supplier bolt problem. Accept the parts as manufactured by the supplier. Meet the delivery deadline. Swap the bolts for those of domestic manufacture when they are available and when Clarke Engineering services or repairs the equipment.
- b. Notify USAWAY of the supplier problem. Propose to meet the delivery deadline by accepting the parts as manufactured by the supplier and swap the bolts for those of domestic manufacture as a special field retrofit or when Clarke services or repairs the equipment.
- c. Notify USAWAY of the supplier problem. Propose delaying delivery until replacement bolts of domestic manufacture are available. Have cost and schedule impact data for discussion with USAWAY.
- d. Notify USAWAY of the supplier problem. Propose redesigning the part to avoid using the bolts of foreign manufacture. Have cost and schedule impact data for discussion with USAWAY.
- e. Put the heat on the supplier. Tell him to fix the problem or you'll find another supplier of the part who can meet the original schedule using all domestically manufactured components. He knew the specifications. It's his oversight. He has to fix it.
- f. Work with the supplier. Obtain the mechanical properties and dimensions of the bolts. Determine if there is an appropriate American made substitute, and use it. If there is any impact on the performance of the part, notify USAWAY and propose the domestic manufacture of the replacement bolts and a special field retrofit. Have cost and schedule impact data for discussion with USAWAY.

Alternative (a) is unethical and violates the negotiated contract. Alternative (b) is politically unfeasible from USAWAY's point of view. Alternatives (c) and (d) will affect Clarke's ability to meet the deadline. (e) means the supplier will tell you to "take a hike", causing you to start the supplier search all over and affect Clarke's ability to meet the delivery deadline.

Alternative (f) seems to be the most practical approach. USAWAY will have a product that meets their business and supplier philosophy--all parts are manufactured in the United States. Clarke can meet the schedule although it might dig into their profit if a retrofit is needed. However, Clarke may be able to do the retrofit as field service under their repair contract. As a quality engineer, John Budinski should be able to make this recommendation to his supervision who should then forward it to USAWAY for review and approval.

II

Well, John kept the problem to himself. Now USAWAY officials, having heard second hand about what Clarke Engineering did, and without examining the products Clarke has supplied, confront Clarke. Were I the Clarke representative, I would ask the USAWAY officials for the basis and evidence of their allegation, citing the need for this to be able to conduct any meaningful investigation. If this is forthcoming, I'll begin a formal inquiry. If not, I'll check informally, just to make sure. Either way, I'll find out what happened. The tough part will be what to do about it.

Any action taken internally with respect to John Budinski will certainly find its way through the grapevine to USAWAY who will then assume a coverup, and really become suspect of us not having met their contractual requirements. So, whatever I find out, I'll have to check further than just this contract. I'll have to check every contract with USAWAY to verify, hopefully, that this was the first and last incident, assuming that USAWAY will also review all our contracts and inspect our parts. My objective would be to treat all parties fairly and remove any suspicion from USAWAY that Clarke engaged in a coverup. John Budinski would probably receive a reprimand, USAWAY would be told what happened and offered replacement of all the affected bolts in the parts we delivered at our cost.

III

If John's immediate superior tells him to let the product go out as is, he should at least request a meeting with the two of them and the chief quality engineer to discuss the issue and options at a management level. His leverage is the long term potential of defaulting on this contract if USAWAY finds out about the bolts to make this a decision for more than just an engineer and a supervisor. At the meeting, the options should be reviewed, and a decision made, hopefully alternative (f). While this seems like it is passing the buck, the resulting decision is nonetheless informed and hopefully responsible. And, this decision must be documented in the part supplier's dossier and communicated to USAWAY. If the situation is addressed straight up, and the former employee tells the story, there is at least a record at Clarke and maybe at USAWAY of what happened with respect to the bolts and how Clarke resolved it.

Alternatively, if there is no meeting and the product goes out as is, hopefully John's supervisor took the appropriate action (alternative (b)), documented it, and communicated it to USAWAY). In any event, John must document the use of the foreign bolts during the part's receiving inspection as conformance to the supplier's design. Should there be an investigation regarding Clarke's fulfillment of USAWAY's contract, the inspection report may not be nice reading if the product was sent out as is without USAWAY's knowledge. Better to do this than falsify the record. Better yet, be straightup with the customer and be a proactive problem solver for him.

Ted Lockhart

I

It may seem to John that the best results will occur if he keeps quiet and allows the product to go out as is. To inform his superiors of the problem of the foreign bolts would open up a real can of worms, since they would then be legally bound to tell USAWAY of the problem. Not to do so would expose Clarke to possible charges of fraud and breach of contract. Furthermore, they might accuse John of not ensuring that the product met the terms of the contract and thus of being derelict in his duties as quality control engineer. Since the product would perform as well as or perhaps even better than it would if it had only American-made parts, USAWAY's customers would not be receiving an inferior product. The only difference would be that USAWAY's promotion of its product as containing only American-made parts would not be completely true. If no one would discover the foreign bolts, then what harm would be done?

However, we need to pay careful attention to the claim that the chances of USAWAY's discovering the foreign bolts on their own, or of some repair person's making the discovery, are very small. If that means that the probability that anyone would ever discover the foreign bolts is extremely small, then John could reasonably judge that the results of letting the product go out as is would be better than the disruption of informing USAWAY or his superiors at Clarke of the problem. However, if it means that the probability that a typical individual at USAWAY or a typical repair person would discover the foreign bolts is extremely small, then it does not follow that the consequences of letting the product go out as is would be better than the consequences of informing John's superiors of the problem. This is so because, if there are thousands and thousands of these products that will be sold and hundreds or thousands that will need to be repaired at some point, then the probability that someone or other will at some time discover the foreign bolts may be very significant. Also, if John takes into account the harm that would be done, not only to Clarke, but also to USAWAY if the foreign bolts became known to the general public, then the expected value of the consequences of dealing with the problem now before the product goes out may turn out to be greater than the expected value of the consequences of letting the product go out as is. Therefore, the judgment that letting the product go out as is would have the best consequences is highly suspect. However, it is not clear that the consequentialist perspective discussed above is the correct perspective. There is the fact that, even if the foreign parts are never discovered, still a fraud is being perpetrated--on USAWAY and its customers and on John's superiors at Clarke, whom he is keeping in the dark. Since the consequentialist argument above is somewhat inconclusive, considerations of honesty, integrity, and truth-telling should be the basis for John's decision. John should inform his superiors and take his lumps, rather than initiate a deception with very uncertain consequences for both himself and his employer.

II

This scenario illustrates the sort of complications that may result from a decision to allow the product to go to USAWAY with the foreign bolts. If the presence of the foreign bolts is widely known by Clarke's employees and it is also widely known that this violates the terms of Clarke's contract with USAWAY, then it becomes much more likely that someone will spill the beans than if that knowledge is limited to John and a small circle of confidants. However, at this point, that is all water under the bridge and Clarke's problem now is damage control. It is difficult to see what would be the point of Clarke representatives' stonewalling at this point, assuming that they have been informed about the foreign bolts when contacted by USAWAY. They should apologetically admit that foreign bolts were used and explain the circumstances that led their quality control

engineer to decide not to fix the problem when it came to his attention.

This is unlikely to satisfy USAWAY and Clarke is probably going to be sued by USAWAY for breach of contract, but no other course of action appears reasonable. USAWAY is now going to be in a real quandary about whether to reveal the presence of the foreign bolts in its products to the general public or to try quietly to reach an out-of-court settlement with Clarke. Thus Clarke may have some bargaining power in its negotiations with USAWAY and may be able to avoid having an exorbitant settlement exacted from them. Clarke might consider attempting to shift the entire blame onto its supplier which used the foreign bolts, but, since it did not correct the problem when it first became aware of it, it now shares responsibility for the problem. To attempt to claim that no one at Clarke had any knowledge of the foreign bolts would be dishonest and probably unsuccessful as a means of deflecting attributions of blame. In short, there is no good reason for Clarke no longer to be truthful in its dealings with USAWAY.

III

By informing his superior at Clarke of the foreign-made bolts, John may escape any legal or institutional responsibility for any future repercussions, such as those given in Scenario II.

However, it is not clear that he escapes moral responsibility. John's superior, in directing him to let the product go to USAWAY with the foreign bolts, is directing him to be a party to the deception of a customer. In general, it is wrong to engage in or be a party to a deception. However, it may be argued that John has an obligation to be loyal to his employer and that is the more important consideration in this situation. What makes the issue especially interesting and problematic is that the public is not endangered by the presence of the foreign bolts in the product and the only reason for insisting on American-made parts is to conform to USAWAY's clever but insubstantial marketing strategy for its products. Such considerations may well convince John that there is insufficient reason for him to resist his superior's directive.

However, there are other ethical perspectives that may be considered. One such perspective stresses the universalizability of the courses of action under consideration. Would John grant the ethical permissibility of allowing the product to go out with the foreign bolts if he viewed the situation as a USAWAY executive or a customer of USAWAY's products who is interested in purchasing only completely American-made products? Does he in effect consent to being deceived if roles were reversed and he were on the "receiving end" of the deception? And from a rule utilitarian perspective, would a society operating on the basis of a set of rules that would allow deception in the sort of situation that John is in be no less valuable than one operating on the basis of rules that allowed no such deception? And what do we mean by "the sort of situation that John is in"? Do we focus narrowly on situations in which business transactions involving the supplying of products to companies marketing their products by appealing to their customers' nationalistic impulses take place? Or do we consider more widely situations in which various types of deception, not necessarily confined to business transactions, occur? The theoretical issues and complications are manifold, and a complete presentation and analysis would occupy many pages of text.

For this sort of decision, moral agents may have no choice but to make a summary judgment about which course of action is more likely to be morally permissible. My own intuitions about moral likelihood incline neither in the direction of John's acting out of loyalty to his employer, Clarke, and doing as directed by his superior or in the direction of his taking some unilateral action against such a directive by refusing to comply with it or by going further and preventing the directive from being carried out by anyone else at Clarke. I conclude that the two alternative courses of action would be equally reasonable for John to pursue in the situation described in this

scenario.

Neil R. Luebke

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.