ductors instead of calling in bargaining-unit electrician for five minutes of work on Sunday is without merit, where supervisor's failure to perform job correctly meant that electrical system easily could have been re-energized, supervisor's action does not constitute "de minimis" contract violation, and safety overrides efficiency when danger to other employees exists.

Appearances: For the employer — G. A. Kiefer, industrial engineering manager; Eugene Gross, maintenance area manager; Terry Smith, maintenance training coordinator. For the union — Steve Vanderheyden; Clyde Cole, electrician.

'DE MINIMIS' VIOLATION

The Issue(s)

STALLWORTH, Arbitrator: — The Parties did not agree precisely on a statement of the issue, and the Arbitrator views the issue as:

1. Did the Company violate the collective bargaining agreement as a result of Supervisor Eugene Gross performing the work in question on October 13, 1991?
2. If so, what is the appropriate remedy?

Relevant Contract Provisions

ARTICLE XI
MISCELLANEOUS CLAUSES

Section 6 — Supervisors

No supervisory personnel shall perform any work which would ordinarily be done by employees in the Bargaining Unit except for emergencies, inventory, trouble-shooting, and demonstrating methods or operations.

Background

In the instant case the Union has alleged that a supervisor has performed bargaining unit work. The Grievant is part of Engineering Maintenance Division in the plant, which consists of about 150 bargaining unit employees who are assigned to fabricate, maintain and repair equipment used by the Production Division.

There is no real dispute over the facts which gave rise to the instant grievance. On Sunday, October 13, 1991, a voluntary work day, a certain amount of work was scheduled by the Maintenance Department. No production work was scheduled for that day. Electricians were scheduled for work on all three shifts on Saturday, and for two shifts on Sunday.

Two pipefitters were assigned to perform maintenance work to replace an overhead condensate header. The work had begun on Saturday and continued onto the third shift on Sunday. The evidence indicated that about five feet or less from the condensate line ran electrical floor main conductors. According to the evidence, these conductors supply 440 volts @ 600 amps of power to part of the plant.

Pipefitter Roger Shultz discussed with Area Manager Eugene Gross that the pipefitters in the course of their work could come into contact with the floor main, and the two agreed that it should be "de-energized." There were no electricians assigned to the shift in question. Area Manager Gross climbed the ladder to the Electrical Sub Station No. 6, and turned off the power at the breaker panel.

At 7:00 a.m. the following morning, Grievant Electrician Harrell Wiggins discovered that the Sub Station breaker had been "de-energized," but the entire procedure of "racking out" the main had not been completed. Mr. Gross had not properly tagged the system, or applied a padlock and finished pulling apart or "racking out" the main. These additional procedures ensure that no one "re-energizes" the panel while the employees are performing the maintenance procedure.

The Union filed the instant grievance dated October 15, 1991 claiming that the Supervisor had violated Article XI, Section 6 of the collective bargaining agreement, because the work should have been assigned to a bargaining unit electrician. The Company denied the grievance and it proceeded to this forum for resolution. It is within this factual context that the instant dispute arises.

The Union's Position

The Union contends that the spirit and intent, as well as the letter of the collective bargaining agreement were violated by the actions of the Supervisor on the date in question. According to the Union, Article XI, Section 6 clearly sets forth the circumstances or conditions under which a supervisor may perform work ordinarily performed by the bargaining unit. According to the Union, the work in question has normally been performed by the bargaining unit and none of the exceptions contained in Article XI, Section 6 applied to this situation, i.e. this was not a situation involving an emergency, trouble-shooting, inventory, or demonstrating a work method or operation.

The Union offered the published job description for the electrician classification as evidence that the work is ordinarily performed by bargaining

unit employees. In addition, the Union contends that the Company, in the handling of this grievance, more or less acknowledged that the work is normally performed by the bargaining unit employees.

The Union argues further that no "emergency" existed, because the maintenance work in question was scheduled before the weekend. The Union contends that it is not arguing that an electrician had to [be] brought in on the third shift. Instead, the Union argues that management should have anticipated that the floor main must be disconnected or "de-energized," and had the work performed on an earlier shift when an electrician was present. Having failed to do so, however, the Union argues that the management was required, under the labor agreement, to call in an electrician. If no volunteers were available, the Union asserts, then it would not have challenged the use of a manager for this job.

The Union acknowledges that other craftsmen and some non-bargaining unit personnel are permitted to perform certain lock out/tag out functions with regard to electrical power in the plant. However, these functions are limited to disconnecting the power to a single machine, the Union asserts, interrupting a 30 or 60 amp power supply. According to the Union, there is no way to make a mistake while operating these units, but that work cannot be compared to the work in question in this case. According to the Union, certain tests which must be performed in order to correctly rack out a main conductor require equipment of the type which only electricians carry.

The Union further disputes the Company's claim that area managers have shared the work in question with bargaining unit electricians in the past. The Union contends that it has no knowledge of any area manager conducting a rack out of a floor main conductor in the past without the Union protesting it. If the work has been done in the past by area managers, it is because the work was not apparent, due to the fact that the electrical sub stations are not within view of the average employee, the Union asserts. If so, such work was done without the knowledge or acquiescence of the Union, it asserts.

The Union asserts further that arbitral precedent between the Parties supports its position, even if the work was performed by both bargaining unit and non-bargaining unit personnel in the past. Furthermore, the Union argues that another arbitrator has addressed specifically the Company's contention that even if the action in question violated the Agreement, it was only a "de minimis" violation.

As a remedy, the Union requests that the appropriate electrician volunteer should be paid for the lost work opportunity which occurred on the day in question.

The Company's Position

The Company contends that there was no violation of the labor agreement when Area Manager Gross "de-energized" the main floor conductor instead of an electrician. The Company's primary argument is that the work in question is not exclusively reserved to the bargaining unit. In support of this position, the Company relies upon the testimony of its witnesses that the work has been done in the past by both management and bargaining unit personnel.

According to the Company, the lock out/tag out procedures in the plant were completely revised and updated in 1991 and both hourly and salaried employees were trained in the procedures. The Company asserts that these procedures indicate shared responsibility by bargaining unit and salaried personnel.

The Company contends that the "racking out" procedure, whereby the breaker unit is unscrewed from the panel until the contacts are separated, is not required by a written plant procedure, nor is it contained in the job description of the electrician. These facts demonstrate that the "racking out" procedure is performed by both groups, the Company argues.

The Company acknowledges that Area Manager Gross did not perform the procedure in the prescribed manner. However, the Company suggests that the Union is seizing on this act as an opportunity to say that an electrician should have been scheduled on Sunday, to perform this five-minute operation. The Company contends that it would have been totally impractical and unnecessary to bring an electrician in to perform this work.

The Company suggests that this grievance works against the union-management cooperation necessary in the face of competition from other companies. The Company also argues that efficiency is especially important in regard to maintenance work which must be performed on the weekend, when the plant is not in production. To delay the maintenance work might cause a delay in the resumption of the production work, the Company suggests.

On the basis of these arguments, the Company argues that the instant grievance should be denied.

Opinion

This is a case involving a claim that certain work performed by a supervisor should have been performed by bargaining unit personnel. The Arbitrator views the issue as follows:

1. Did the Company violate the collective bargaining agreement Supervisor Eugene Gross performed the work in question on October 13, 1991?

2. If so, what is the appropriate remedy?

The Arbitrator has considered the testimony, other evidence and arguments presented by the Parties and concludes that the Company did violate the Agreement when Supervisor Gross performed the work at issue. The Arbitrator's findings, conclusions and reasoning are set forth below.

The instant dispute involves the performance of electrical work by a supervisor. The work involved the disconnecting of a floor main conductor, an electrical power supply which supplied a portion of the plant with power. The Union contends that the work should have been performed by a bargaining unit electrician.

In determining a case of this nature, the language of the collective bargaining agreement is paramount. The language here states,

> No supervisory personnel shall perform any work which would ordinarily be done by employees in the Bargaining Unit except for emergencies, inventory, trouble-shooting, and demonstrating methods or operations.

This language raises two issues: whether the work in question was work ordinarily done by bargaining unit employees and whether any of the exceptions permitting a non-bargaining unit person to perform the work apply to this case.

Turning to the second issue first, it is clear that none of the exceptions apply in this case. The only exception which arguably could apply is the "emergency" exception, since apparently an unanticipated situation arose when the pipefitter requested that the main be "de-energized" and no electricians were assigned to the shift. However, the Company has not argued that the work occurred under "emergency" conditions.

The Company argues instead that the work does not meet the initial threshold criterion that it be ordinarily performed by bargaining unit personnel. Although the work is not specifically listed in the job description for electricians, it is clear that it falls under the general category of testing, inspecting, maintaining and repairing all electrical systems in the plant.

According to the Company, however, the past practice has been that the work has been performed both by bargaining unit and non-bargaining unit employees. Therefore, the Company urges, the bargaining unit electricians have no exclusive right to the work, and no protection under Article XI.

The Arbitrator has carefully considered the evidence concerning the performance of this work in the past. It is clear, as the Union itself acknowledges, that even non-electrician craftsmen are permitted to perform certain kinds of electrical shut-offs without challenge. However, the Union argues, and there is no evidence to the contrary, these shut-offs involved typically only one machine, with very low voltage.

The evidence also was uncontradicted that the amount of voltage at issue here is much higher than that involved in a regular shut off of a machine. Nevertheless, both of management's witnesses testified that they had performed such shut-offs in the past. One witness even testified that it was Company policy to have a supervisor present when higher voltages, say of 2300 volts, are disconnected.

The Union contends that, if supervisors have performed this work in the past, no Union official was made aware of it at the time. The Union notes that the work is performed within the confines of an electrical substation, a sheltered area out of the view of most, if not all the employees in the area. In addition, the Arbitrator notes that the witness who mentioned the names of several bargaining unit individuals who were present when he racked out major electrical conductors did not raise these names at any earlier stages of the grievance procedures, so that the Union could investigate these allegations.

Upon closer examination, the testimony of the management witnesses suggests that in most, if not all of these cases, a bargaining unit electrician was present at the time the shut-off or rack out was performed. Whether the bargaining unit electrician was there to check on the supervisor's work or vice versa, this is a different situation from the one at issue here, where no bargaining unit electrician was present.

Therefore, the Arbitrator concludes that the work in question has been performed ordinarily by bargaining unit electricians. Nor is there sufficient evidence to conclude that the Union has acquiesced in or agreed to a policy of sharing this work between

bargaining unit employees and supervisors or non-bargaining unit employees.

The Company has argued that it is not efficient to bring in an electrician for five minutes of work on a Sunday, when that work can be performed by a supervisor. In support of this argument, the Company notes that supervisors have been trained to perform the work in question.

Of course, the Company's argument on this point is weakened by the undisputed fact that when the supervisor performed the work in question in this case, he did not do so according to the prescribed routine established by the Company itself. The Company argues, however, that the failure of a single supervisor to abide by all the procedures for this operation should not be the issue upon which this case is decided.

The situation as it actually occurred in this case, however, does suggest that the term "efficiency" encompasses more than simply a matter of what it would have cost to bring in an electrician for what amounted to five, ten or thirty minutes worth of work. It is not necessarily more efficient to allow a supervisor to perform this work when the issue of safety is weighed into the efficiency equation.

There was undisputed testimony that contact with these power lines which were not fully "de-energized" could have caused serious risk to the lives and health of the employees working around the area in question. There also was undisputed testimony that some of the employees came into contact with the power lines during the work on the condensate header.

There also was testimony that the difference between what the supervisor did and what should have been done is like the difference between putting your car in "park" and turning it off. In other words, without taking the extra step of unscrewing the breaker and fully separating the contact points, (and tagging and locking the system) the electrical system could have been "re-energized" more easily. The supervisor's action—and the danger in which he placed the other employees—underscores the need for safety to be an overriding consideration, even if it means calling in a trained and experienced electrician to do the lock-out and tagging procedure.

This result is mandated by the language of the Agreement itself. The Company's argument regarding the efficiency of the operation is relevant only in regards to determining whether this was a "de minimis" violation of the contract, because so little time was involved in the actual racking out, tagging and locking procedure. But even though not a great deal of time is involved, the seriousness of not performing the procedure correctly, with an electrician's guidance, indicates that this is not a "de minimis" violation.

In addition, the evidence suggests that the work could have been scheduled at a time when electricians were present. The pipefitters' work was begun before the start of the third shift on Sunday, and the Union argues convincingly that management should have realized the pipefitters' proximity to the electrical lines and had the electrical lines shut off earlier. Even after management failed to do so, if there were no electricians available and willing to work on the shift in question, the Union states that it would not have opposed management performing the work at that time.

Under all these circumstances, the Arbitrator concludes that the labor agreement was violated. Therefore, the instant grievance shall be sustained.

AWARD

The instant grievance is sustained. The electrician who would have been assigned the work on the third shift on Sunday, October 13, 1991 shall be recompensed, according to the Agreement's call-out and overtime provisions.

INTERNATIONAL PAPER CO. —

Decision of Arbitrator

In re INTERNATIONAL PAPER COMPANY FOLDING CARTON DIVISION [Cincinnati, OH] and UNITED PAPERWORKERS INTERNATIONAL UNION AND ITS LOCAL NO. 543, FMCS File No. 93/00094, May 28, 1993

Arbitrator: Louis V. Imundo Jr., selected by parties through procedures of the Federal Mediation and Conciliation Service

WAGES

— 'Team manning' — Rate retention — Interpretation of contract

▸120.205 ▸117.334 ▸24.37 ▸114.308 ▸24.619

Rate-retention agreement negotiated to cushion effect of reduction in wages on em-