

Joseph Ellin's Commentary on "US Parts"

Commentary On
US Parts

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.



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.