

AMERICAN ARBITRATION ASSOCIATION  
VOLUNTARY LABOR ARBITRATION

In the Matter of the Arbitration  
Between:

Union,

-and-

**CASE: Lyons #7**

Employer.

Gr: Poor Ventilation/ "Sick Building  
Syndrome"

**OPINION AND AWARD**

BACKGROUND /FACTS

This case began in 1992 when the original grievance was filed (Joint Ex. 2). The grievance complained of inadequate ventilation which was a "continuous threat to health and safety." The grievance cited violation of Article 11 of the collective bargaining agreement (Joint Ex. 1). The Union requests immediate evaluation of the quality of office air, ventilation and a complete investigation to determine if "sick building syndrome" exists. In addition, the grievance demands restoration of all sick leave that has been used by employees who claim their illnesses were related to the quality of the work environment.

In 1993 and 1994 studies and recommendations were made by the ABC Group regarding air quality. See Joint Ex. 3, 4, 5, and 6. As a result a new roof was installed and the office was remodeled - a new dropped ceiling, decorating, and carpeting was replaced. In 1994-95 Amber Heating and Air Conditioning replaced the cooling, ventilation and heating system (HVAC). (Joint Ex. 13).

The building is leased by the Employer. It is approximately eighty years old and has, according to the testimony, at least two ceilings. There is a ceiling behind the one that is readily observable which is the typical drop ceiling with 2' x 4' ceiling tiles. In the particular conference room the hearing was being conducted it was obvious that there was water damage to a number of the tiles in the corner of the room, and also the hallway to the employee break room. It was agreed that the roof, in spite of being replaced, still leaked. (As we will see, that is a cause of major concern, and perhaps the culprit in this case.)

In 1992 employees complained of several symptoms such as headaches, upper respiratory problems, dry and burning eyes, sleepiness, congestion, depression and the like. The Union presented witnesses Jim Moon, Geraldine White, the office manager, Dorothy Red, Richard Green, Sandy Silver, and Marquette Purple, who testified that they continue to experience the various symptoms mentioned while at work. When absent from work, the symptoms subside or are non-existent. For instance, when Mr. Green was detailed to the Smallville Branch Office, he

experienced no problems, however, when he returned to work in the Channel Office he experienced cold and flu-type symptoms.

In spite of the several modifications, and renovations, that were made to the building after the original complaint was filed in 1992, the symptoms and illness of several workers continued unabated. The symptoms persisted in spite of the fact that a new heating/ventilation air conditioning system was installed. In fact, Director of Office and Business Administration, John Yellow, sent a reply in response to Mr. Mud's request concerning the status of the building. He stated in his memorandum dated July 4, 1995:

In reference to the above grievance and your memorandum dated June 20, 1995, there was and is no viable problem with the air quality of that office. In accordance with the Health Department report dated May 25, 1989, there was no excessive employee exposure to any contaminants.

THE EMPLOYER along with the lessor exceeded the Health Departments recommendations by installing a new HVAC system that included fresh air dampers that exceeded the 10% recommendation for fresh air. All return airs were lowered closer to the floor to increase ventilation back to the main HVAC units. The lessor also replaced the roof and THE EMPLOYER did total renovation of the office. All this work was completed in 1995. . . (Joint Ex. 9(b)).

So, in response to the grievance the Employer held a third step meeting on April 29, 1996. In the discussion and opinion portion of the response given by the Employer it states:

The Channel Branch Manager remarked that the employees had a perception of something wrong - and that meant that something was wrong. And there is no question that the employees feel or believe that something is wrong with the office.

The other side of the story is Mr. John Yellow, who takes his job and the safety of the employees as a straight matter of fact. If something is wrong; he will have it corrected. He cannot repair perception.

At issue is the fact that nothing has been found wrong with the Channel Branch Office. As Mr. Yellow has pointed out, any and all tests have found nothing substandard. Nevertheless any recommendations that were made were met and/or exceeded. Office staff would not agree with this because the recommendation to remove the original ceiling tiles (that got wet do (sic) to a leaking roof) was not done throughout the entire office. Employees believe that the tiles in the south-east corner may be moldy and that may be cause for people feeling ill. (other tiles were removed) The office has a new drop ceiling throughout the office.

There is no question that employees at the Channel office get ill. But employees in THE EMPLOYER'S Branch Offices from Marquette to Monroe become ill. There was no evidence presented to establish a greater illness percentage in the Channel office over any other Branch Office location.

At the Step 3 conference some suggestions were made about adding windows to the building or additional air cleaners (there's one in the "break room"). These suggestions were mentioned to Mr. Yellow, who indicated such changes will not be implemented.

The grievance was denied on June 24, 1996. It is from that denial that this matter was appealed to arbitration.

### ISSUE

HAS THE COLLECTIVE BARGAINING AGREEMENT,  
ARTICLE 11, SECTION 1, BEEN VIOLATED?

### DISCUSSION

In addition to the testimonial evidence the following exhibits were admitted:

- J-1 Collective Bargaining Agreement
- J-2 Grievance
- J-2A List of grievants' signatures and their classifications

- J-3 Letter dated 2/8/93 from ABC Group re: indoor air quality site assessment
- J-4 April 20, 1993 letter from ABC Group re: indoor air quality report
- J-5 May 28, 1993 letter from ABC Group, the attachment to indoor air quality report
- J-6 July 20, 1993 from ABC, indoor air quality report J-7A May 31, 1995 letter from Ms. White to Jim Amber Heating and Air Conditioning
- J-7B Response to Joint 7-A
- J-8 Memo from Frank Mud, Labor Relations to Marquette Purple 6/16/95
- J-9A Memo from Frank Mud to John Yellow dated 6/20/95 J-9B Memo July 4, 1995 from John Yellow to Frank Mud
- J-10 Memo from Frank Mud to Nancy Grey, Chief Steward 7/6/95
- J-11 Amended grievance 7/27/95
- J-12 Step 3 response to amended grievance
- J-13 Amber Heating and Air Conditioning contractor work order and work performed 11/12/94
- U-1 Union Steward's memo to manager White 9/8/92
- U-2 Memo from Mr. Moon to Bigplace LLC 5/30/97
- U-3 Memo from Dorothy Red dated 7/31/95
- U-4 Chemical Risk Management mission statement
- U-5 Curriculum Vitae - Roger L. Ginger
- U-6A Memo 7/22/97 re: indoor air quality
- U-6B 8/6/97 attachment to Union 6A

The grievance alleges a violation of Article 11, Section 1 of Joint Ex. 1 which states: "The Employer shall make every reasonable effort to provide a safe and healthful place of employment free from recognizable hazards."

This may be a "sick building syndrome" case. It is the opinion of the Union expert that it does in fact meet the criteria. The Union produced several witnesses that revealed assorted physical and mental ailments which they believe are directly attributed to the physical condition of the Employer's building offices in the city of Channel.

Also there was some evidence that a few employees frequently tell themselves and other, that the building is the sole cause of the illnesses. The Employer, therefore, urges that the illness issue is only one of perception. It argues that if a person constantly tells themselves that the building is the cause of their problems, then it does become the source of the problem.

Article 11, Section 1, of Joint Ex. 1 states "The Employer shall make every reasonable effort to provide a safe and healthful place of employment free from recognizable hazards."

In addition, the relevant portions of Article 9, which provide for the grievance procedure, states in Section 2 that "A grievance is a written complaint of violation of this Agreement . . . "

The employees filed the original grievance, as earlier noted, in 1992. It was signed by several employees and was amended in 1995. The grievance has been filed as a class group grievance. The hearing was conducted in Channel City at Branch No. 00 on December 8, 1997. Several witnesses testified. The employee witnesses all testified very consistently that they each experienced similar symptoms involving respiratory problems, flu-like symptoms, dizziness, nausea from time to time. It was pointed out by the Employer that all the employees perceived that the building was causing their discomfort and/or illness and one of the arguments made by the Employer is that there is no way that it can overcome an employee's perception. The Employer urges that it has made major modifications to the building and completely renovated the interior of the building, replaced the ceiling, and replaced

the HVAC system. In spite of that, the employees still have experienced several difficulties that were attested to by the witnesses presented at the hearing.

Importantly, the original ceiling which apparently is a drop ceiling also, was not removed when the renovations were done to the building. A new drop ceiling was simply added. From the testimony, it is understood that the first drop ceiling retained some of the water and water damage that accumulated due to the leaks in the roof in spite of it being replaced. It continued to leak even on the day of hearing which was very obvious to a simple visual inspection as stated before.

When the ABC Group, architects and engineers and environmental folks, originally recommended modifications to the building in April, 1993, they included in one of their recommendations that the Employer should "remove all of the wet and damaged acoustical ceiling tile located within the ceiling cavity area. The majority of this damaged area is located along the south east corner of the building. Apparently that was not done. Rather, a drop ceiling was installed below the damaged acoustical ceiling tile and created the ceiling cavity area. (See Joint Ex. 4, Recommendation No. 5).

The Union presented an expert witness, Mr. Roger L. Ginger, whose testimony was accepted as expert. He is the President of Chemical Risk Management Company as well as the Director, Industrial Hygiene and Environmental Toxicology, Wayne State University School of Medicine, Department of Family Medicine, Occupational and Environmental Medicine Division. He is an adjunct professor and resident lecturer within the School of Medicine as well. His curriculum vitae,

contained in Union Ex. 5, establishes that he has over 30 years experience in the industrial hygiene discipline. He submitted his reports (Union Ex. 6A, 6B), gave testimony, and was accepted as an expert. He stated that although the ABC Group report (Joint Ex. 6) on air quality was not alarmed at the levels of formaldehyde, in his thirty years he had never seen levels this high in an office building. While at the building site prior to the hearing, he observed old ceiling tiles and removed several and identified the tiles as being subjected to clear water damage. There was an observable black residue on the tiles which he identified as mold and mildew that can give off biogenic particles. When the particles are airborne it creates a health problem. Samples of the ceiling tile were taken from the return air plenum (the ceiling cavity). He said these air borne biogenic microbes are not visible but there were viable spores growing in the surfaces of the tile. He stated for instance, that when the building is vacuumed, particles will be sucked through and into the work space area, and in effect, redistribute themselves. Mr. Ginger noted and testified without contradiction that there was mold and mildew contained within the ceiling of the building. The primary recommendation by ABC, that the damaged ceiling tile within the ceiling cavity be removed, was not in fact followed. His personal observations were that the building was so contaminated that it is a health hazard. He testified that it would be very difficult to remediate the building because of the origin of the cause - leaking roof and wet tile. The problem is organic, and when the tiles get wet, things start to grow. He said there was a consistent reservoir of toxic "stuff", i.e., spores, mold, and mildew



growing. Mr. Ginger said there is a visibly clear mold growth, black aspersilis species of mold on the tile.

He noted that the ABC study did not include an investigation with regard to this aspect of air quality. He said that because the building has two suspended ceilings, the contamination problem of the building is compounded.

The first ceiling is located about a foot below the roof line, the second about four feet below. That is the one that was visible and provided the immediate ceiling in the conference room and the rest of the building. He said that there were biogenetic microbes that exist and are growing, and that these microbes attack humans in different ways. Some people are not affected until exposed for very lengthy periods of time, others are affected immediately. He reviewed the symptoms of the employees and indicated that the symptoms were consistent with those found in his studies and his experience. The first symptoms begin with respiratory problems, then progress to, eyes, skin, cardiovascular illness (heart and lungs) and also to possible neurologic illness such as headaches and depression.

In addition, his written report dated July 22, 1997 (Union Ex. 6(a)) concludes that:

In summary, based upon a thorough review of the above documents and numerous references regarding indoor air quality and "sick building syndrome" in our library (attachment), **I conclude, to a reasonable degree of scientific certainty, that the initial grievance was well-founded and that the reported health problems, more likely than not, were either caused by or aggravated by the environmental conditions existing in the MESA office....**

The Employer pointed out that the reports of ABC were in 1993 and 1994. They are dated reports as to, for instance, formaldehyde gas levels. While the point is well taken, Mr. Ginger used the reports because they were on hand and the latest available. Ginger found with regard to the formaldehyde levels that Item 1 of Union Ex. 6(a) that:

Extremely elevated levels of formaldehyde gas as measured in the building's atmosphere. In fact, the reported levels of 0.572 and 0.534 parts per million (ppm) were considerably above typical ambient levels of formaldehyde found in indoor environments (0.03-0.14 ppm in conventional homes, 0.09-0.46 ppm in mobile homes). Formaldehyde gas is a respiratory and ocular irritant, an allergen, and suspect human carcinogen. The current Threshold Limit Value of formaldehyde gas is a ceiling concentration of 0.3 ppm.

He found that the employees' signs and symptoms are consistent with poor indoor air quality. Notably, he also found that the employees' symptoms lessened when they were at home or on vacation. Also, he found that the ABC study " . . . failed to measure airborne microbes and biogenetic particles typically associated with water-damaged building materials. More likely than not, employees in these offices were excessively exposed to numerous airborne microbial allergens and irritants in addition to formaldehyde gas."

Further, the witness testified that the roof water damage leakage source has to be repaired, both ceilings would have to be removed, and the walls would have to be decontaminated with bleach. He said that the source of the problem has to be attacked. It wasn't cured by the actions taken by the Employer, although he admitted that there was an attempt made to correct the problem. But the source problem, the waterborne damage caused to the ceiling tiles which caused the biogenic microbe

growth - mold and such to grow - was not corrected and therefore the problem continues.

As earlier noted, there was no testimony that refuted the conclusions of the expert witness. He testified in essence that Office No. 00, located in the city of Channel certainly appears to have "sick building syndrome". Based on his unequivocal, strong testimony, the Arbitrator must conclude that the grievance is meritorious. Although the Employer has taken steps, and has made attempts to resolve the problem, the basic source of the problem, i.e., the water damaged tiles that promoted microbiotic mold growth was not remediated. Therefore, the problem was not solved, hence, the continued medical symptoms that were testified to by each of the witnesses.

The conclusion of the Arbitrator is that based on this strong and unequivocal testimony and evidence, I must find that this building is not safe and healthful for employment free from recognizable hazards based on the uncontradicted testimony of the expert witness.

As a part of the relief requested the Union asks for restoration of all sick leave used for any illness related to the work environment and that employees be made whole. Several of the witnesses testified that they could not prove that their illnesses were due specifically to problems that they encountered at work but they certainly believed this to be so. (see testimony of Mr. Green and Ms. Silver). This may not be good enough because the cause must be medically established. This portion of the remedy would have to be based on medical evidence and not just the

belief of the employees. That is, appropriate medical evidence would have to be submitted that would indicate that the work environment did in fact cause illness that caused the use of sick leave in order for the parties to come to an adequate resolution. Nevertheless, I believe that the Employer should attempt to discuss this, and perhaps negotiate an acceptable resolution on this case.

The request by the Union for immediate evaluation of the office air quality, ventilation system and a study to confirm the conclusion of Mr. Ginger that The Employer's Agency Office 00 has "sick building syndrome" is granted.

AWARD

The grievance is granted.

1. Immediate evaluation of the office air quality, ventilation system, and a confirmation should be made as to the existence of "sick building syndrome" at the Channel The Employer's Agency Building No. 00.

2. The parties should attempt to negotiate the request for restoration of sick leave. If they cannot come to a satisfactory resolution, the Arbitrator will retain jurisdiction to assist in the resolution of that issue.

Respectfully submitted,

A black rectangular box redacting the signature of the arbitrator.

Dated: February 26, 1998