BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between	
SUB-ZERO FREEZER COMPANY, INC.	Case 68 No. 48259 A-4996
and	
LOCAL UNION 565, SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, AFL-CIO	

Appearances:
Mr. Paul Lund, Business Manager and Financial Secretary-Treasurer, for the Union.
Mr. Michael H. Auen, Attorney, for the Company.

ARBITRATION AWARD

Pursuant to the terms of the parties' 1990-1993 bargaining agreement, the undersigned was designated by the Wisconsin Employment Relations Commission as an arbitrator to resolve a grievance. Hearing was held in Madison, Wisconsin on December 15, 1992. A transcript of the hearing was produced and the parties submitted written argument, the last of which was received January 28, 1993.

STIPULATED ISSUE

The parties agreed that the issue to be resolved is:

> Did Mr. McGinley's termination violate the collective bargaining agreement?

PERTINENT CONTRACTUAL PROVISIONS

ARTICLE XV

DISCIPLINE AND DISCHARGE

> Section 1. Any employee may be suspended or discharged for just cause, provided, however, that if such employee feels he/she has been unjustly dealt with, they may file their complaint with a Shop Steward and it shall then be handled in accordance with provisions of Article XVII. If it is found that such employee has been unjustly discharged or suspended, then he/she shall be restored to employment with full seniority rights and paid for all time lost at the usual rate of compensation, unless in arbitration a discharge is converted to a suspension, provided the complaint is registered with the Employer within seventy-two (72) hours of the suspension or discharge.
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> . . .
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> Section 2. . . .Misconduct under the following subject areas shall be subject to immediate discharge or the by-passing of any of the following intermediate disciplinary steps; insubordination, stealing, fighting, possession or sale of drugs on Company

premises and being intoxicated on Company premises. Dishonesty and defective workmanship shall be subject to disciplinary action up to and including a three (3) day suspension. Any further violations of the same nature shall subject the employee to immediate discharge.

. . .

ARTICLE XVI

MANAGEMENT

Section 1. The operation of the plant and the direction of the work force, including the right to hire, promote, transfer or demote, suspend or discharge for just cause, the right to relieve employees from duty because of lack of work or for other legitimate reasons are vested exclusively in the Company, provided, that the sole limitation upon the prerogatives of management in these respects shall be, that it will not conflict with the terms and conditions of this contract nor shall it be used for purposes of discrimination against any employee.

DISCUSSION

On Monday, October 19, 1992, the Company discharged the grievant for his conduct on Friday, October 16, 1992. The grievant was discharged because the Company believed he profanely ordered the acting plant manager to leave his production area, threw a rag which splashed cleaning solvent in one of the manager's eyes, failed to provide first aid to the manager, pushed the manager, and told the manager that "he wasn't going to do a fucking thing" about his (the grievant's) conduct. The record satisfies me that the Company's view of the grievant's conduct is correct and that the grievant's discharge did not violate the parties' contract.

The Union correctly concedes that the grievant engaged in serious misconduct during the October 16 incident. However, it argues that discharge is too severe a penalty when all the circumstances are considered. 1/ In my

1/ The Union urges me to consider:

"1.The grievant's length of service with the Company.

2.No evidence of the grievant's prior misconduct of a serious nature.

3.No convincing evidence that the grievant knew on October 16, 1992 that Tom Torgeson has been designated acting plant manager.

4.No convincing evidence that the grievant willfully intended to spray solvent into Torgeson's face or eyes, and cause him bodily injury of any kind.

view, even if I were to assume the accuracy of all the Union arguments, discharge would still be appropriate under the contract. This is so because even viewed under the Union's scenario, the grievant nonetheless responded to a co-worker's legitimate request with loud and angry profanity, endangered a co-worker's safety with careless conduct, did not assist the co-worker to an aid station, pushed the co-worker while the co-worker was in distress from the cleaning solvent and taunted the co-worker as a fellow employe led the co-worker away. Viewed as a whole, such conduct need not be tolerated from any employe, even one with the 15 years service of the grievant. Thus, even if I were to conclude that insubordination was not present, the grievant nonetheless engaged in misconduct sufficient to justify discharge under Articles XV and XVI of the contract. Therefore, it is my award that the grievant's termination did not violate the collective bargaining agreement. The grievance is denied.

Dated at Madison, Wisconsin this 31st day of March, 1993.

By Peter G. Davis /s/
Peter G. Davis, Arbitrator

5.No convincing evidence that the grievant clearly and completely refused to render aid to Torgeson.

6.No assumption can be made that the grievant falsely denied knowledge of the eyewash station adjacent to the exit door near his work area, in light of two other employees' testimony that they also weren't aware of its existence.

7.Evidence of loud yelling and profanity in confrontations and exchanges between employees and supervisors considered routine "shop talk" by Management (Union Exhibit 1 and the testimony of the grievant's supervisor, Don Kitsemble).

8.No evidence that grievant was insubordinate, i.e., refused any direct orders given by Torgeson.

9.No evidence of any threat of physical violence by grievant."