

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration :
of a Dispute Between :
 : Case 35
UNITED TEXTILE WORKERS OF AMERICA, : No. 50350
AFL-CIO, LOCAL UNION NO. 78 : A-5168
 :
and :
 :
APPLETON MILLS :
 :
- - - - -

Appearances:

Mr. John S. Williamson, Attorney at Law, on behalf of United Textile
Stroud, Stroud, Willink, Thompson & Howard, Attorneys at Law, by

Worker
Mr. Robert R

ARBITRATION AWARD

United Textile Workers of America, AFL-CIO, Local Union No. 78, hereinafter the Union, and Appleton Mills, hereinafter the Company, jointly requested that the Wisconsin Employment Relations Commission appoint a staff arbitrator to hear and decide the instant dispute in accordance with the grievance and arbitration procedures contained in the parties' labor agreement. The undersigned, David E. Shaw, of the Commission's staff, was designated to arbitrate in the dispute and a hearing was held before the undersigned on March 30, 1994, in Appleton, Wisconsin. There was a stenographic transcript made of the hearing and the parties submitted post-hearing briefs in the matter by June 24, 1994. Based upon the evidence and the arguments of the parties, the undersigned makes and issues the following Award.

ISSUES

The parties stipulated to the following statement of the issues:

Whether the Company violated the Collective Agreement when it suspended the Grievant, Alan Mitchell, for three days? If so, what should the remedy be?

CONTRACT PROVISIONS

The following provisions of the parties' Collective Bargaining Agreement are cited:

**ARTICLE II
MANAGEMENT FUNCTIONS**

Section 3. The management of the plant and the direction of the working force and of the affairs of the Company shall be vested exclusively in the Company as functions of management. Such functions of management include among others the following:

. . .

- (b) The right to suspend, discharge, and lay off employees for legitimate reasons.
- (c) The right to supervise the work of each employee, including the right to determine production schedules, and to assign individual jobs in each department.

- (d) The right to establish reasonable rules and conditions for operating the plant and covering the conduct of employees in the plant, and to determine the time when shifts shall begin and end.

. . . .

The Company also cites the following work rule:

FACTORY WORK RULES

In order to make Appleton Mills a desirable place to work and allow our employees the greatest possible freedom, the company desires to maintain a minimum number of work rules. Nevertheless, so that we may be fair, maintain order, assure that together we can produce a competitive, quality product, and meet state and federal legal requirements, it is essential that the following rules be followed:

. . . .

11. PLANT CONDUCT: As in any organization, certain basic rules of conduct must be followed in order for the organization to function effectively. Among the actions that are unacceptable are: horseplay, use of abusive or profane language, dishonesty, destruction of property belonging to the company or another employee, and the failure of an employee to follow the instructions of his foreman or another authority.

BACKGROUND

The Company operates a production facility in Appleton, Wisconsin, and the Union is the certified exclusive collective bargaining representative of the production and maintenance employees at that facility. The Grievant, Alan Mitchell, has been employed by the Company approximately fourteen years and was working as Dryer Operator in the Finishing Department on the first shift at the time of the incident in question. The supervisor in the Finishing Department is Michael Fuller, and he is the Grievant's immediate supervisor. Fuller was hired into that position on October 25, 1993. Fuller reports to the Production Superintendent, Randy Blasczyk.

On November 18, 1993, Fuller's first day on his own as the supervisor of the Finishing Department, an incident occurred between the Grievant and Fuller which ultimately resulted in the Grievant being issued a three day suspension without pay. There is considerable dispute as to what occurred that day. Fuller testified that the Grievant came to him that morning around 11:00 a.m. and asked if he could take a vacation day the next day and that Fuller told him he would have to think about it and would get back to him after lunch. Fuller wanted to think about it because he already had one employee off, a Dryer Operator who was a Leadman, and due to the workload in the pin seam area, he would not be able to use those operators to cover for the Dryer Operators. Over lunch, Fuller went to Bob Huck, Fuller's predecessor in the Dryer Department, and asked Huck what he would do in that situation. Huck recommended to Fuller that he not allow the Grievant to take vacation. After lunch, Fuller went out on the floor and approached the Grievant and another employee, Vince Nettekoven, who were sitting down near a dryer in the pin seam area of the department. Fuller told the Grievant he could not have the next day off since there was already another Dryer Operator off and the pin seam

area was too busy to replace someone. The Grievant then responded that the other Dryer Operator, being a Leadman, is in a different classification, and that he should be able to have the day off. The Grievant told Fuller that in the past management would just call in an operator from the next shift early to cover the work. Fuller responded that he was not going to call someone in on overtime to cover the Grievant's vacation hours. With the exception that the Grievant testified he only asked to take a half-day of vacation, the testimony of Fuller and the Grievant is substantially the same up to this point.

Both the Grievant and Fuller testified that as Fuller was leaving, the Grievant then said something to Fuller to the effect, "Well, I can see what kind of person you're going to be to work for. Don't expect a lot out of me," or, "I guess I'm going to work real hard for you....can't do nothing for me." The Grievant then told Fuller he would probably just call in the next day and take it off anyway. Fuller then told the Grievant, "Well, do what you have to do." During this time the Grievant had been sitting and the conversation was carried on in a normal tone. After this point, the testimony of the Grievant and Fuller differs as to what happened.

Fuller testified that as he was walking away from the Grievant, the latter called him an "asshole". Fuller then stopped and turned around and said, "Do you have a problem with it?", to which the Grievant responded, "Yes, I do." Fuller said, "Why don't you get a union steward and come to my office and we'll talk about it", and the Grievant responded, "Suck my dick" or "Suck my cock." Fuller then walked toward the Grievant, who had risen to his feet and started to walk away, and asked him what he said. The Grievant said he had said, "suck eggs". Fuller then said, "No, you didn't. You said 'Suck my dick'." They went back and forth a few seconds on what the Grievant had said.

Fuller then again told the Grievant to get a union steward and come to his office. The Grievant responded to the effect that he was not going to go anywhere to talk to him (Fuller). Fuller left and walked back towards his office and the Grievant yelled across the floor at him, "You asshole!" Fuller then went in his office and called Blasczyk and told him about the incident.

The Grievant testified to the following. He had requested to take a half day of vacation for the next day and that when Fuller approached him after lunch on November 18th, he and Vince Nettekoven were both seated in the pin seam area. Fuller told him he already had a man off the next day, the Leadman, Moseng, and the Grievant responded that in the past that had not affected them since Leadman was a different classification. Fuller then said he did not have anyone to cover for the Grievant since the pin seamers were on rush felts, so there would be one dryer down. The Grievant responded that in the past they called someone in early from the next shift to cover the hours. Fuller said he was not going to call somebody in to cover the Grievant's hours. Fuller started to walk away, and the Grievant said, "I guess I'm going to work real hard for you. . .Can't do nothing for me." The Grievant then said he would probably call in and take the day off anyway. Fuller responded, "You gotta do what you gotta do." The Grievant then rose to his feet and said, "Suck eggs," and started walking toward the console for his dryer. Fuller came towards him and "got real close" to the Grievant (six to twelve inches apart), and said, "Did you tell me to 'suck me'?" The Grievant said, "No. I told you to suck eggs." Fuller then said, "Did you tell me to 'suck me'?" The Grievant responded, "Fine, whatever you want to hear. Suck me." Fuller then grabbed the Grievant by the arm and told him to come to the office. The Grievant pulled his arm away and said, "Not without a union rep." The Grievant said that twice and then the two of them started walking away, the Grievant toward the telephone and Fuller towards the office. The Grievant then yelled, "Asshole!" The Grievant went to the telephone and called the Company's Vice-President of Manufacturing, Mike Miller, and told him, "Mike, I got a problem with your new foreman out here. I need -- I want a half day of vacation for tomorrow."

The Grievant was called in to a meeting later in the afternoon of November 18th by Blasczyk. Present at the meeting was Blasczyk, Don Stepniak, the Company's Human Resources Manager, Bob Huck, the Grievant's former supervisor, Fuller, the Grievant and Paul Schroeder, the Union's Acting President at that time. Both Fuller and the Grievant related their versions of what had happened. The Grievant did not mention Fuller grabbing his arm when he gave his version of the event. The Grievant requested that Nettekoven be permitted to attend the meeting, but the request was denied. Blasczyk did, however, talk to Nettekoven that afternoon about the incident. Blasczyk testified that Nettekoven did not mention anything about Fuller grabbing the Grievant during that conversation, but that he did mention it in later discussions they had about the matter. Nettekoven testified that he did mention Fuller's grabbing the Grievant's arm in his first discussion with Blasczyk after the incident.

As a result of the exchange between he and Fuller on November 18th, the Grievant was given a three day suspension without pay by Blasczyk. The written notice of the discipline stated, in relevant part:

INFRACTION Abusive Behavior Toward the Supervisor

DATE 11/18/93 PLACE Finishing

OTHERS INVOLVED? None

DETAILS: Al used abusive language toward Mike Fuller after having a vacation day refused. For this Al will receive a 3 day suspension on Nov. 30, Dec. 1 and Dec. 2. Another occurrence will result in termination.

The Grievant served his three day suspension and grieved the discipline. The grievance was processed through the steps of the parties' grievance procedure. The parties were unable to resolve the dispute and proceeded to arbitration before the undersigned.

POSITIONS OF THE PARTIES

Company

The Company takes the position that the three day suspension of the Grievant was reasonable based on his abusive and insubordinate conduct and it was supported by legitimate management reasons.

Regarding the reasonableness of the suspension, it is undisputed that the Grievant disagreed with Fuller's decision and demanded further explanation and by his own admission, he was mad and frustrated. Although the Grievant denied making more profane comments to Fuller, he admitted he was upset to the point of telling Fuller to "suck eggs", language calculated to insult. The Grievant's self-serving denial that he used abusive language toward Fuller must be considered in the context of his angry state.

The Grievant's abusive conduct in this case is consistent with his pattern of dealing with problems and with his supervisors. Blasczyk testified that the Grievant has a history of being confrontational and ill-tempered and that he had several conversations with the Grievant regarding those problems. Blasczyk testified regarding an incident that occurred on September 20, 1993, where the Grievant publicly and vehemently questioned Blasczyk's authority in front of other workers. Blasczyk subsequently verbally admonished the Grievant about his conduct. According to the Grievant, however, he does not have a problem with his temper, rather, he has been warned "about the way I present myself" and indicated he thought that other people have a problem with him because he "tells things the way I feel". The evidence clearly established the Grievant's pattern of confrontational responses to people in situations in the workplace. In contrast, the evidence was undisputed that Fuller is non-confrontational and he has not had problems related to his behavior or temper.

Fuller credibly testified that the Grievant did direct profane, abusive language towards him, and the conduct attributed to the Grievant is consistent with his past conduct and also with his temper. The Grievant's subsequent claim that he merely told Fuller to "suck eggs" is inconsistent and implausible under the circumstances. It was a self-serving attempt to recharacterize his remarks. Clearly, his conduct was abusive and inappropriate.

As to the claim that his remarks were the result of physical provocation by Fuller, the Grievant claimed that Fuller "got in his face" and grabbed him by the arm and directed him to come to his office. The claim that Fuller got in the Grievant's face rings hollow when the two individuals are physically compared. The Grievant, at six feet two inches tall, is about eight inches taller than Fuller. The claim that Fuller grabbed the Grievant by the arm is contradicted by the Grievant's own initial version of the events. Blasczyk

testified that the Grievant initially made no claim that Fuller had grabbed him by the arm. The Grievant admits that he did not make that claim when initially explaining his action, but said he did not mention that fact in his defense because he was "shook up real good." That explanation is belied by the fact that the Grievant immediately contacted the Company's Vice-President of Manufacturing, Mike Miller, to attempt to head off the consequences of his actions. The Grievant's later story is also unbelievable. He claimed he thought he was going to be fired, but offered no explanation for his conduct. The other employee present during the incident, Nettekoven, also did not mention anything about Fuller grabbing or touching the Grievant when first questioned by Blasczyk immediately after the incident. It was only in later versions, that the Grievant and his friend, Nettekoven, claimed that Fuller had touched the Grievant. Thus, the claim of provocation is not credible as it is inconsistent with the respective personalities of the Grievant and Fuller, is self-serving, was raised only after the fact, and is inconsistent with the Grievant's and Nettekoven's initial version of the events.

The assertion that abusive and disruptive conduct towards supervisors is acceptable conduct in the plant is not supported by the evidence. The incidents testified to by another employee, Tom Peterson, who claimed to have previously used abusive language towards supervisors without any consequences, were private and did not have the same effect of undermining supervisory authority or disrupting the workforce. The claim is also belied by the prior verbal warnings the Grievant received from Blasczyk about his temper and abusive language.

In addition to the abusive language directed at his supervisor, the Grievant also admittedly violated a plant work rule by refusing to comply with a direct order of his supervisor. Twice during the incident in question, the Grievant was directed by Fuller to get a Union steward and go to the supervisor's office to discuss the matter. The Grievant admitted that he refused. That conduct constituted a violation of a promulgated work rule and is an additional basis justifying the Grievant's suspension. The claimed surprise that the Grievant's refusal to comply with a directive was also a basis for his discipline is contradicted by Blasczyk's testimony that that matter was specifically addressed during a prior stage of the grievance. In fact, the Grievant conceded he discussed with Blasczyk why he did not go to the supervisor's office as directed, testifying that he wanted a union representative in attendance because he was mad. He was in fact told to get a union representative and report to the supervisor's office and he makes no claim that he was denied his right to a union representative, nor did he claim that he made any effort to get a union steward. Instead, he refused to comply with a direct order.

The Company also contends that the grievance should be denied because the suspension is supported by legitimate management reasons. Article II, Section 3(b) of the Agreement gives management the prerogative to impose discipline for "legitimate reasons". The Grievant was verbally abusive to his superior and refused to obey a directive and his claims to the contrary are not credible. The Grievant's verbal abuse of his supervisor was unjustified even as retaliation if the supervisor had been abusive towards him. The proper response by an employee to an allegedly abusive supervisor or a co-employee is to file a grievance under Article XIII of the Agreement. The requirement that employees follow the proper procedures in such circumstances is necessary in order to maintain control in the workplace. The imposition of discipline for employees who subvert or disrupt supervisory authority is necessary in order to maintain control.

The Company concludes that a three day suspension is warranted due to the nature of the abusive language directed towards the supervisor and by the fact that the Grievant had been previously warned and counseled about his confrontational and ill-tempered behavior in the workplace. Further, the

Grievant engaged in such conduct over a relatively trivial matter that could have been avoided altogether if the Grievant had simply planned ahead and properly requested vacation time rather than demanding accommodation on such short (one day) notice.

Union

The Union takes the position that the grievance should be sustained. The Grievant has been an employee of the Company for 15 years and has never been disciplined before this except for absenteeism. The contention that the three day suspension was part of the "progressive nature of the discipline" is not supported in the record. While Blasczyk did not like some of the remarks the Grievant had previously made to him, he took no disciplinary action on that basis and did not even place a notation in the Grievant's personnel file regarding their discussion. Thus, there was no prior relevant discipline. Further, Blasczyk's discussion with the Grievant had the desired effect, i.e., he never spoke to Blasczyk in that manner after that. Therefore, the Company should have known that speaking to the Grievant about what he said to Fuller would have been sufficient.

The contention that the Grievant was also disciplined for insubordination cannot be sustained. The notice of the discipline (Joint Exhibit 2) set forth the basis for the suspension, and did not mention anything regarding insubordination. The Union's International Representative, Gene Krull, also testified that there was no allegation that the Grievant had disobeyed an order in the third step grievance meeting. Therefore, two of the asserted bases for the suspension, continuation of progressive discipline and insubordination, are spurious.

The Union cites arbitral precedent for the proposition that an attempt to support disciplinary action on grounds not previously asserted suggests that the employer, itself, doubts the original bases for the discipline. Hence, the Company's attempt to interject the alleged insubordination and the asserted continuation of progressive discipline as bases for the suspension reflects the Company's understanding of the weakness of its case. Even if the Company is able to make its case regarding the Grievant's alleged use of abusive language, the suspension should be reduced to an oral or, at most, a written reprimand. Such a penalty would be appropriately corrective and consistent with the philosophy of progressive discipline.

Regarding the question of whether the Grievant used the alleged abusive language towards Fuller, the Union asserts that credibility determinations are required to answer that question. While both the Grievant and Fuller have reason to shade the truth, the employees Nettekoven and Moseng do not. Nettekoven corroborated the Grievant's testimony regarding Fuller's conduct and about the Grievant saying "suck eggs", that Fuller got in the Grievant's face, and that he tried to get the Grievant to say something obscene, rather than "suck eggs". Nettekoven also corroborated the Grievant's testimony that Fuller grabbed his arm. Nettekoven then told Moseng about the grabbing shortly after it occurred and about the Grievant saying, "Suck eggs". Moseng corroborated Nettekoven's testimony in that regard. Thus, to credit Fuller's testimony, the Arbitrator must discredit the testimony of employees Nettekoven and Moseng, as well as that of the Grievant, and there is no basis in the record for doing so.

Both the Grievant and Nettekoven did testify that the Grievant called Fuller an "asshole", after Fuller grabbed the Grievant's arm. Considering the provocation and the Company's practice of tolerating much stronger language directed at supervisors whose actions were much less egregious than Fuller's in this case, the use of that term should not be a basis for discipline. There is no evidence that the Grievant's comments caused anyone to work slower or in any way disrupted work, nor is there evidence that the Grievant intended that his remarks do so. Since the Company does not allege or argue that the language

the Grievant admitted he used warrants discipline, it follows that the discipline must be dismissed in its entirety.

The Union asserts that Fuller's motive for filing charges against the Grievant and his version about what happened is explained by the fact that it was his first day on the job as acting supervisor, and that he was understandably anxious to demonstrate that he was in command. Having become agitated by the Grievant's remarks and misunderstanding or misconstruing what the Grievant had said, he became even more agitated until he lost his temper and grabbed the Grievant. Knowing his conduct was unacceptable, Fuller then sought to shift the focus from his own conduct to the Grievant's and could only do so by accusing him of language that would be grounds for discipline. Fuller's anger, the need to defend his actions, and his misinterpretation of what the Grievant said, all contributed to his decision to charge the Grievant.

While those reasons explain Fuller's actions, they do not justify the charge.

Lastly, the Union asserts that the Company's investigation was faulty in that it refused to allow the sole objective witness to the incident, Nettekoven, to attend the meeting that led to the assessment of the penalty. That refusal, coupled with the supervisor's inappropriate conduct, requires that the penalty be eliminated, or at the least, reduced to a written reprimand, even if the Company had proved that the Grievant used the language that Fuller attributed to him. However, since the Company failed to prove that the Grievant used such language, the grievance should be sustained, the Grievant made whole, and his record cleared.

DISCUSSION

First, there is a dispute as to the basis for imposing the three day suspension on the Grievant. The Company contends that the decision to discipline the Grievant was based on his use of profane and abusive language toward his supervisor and also for his refusal to comply with his supervisor's order to go to the office in violation of the Company's Work Rule 11.

The testimony indicates that both Fuller and the Grievant gave their version of what happened on November 18th at the meeting later that day. There is, however, no indication from the testimony that the allegation the Grievant disobeyed an order from Fuller was brought up at that meeting as a basis for the discipline. The written notice of the suspension issued on November 18th lists, "abusive behavior toward the supervisor" as the "Infraction". Fuller testified that the Grievant's refusal to comply with his order to go to the office falls within "abusive behavior". However, the notice of the suspension under "Details" only states, "Al used abusive language toward Mike Fuller. . ."

While both Blasczyk and the Grievant testified that Blasczyk asked the Grievant at one of the steps in the grievance procedure why he did not go to the office when Fuller told him to, the testimony of the Union's International Representative, Gene Krull, is un rebutted that an allegation of disobeying a supervisor's order was not discussed or mentioned as a basis for the discipline at the third step of the grievance procedure, i.e., the last step before arbitration.

It appears from the foregoing that the alleged failure of the Grievant to follow his supervisor's order to go to the office was not initially considered by the Company as part of the basis for its decision to suspend the Grievant. Therefore, it will not be considered at this point in determining whether the Company was justified in suspending the Grievant.

There is also considerable dispute as to what took place between the Grievant and his supervisor, Fuller, on November 18th. Fuller claimed that the Grievant called him an "asshole" twice and told him to "suck my dick", or "suck my cock". Fuller denies he grabbed or even touched the Grievant during their exchange. The Grievant admits he said "asshole", but claims he said it only

once. The Grievant claimed he said "suck eggs" to Fuller, having heard that Fuller drank raw eggs for breakfast and only said "suck me" after Fuller kept disputing that he had said "suck eggs" instead. The Grievant also claimed that after that exchange, Fuller grabbed his arm and told him to come to the office.

There is also a dispute regarding whether Fuller told the Grievant to get a Union Steward and come to the office or whether the Grievant said he would not go to the office without a Union Steward.

As is often the case in these situations, a completely accurate reconstruction of what was said and done during the exchange between the Grievant and Fuller is not achievable. At most, the participants will try to give their best recollection as to events, but time and the natural tendency to rationalize one's behavior often shade those recollections. In this case, however, there was another person present to witness the incident, Nettekoven, who was not directly involved and who has no apparent interest in the outcome.

While the Company infers in its argument that Nettekoven and the Grievant were friends, there is no evidence that they were any more than co-workers in the same department. The Arbitrator is unwilling to presume bias in their testimony on the part of an employee or a member of management based simply on their status as such. Further, the testimony of another employee, Moseng, as to what Nettekoven told him very shortly after the incident is consistent with Nettekoven's account.

Nettekoven's testimony as to what was said and what happened during the exchange between the Grievant and Fuller supports the Grievant's testimony in that regard. At the same time, Fuller's testimony was somewhat unclear at points as to what happened, e.g., whether the Grievant called him an "asshole" twice or only once (Tr. 39). Fuller testified he immediately wrote down what had happened, but those notes were not introduced. Therefore, the Grievant's account of what was said and what happened is considered to most accurately reflect what took place.

It does not appear from the testimony that the exchange between the Grievant and Fuller was a shouting match or a verbal tirade. Rather, it appears that the Grievant became argumentative with Fuller about the reasons Fuller gave for not letting him take vacation the next day. The conversation then deteriorated to the point of who was going to have the last word, and it appears the Grievant was bound and determined that it would be him who got the last dig in. "Suck eggs", while not profane or abusive, was meant to insult Fuller and led to further confrontation. When their exchange was over, and both were walking away, the Grievant still could not let it be and yelled "Asshole!" at Fuller. The Arbitrator does not condone a supervisor grabbing an employee; however, he does not buy the argument that Fuller's taking the Grievant's arm, and the latter pulling it away, constitutes provocation for the Grievant's subsequent action. The Grievant did not yell "Asshole!" in the heat of the moment, but waited until they were both walking away. Rather than an extemporaneous outburst, it was a parting shot.

The Union makes a valid point that it appears the Company has tolerated a fairly extreme degree of "abusive or profane language" to be directed at supervisory and managerial personnel by employees. The Company is able to point out, however, that most of those occasions cited involved the employee and supervisor being alone. It also appears that in two of the three cases the employee felt he was being falsely accused of wrongdoing by the supervisor and in all three cases it was a heated exchange between the two individuals. In this case, the exchange was not that heated and was over when the Grievant yelled "Asshole!" at Fuller. Moreover, it was the Grievant, unhappy with Fuller's decision, that started the exchange. The Grievant had been warned by Blasczyk about similar conduct not long before this incident. It does not appear Blasczyk's comments amounted to formal discipline; nothing was placed in the Grievant's personnel file, but it was sufficient to put the Grievant on notice that his actions were not acceptable and could result in discipline if

continued.

The Company has the right under Article II, Management Functions, Section 3, (b), to "suspend, discharge, and lay off employees for legitimate reasons." Given the extent that the Company has tolerated such language being directed at its supervisors by employees in the past, the lack of any prior formal discipline having been imposed on the Grievant for such conduct, 1/ and the comparatively "mild" language used in this case, the Grievant's conduct does not rise to the level of being a legitimate reason for a suspension. However, while the Grievant's conduct did not constitute a legitimate basis for suspension, it does constitute a legitimate basis for discipline under the circumstances for the reasons discussed above. 2/ The Company does have a legitimate concern in protecting the authority of its supervisors and maintaining order. Therefore, the Grievant's suspension is reduced to a written warning for his conduct on November 18, 1993.

Based upon the foregoing, the evidence, and the arguments of the parties, the undersigned makes and issues the following

AWARD

The grievance is sustained in part and denied in part. The three day suspension without pay imposed upon the Grievant for the incident of November 18, 1993 is reduced to a written warning. That is to be reflected by removing the record of the suspension from the Grievant's personnel file and replacing it with a written warning and by making the Grievant whole for the wages he lost due to serving the suspension.

Dated at Madison, Wisconsin this 4th day of October, 1994.

By David E. Shaw /s/
David E. Shaw, Arbitrator

1/ Although the Company's tolerating such language being directed at supervisors by employees and the lack of formal discipline having been imposed on the Grievant for his similar conduct in the past do not totally exonerate the Grievant, those circumstances do work to mitigate the seriousness with which the conduct may be viewed in this case.

2/ The Union's argument that no discipline should be imposed given the Company's refusal to allow Nettekoven to attend the meeting on November 18th is rejected. The Company takes its chances by not questioning all witnesses before making its decisions, but that alone does not alter the employee's or the Union's ability to ultimately defend against management's action. Further, it appears Blasczyk did talk to Nettekoven on November 18th about the incident, albeit after the meeting.