Gilson #3

IN THE MATTER OF ARBITRATION BETWEEN:

Employer

AND

Union

This dispute was presented to the undersigned for final and binding decision under The Collective Bargaining Agreement (CBA) between the parties which runs from November 1, 1990 through October 31, 1993. Hearings were conducted in Employer conference rooms on February 25, March 11 and April 14, 1993 and were completed on the last date. No transcript was taken and the parties agree to submit post-hearing memoranda by May 14, 1993. These were received on May 16, 1993 on which date the hearing was closed.

ISSUES

Did the Employer violate Article XV, paragraphs E and F of the CBA in its conduct of the investigative hearing concerning Employee's alleged violation of Rule 16 of Category I of C. Causes for Discipline or Discharge in the Corporate Policy Manual Section 900 Page 900:6? If so, what shall the remedy be?

Did the Employer show just cause for the termination of Employee? If not, what shall the remedy be?

RELEVANT CLAUSES OF THE CBA AND EMPLOYER POLICIES

ARTICLE I: PURPOSE OF AGREEMENT

E. The right to hire, promote, discharge or discipline for cause in accordance with the terms of this Agreement and to maintain discipline of employees is the sole responsibility of the Employer except that employees will not be discriminated against because of Union membership or activities. It is understood and agreed that the routes to be flown; the equipment to be used; the location of plants, hangars, facilities, stations and offices; the scheduling of airplanes; and all other matters of policy and management are the exclusive function and responsibility of the Employer, providing such matters are not in conflict with the terms of the Agreement.

ARTICLE XV: BARGAINING AND GRIEVANCE PROCEDURE

E. Necessary hearings and investigations called by the Employer shall, insofar as possible, be conducted during regular business hours, and stewards, and local committeemen, and necessary witnesses shall not suffer loss of normal pay while attending such hearing or investigation. Any employee who is to be questioned by Employer representatives in the investigation of an incident which may result in disciplinary action being taken against him may request a Union representative to be present as an observer. The above does not apply to inquiries of employees by supervisors in the normal course of their work.

F. No employee covered by this Agreement shall be discharged or suspended without pay from service without a prompt, fair and impartial hearing and shall be represented and assisted at such hearing by a Business Representative or his designee and members of the Local Committee. At least forty-eight (48) hours prior to such hearing the employee and members of the Local Committee and the Business Representative shall be advised in writing of the precise charges against the employee. Nothing herein shall be construed as preventing the Employer from holding an employee out of service without pay pending such hearing.

G. Any employee dissatisfied with the action of the Employer in suspending or discharging him may appeal from such action by filing an appeal to the third step of the grievance procedure as provided for in this Agreement and a hearing shall be held within ten (10) days of submitting such appeal. Oral and written evidence may be introduced at such hearings, and witnesses may be required to testify under oath. All decisions by Employer representatives and all appeals filed by the employee or Union shall be in writing and shall conform to the time limitations set forth in the third step of the grievance procedure.

H. If, as a result of any hearing or appeals therefrom, it is found the suspension or discharge was not justified or if paragraph F above is not complied with, the employee shall be reinstated without loss of seniority and made whole for any loss of pay he

suffered by reason of his suspension or discharge, and his personnel records shall be corrected and cleared of such charge; or if a suspension rather than discharge results, the employee shall have that time he has been held out of service without pay credited against his period of suspension. In determining the amount of back wages due an employee who is reinstated as a result of the procedures outlined in this

Agreement, the maximum liability of the Employer shall be limited to the amount of normal wages he would have earned in the service of the Employer had he not been discharged or suspended.

CORPORATE POLICY MANUAL

SECTION 900: Page 900:6

C. Causes for Discipline or Discharge

CATEGORY I: (Violations will result in discharge.)

16. Fighting, threatening bodily injury toward supervisors, employees, passengers, vendors, officers or officials of the Employer or any other individual.

THE ISSUE OF THE INVESTIGATIVE HEARING

The parties presented two issues to the arbitrator, and if the answer to either was in the affirmative, the question of remedy was also presented. The first issue was whether the Employer violated article XV, paragraph F of the CBA. The parties stipulated that the required notice of the "prompt, fair and impartial hearing" had been provided. There was no argument but that the Employee was properly held out of service pending the hearing or that the Employee was represented and assisted at the hearing by the Business Representative. However, the Union protested at the start of the hearing on July 30, that Hearing Officer Person 1 was serving as Prosecutor, Judge and Jury. He was the Employer official who had ordered Maintenance Manager Person 2 to hold the Employee of service.

The Employer urged that Person 1 had served in a similar role in the past without protest from the Union. However, in order to avoid complaint and to expedite the matter, but without setting a precedent, the Employer agreed to call off the hearing. It assigned Person 3, Director of Maintenance Support, who had not been involved in the disciplinary action, as Hearing Officer. The Union did not protest the choice of Person 3. However, at the arbitration hearing and in its brief, the Union urged that the Employee was not provided an impartial investigative hearing on July 30, 1992 as required by paragraph F as noted above.

If the Employer had proceeded with the investigative hearing with Person 1 as Hearing Officer, the Union might have had a valid claim of lack of impartiality. However, the Employer's acquiescence to the Union Protest and the assignment of Person 3 as Hearing Officer, without any protest by the Union, rendered the Union's claim moot. Therefore, the Employer did not violate paragraphs E and F of Article XV in the conduct of the investigative hearing on August 26, 1992, and no remedy is appropriate.

THE ISSUE OF THE MERITS OF THE TERMINATION BACKGROUND

The Employee was hired in June, 1990 by the Employer as a General Support Equipment Mechanic. After 8 months he was classified as a Metal smith. From about 1972 to 1984 he served in the Marines and offered a variety of commendations and fitness reports. Following honorable discharge he held a variety of jobs before his employment at Employer. The testimony showed that the Employee had gotten into altercations with fellow workers and supervisors on a number of occasions during his employment with the Employer. The most serious involved a fight with a fellow worker and a superior on Feb. 11, 1991. All three could have been fired as even the Union admitted. However, the two managers agreed on a 2-day suspension for each of

the three involved. A week later, Person 4 conducted an investigatory hearing. As a result of the hearing, he wrote both the Employee and the other workers that the suspension was a mistake and that they should have been terminated. He noted that "any infraction of House Rule Category I, number 16 will result in immediate termination."

On March 16, 1993 Person 5, a supervisor, had a discussion with the Employee which he summarized in a memorandum dated March 19, 1992:

> "We both agreed that there were a number of factors contributing to very unfavorable confrontations between you and fellow co-workers. These factors included differences in age and differences in comparative skill levels. We also touched on the possibility that outside influences (such as personal problems) may by the overriding factor."

At the same time he was assigned to the 2100 sheet metal shift with the concurrence of the shift shop steward. This was an effort to provide a new start. However, the confrontations continued, often over minor matters such as what name he wants to be called. On one occasion he came in early and found employee Person 6 taking a bottle of solvent from the top of his tool box. Testimony showed that solvent is supplied by the Employer, but Employee testified that he thought that it might have been his. In any case, Person 6 tried to apologize, but the Employee replied, "Get away from me." Person 6 said that thereafter he avoided the Employee. On an earlier occasion, Person 6 was talking with another employee about a newspaper article involving a white fireman, and the Employee overheard the discussion and gratuitously commented: "it was you white guy's fault."

On July 23, 1992 Person 6 was heading with Person 7 toward the time clock to punch out about 11:15 p.m. Earlier in the shift, Person 8, the lead of the group, had warned them that the Employee was on the warpath-- angry because someone had left a plate lunch on his tool box

and it was full of bugs. Person 6 had told Person 7 that the Employee would blame him. As Person 6 and Person 7 came abreast of the Maintenance Control office, they met the Employee, and he started yelling at Person 6, in effect accusing him of putting the plate lunch on his tool box. Eventually, Person 6 and the Employee went into the office where Person 2 and Person 9 were doing their paper work. Person 2 and Person 9 told the Employee to calm down and sent Person 6 out of the office to punch out. After leaving, Person 6 stopped Person 8 at the entrance to the freeway to complain about the Employee, but Person 8 told him that if he wanted management to act, he would have to file a written complaint the next day. Person 6 did so on July 24, 1992 and asked Person 7 and Person 8 also to do so. As a result of these complaints, Person 1 directed Person 2 to hold the Employee out of service pending an investigative hearing. As outlined above, this was originally scheduled for July 30, 1992, canceled and rescheduled on Aug. 26, 1992. As a result, Employee was terminated September 1, 1992. The parties agreed to skip the steps in the grievance procedure and go directly to arbitration.

EMPLOYER POSITION- FACTS

The Employer noted that the Employee testified that, although it had not been reported to management, he had gotten into an altercation with a fellow employee, Person 10. The lead mechanic, Person 11, had to break it up. The Employee admitted that he didn't take such matters to management because "If I go see management, I'd be banging myself."

After the fight on February 11, 1991, Person 1 made the Employee read the House Rule and Employee referred to it as the "Sword of Damocles", because any infraction would result in immediate discharge. The Employee testified that he agreed with Person 4's letter, and Person 12 corroborated that the Employee clearly understood that any infraction included "threats". Shortly

after this incident, the Employee bid and was transferred to the sheet metal shop on March 25, 1991. At first, according to the testimony of Person 6, Person 7, Person 8 and the Employee, everyone was getting along well. Then, after the Employee completed probation, problems arose. The first involved the Manager, Person 9. He testified that the Employee swore at him and threatened him when Person 9 questioned the Employee's absence when he had been denied a vacation request for the same period. Person 9 did not discipline him because he thought he should give him a chance. During the same period, the Employee was accused of sexual harassment but was not disciplined because the female employee refused to make a formal complaint.

The Employee got into another confrontation with Lead Mechanic Person 8 by pointing his finger in Person 8's face and yelling at him, "Don’t mess with me." Person 8 reported the incident to Person 3 who called both men in to warn them and avoid a possible physical confrontation. He considered this counseling and did not put it in writing. However, in March, 1992, the Employee yelled at Person 6 and Person 13, another mechanic, and threatened Person 6. Person 6 reported that to his supervisor, Person 5, who discussed it with Person 3. The latter advised him to discuss the situation with the Employee and document it. Person 5 did both on March 16, 1992. On March 18, the Employee met with Person 1 and Person 14, the shift shop steward, to discuss the Union's request that the Employee be assigned to a different shift. Person 1 testified that he agreed, hoping that Employee' abusive behavior and threats to other employees would stop.

The Employer noted that the Union tried to discredit Person 8 by Person 14's testimony that he always yelled at mechanics, regardless of their ability. However, on cross-examination, Person 14's reference was found to be Person 15 whose grievance over lack of promotion to a full-time

sheet metal job was denied in an arbitrator's decision which concluded that after extensive efforts to arrange training by Person 1, he was completely incompetent. The Employer suggested that not only did this discredit Person 14's testimony about Person 8's handling of employees, but the fact that Person 14 testified that he talked to the guys once a week for 1-5 minutes showed that he had little first-hand knowledge of relations between mechanics and their leads. There was also testimony that Person 8 carried a "large" knife at work. However, only the Employee saw such a knife. Person 16, a Union witness, testified that Person 8 waved his knife at Person 6 and said "I'm going to fuck you up." But on cross-examination he admitted that he heard this from the Employee. Person 3, Person 14 (a Union witness) and Person 8 all testified that the knife was not large - about 3" in length and its use was commonly accepted by mechanics and supervisors. Person 16's credibility was also questionable because he first testified that he worked with the Employee, but on cross-examination admitted that he was on the 0645 shift, and the Employee was 1445-2145 H shift. Person 16 also was alone in testifying that "before he (the Employee) started, they never liked him". Others, including Union witness Person 14, Employee, Person 8 and Person 7 testified that they got along fine at the start.

The Employer next noted that in the July 23, 1992 incident, Person 6's statement said:

> "11:15 The Employee approached me and Person 7 in front of Maintenance Control yelling, swearing, wanting to fight, saying I put it (the box lunch) there and to never touch his stuff or come near him again. But not in those words. He has threatened me before in the past. He didn't threaten me last night. But he has me worried for myself and my tool box. Sooner or later he will snap on something and take out life's misfortune on me, and I do not want to be around when this happens."

Person 6 testified that he meant that his life was not threatened last night, but he did feel threatened that Employee would cause him harm. This was supported by Person 7's statement:

"He had the intention of punching Person 6's lights out."

This incident was repeated inside the office. Person 9 recalled the Employee saying to Person 6, "I'm going to kill you, you fucking white ass." Person 9 also testified that he walked Person 6 to his car because Person 6 feared the Employee. Person 2 confirmed the yelling and swearing but didn't recall the exact words. Person 8's statement and testimony showed that Person 6 felt threatened when he left the shop.

The Employee gave an entirely different version. He testified that he reported the half-eaten plate lunch under the cover of his tool box to "the Chinaman" (Person 2, his supervisor). This showed his lack of respect for his supervisors. He testified that the confrontation occurred after he was paged on the P.A. and was walking to the Maintenance Control office. He said he had to do a "Kentucky Jig" to avoid Person 6 and Person 7. He then told Person 7 to "leave, this is none of your business." This showed that he had more in mind than just asking Person 6 about the plate lunch.

At the investigative hearing, the Employee was the only witness and Person 3, the Hearing Officer, reported that his only defense was that "... in all the past incidents, provocation was initiated by other parties and not by himself." He admitted that the confrontation with Person 6 was a result of accumulations of suspicions he had... and which culminated in the heated verbal confrontation outside Maintenance Control. Person 3 testified that the Employee never denied threatening Person 6 or Person 8. The Employer also noted that the Employee displayed his volatile personality at the investigative hearing by verbally exploding against Person 9, causing

the Business Agent to call a caucus to calm him down. Person 3 testified that he decided to terminate Employee because: 1) Testimony of all parties was similar; 2) Witnesses were believable; 3) Past record; 4) Three incidents of threats; and 5) The violation was very serious and cannot be tolerated in the work place.

EMPLOYER POSITION - ARGUMENT

The Employer urged that testimony was often contradictory and requires determinations as to credibility. There was testimony about Employee' abrasive behavior toward: Person 10, Person 17, Person 18 (a supervisor), Person 9, Person 8 and Person 6 on two occasions. He received progressive discipline by verbal counseling (Person 3), written counseling (Person 5) and the two-day suspension. In addition, there were discussions with his shop steward, lead mechanic and Person 1 resulting in his reassignment. He was aware of Rule 16. His employment puts all the mechanics in danger.

The arbitrator should credit the Employer witnesses, especially those who broke "the code of silence" over the Employee. The Union urged that nothing occurred on the night of July 23, 1992. Employee merely asked Person 6 if he had put the lunch on his tool box. That was not the testimony of Person 6 or the witness, Person 7. Neither had anything to gain from their testimony and both risked their relations with co-workers. The Employee had a large financial incentive to testify falsely. He showed no remorse.

The Employee's record corroborates his actions on July 23, 1992. In each area that he worked he had difficulty getting along with fellow workers and supervisors. He also had a poor record of attendance during his short employment - 89 days for various reasons during every month but one in 1991 and 1992. Employee asked the arbitrator to look at his military record to support his

claim that he was a calm employee who gets along with coworkers. However, except or his self-serving testimony, none of the witnesses testified that he was a model employee. Although Person 1 testified that Employee worked hard in the Ground Shop and the Welding Shop, he was not allowed to testify as to Employee' attitude in the work place. Person 9 testified that his output in sheet metal was terrible. Both Person 3 and Person 8 testified that he was a beginner with a lot to learn and Employee admitted the errors on cross-examination. Person 9 testified that the Employee was "mad at the world and had a chip on his shoulder". He also testified that lead mechanics reported that often the Employee couldn't be found in his work area. The Employee alleged that Person 6, Person 7 and Person 8 turned everyone except his friends Person 19, Person 20 and Person 21 against him. It was significant that none of them testified on his behalf. Only the shop steward and Person 16, whose credibility was questionable, testified on his behalf. Even Person 14 admitted that a "couple of guys couldn't get along with Employee", but he could not identify these people. .

The Employee exercised all the rights provided by the CBA and received a fair and impartial hearing. He still could use the grievance procedure and appeal to the System Board of adjustment.

In summary, the Employee had to lie because he knew that any threat would justify termination. Person 6 had no axe to grind and he was so scared that he stopped another employee on the freeway to ask for help. The Employee admits prior incidents because he knows that he had already been (or was not) disciplined for them, but he lied about the last one because he knew that it would cost him his job. He was a short-term employee with a terrible record. If he were reinstated, it would only be a question of time before another outburst occurred. The Employer

submitted three arbitrators' decisions involving similar threats against co-workers. In each case the arbitrator ruled against the Employees who had been terminated.

UNION POSITION

The Union first noted that Person 6's written statement concerning the July 23, 1992 incident stated "He didn't threaten me last night." During the investigative hearing, Person 6 testified that he was not threatened by the Employee that night. Hearing Officer Person 3 failed to include these remarks in his decision; Person 2 who was directly involved in calming both parties, substantiated this. He testified that he did not hear any threat of physical violence from Employee against Person 6. Person 9 testified that Employee threatened Person 6 in the presence of Person 2. Person 2 denied this and with this in mind did not hold Employee out of service at this time. Person 9 testified that he was asked to escort Person 6 to the parking lot because of his fear of the Employee. Person 6 denied that he was escorted to the parking lot by Person 9. As Maintenance Manager, Person 9 had the undisputed authority to hold the Employee out of service if he had made such a threat. He testified that Employee yelled "You white ass hole, I'm going to kill you!"

If he had indeed made such a threat, Person 9 would have been remiss in not following through with the appropriate disciplinary action as provided in the Corporate Policy Manual. None of the witnesses present in the office substantiated Person 9's testimony.

Person 7's testimony failed to substantiate any of the physical or verbal threats against Person 6. He did confirm a loud verbal discussion, but this was not unusual in the isolated Maintenance Department which is a predominantly masculine work area. Person 8 testified that he did not witness the alleged incident. He learned about the incident from Person 6 after leaving the work

place. At the Investigative Hearing he made no reference to any threat by the Employee. His testimony was primarily about Employee' sheet metal skills and work habits.

At the arbitration hearing, the Union noted that the Employer chose not to call a key witness to the alleged violation on July 23, 1993 - Person 2, who was the Maintenance Manager. It was the Union that insisted that he testify as a hostile witness. The Union urged that if the incident had remained in his hands, it could be assumed that Employee would not have been held out of service or terminated. Person 9 holds equal authority with Person 2. If Employee made the alleged threats of violence, Person 9 should have notified the police, escorted him off the premises and held him out of service pending an investigative hearing.

Contrary to Person 9's testimony, Person 2 testified that no verbal or physical threats were made by either Employee or Person 6. He testified that Employee did not pose any threat or danger to others and therefore was asked to resume his duties and no further action was needed or appropriate. Person 6, the alleged victim of the physical threats, testified that the Employee did not threaten him on that night. Person 9 testified that he was present when Employee was paged to report to the Maintenance Control Office after the confrontation with Person 6 outside the office. However, none of the other witnesses could substantiate his presence. Person 2 was unable to substantiate Person 9's testimony. Both Person 12 and Person 1 testified that the work performed by Employee in the GSE was exemplary.

In conclusion, the Union argued that if the arbitrator did not find the first investigatory hearing violated Employee right of due process as provided in Article XV, paragraph F of the CBA, the termination violated Article I, paragraph E. Article XV, Paragraph H provides that if an employee is suspended or discharged despite the Employer's noncompliance with the provisions of paragraph F, the employee shall be reinstated without loss of seniority and made whole for

any loss of pay he suffered, and his personnel records shall be corrected and cleared of such charge.

The Union further contended that the Employer failed to prove that the Employee violated Section 900, page 900.6 of the Corporate Policy which is "Fighting, threatening bodily harm toward supervisors, employees, passengers, vendors, officers or officials of the Employer or any other individuals." There was no evidence that Employee engaged in any fight on July 23, 1992. There was no evidence that Employee threatened any supervisor with bodily injury on July 23, 1992. The only witness to testify that the Employee threatened bodily injury to Person 6 on July 23, 1992 was Person 9. However, no other witness confirmed Person 9's allegation, not even Person 2, who was directly involved in trying to calm the two individuals involved in the argument. No testimony was offered of threatening bodily injury to passengers, vendors, officers or officials of the Employer or other individuals other than the unsubstantiated allegation that Employee threatened Person 6 in the Maintenance Control office on July 23, 1992.

Thus the Union argued that the Employer failed to substantiate its umbrella allegations brought forth under the Corporate Policy. Therefore the Employee should be reinstated with full pay, seniority and benefits retroactive to July 24, 1992.

DISCUSSION

This arbitrator has carefully reviewed his notes, the exhibits; the post-hearing briefs of the parties, including the decisions provided by the Employer, and has reached the conclusions which follow. In particular it was necessary to examine the testimony carefully because the credibility of the various witnesses was crucial in view of conflicts. The Union urged that no one

except Person 9 testified that the Employee threatened Person 6. Specifically, the Union noted that Person 6 stated in his letter "He didn't threaten me last night." The Union argued that Person 6 also testified that Employee didn't threaten him. A look at both his complete letter and his testimony showed that he did feel threatened. He testified "he didn't threaten to kill me, but I felt threatened." He also testified: "He wanted to go outside and kick my ass." The fact that he felt threatened was confirmed by the testimony of both Person 9 and Person 2. The latter testified that Person 6 asked to be escorted to his car and both testified that Person 9 did escort him. It is true, as the Union pointed out, that Person 6 didn't "think" Person 9 escorted him to the car, but by questioning whether it was that night or later, he implied that Person 9 did escort him on some occasion. I can only conclude that Person 6 was confused. I must accept the testimony of Person 9 and Person 2, who was called by the Union, both of whom were definite and had no reason to invent their testimony. Furthermore, both independently testified that the reason they didn't consider sending the Employee home at the time was because they feared a further escalation into a physical confrontation. Both testified that they wanted to keep the Employee on the premises (since Person 6 and Person 7 were leaving). The reasoning of Person 9 and Person 2 demolished the Union's argument that one or the other should have sent Employee home if he in fact did threaten Person 6.

Other witnesses also confirmed that a threat was made. Person 2, called by the Union, testified that he saw the confrontation outside the office. He couldn't hear anything but described the Employee’s looks as "evil and harsh". He testified that when Person 6 came in he said the Employee threatened to punch him out. Person 2 testified that the Employee swore at Person 9 and yelled at Person 6 and he (Person 2) told Employee to "cool it". He said that the Employee "made a verbal threat only when he came back in" (the office). Person 7 answered the question:

"Did Employee threaten Person 6 that night?" "From what I've seen, yes." He also testified "Employee swore at Person 6 and used 'lights out' as a threat", and was "real loud". Thus, in addition to Person 9, and contrary to the Union's contention, Person 6, Person 2 and Person 7, the other witnesses, all described Employee' behavior as threatening.

Other aspects of the testimony must also be examined. The Union brief stated that:

> "Person 9 testified that he was present when Employee was paged to report to the Maintenance Control Office soon after his confrontation with Person 6. Also present were Person 6 and Person 2. However, none of the witness present Lind testifying could substantiate Person 9's presence."

In fact Person 6 and Person 2, as well as Person 7, testified that Person 9 was present as noted above.

The Union argued that both Person 14 and Person 16 testified that Person 8 was not good with people. Under cross-examination, Person 14 admitted that he stopped by the sheet metal shop "once a week for 1 to 5 minutes". When questioned as to his conclusion about Person 8, his only evidence was the fact that Person 8 had yelled frequently at Person 15 and told employees that he wanted him off his shift. Person 14's testimony evidenced an obsession that Person 15 was unfairly treated, which he believed might be due to racial prejudice. The Employer submitted an arbitrator's decision rejecting Person 15's grievance that he was unfairly denied promotion to a full-time job. The arbitrator concluded that Person 1 had gone far beyond usual efforts by assigning Person 15 to a number of supervisors for training without success. Eventually Person 15 was terminated. Thus Person 8's public complaints about Person 15's work, while not good supervisory practice, were nevertheless valid. In the absence of other knowledge, Person 14's testimony was not persuasive.

Person 16's testimony was also used to argue that Person 8 did not have good relations with his employees. Person 16 was a strong Union supporter. He had told Person 6 that after he had complained to management, that Person 6 couldn't expect the Union to join and, in any case, that the Union couldn't support one member against another. He testified that Person 8 brandished a large knife which was not customary for mechanics. Upon cross-examination, it turned out that he was on a non-overlapping shift, so his knowledge of Person 8's relations was only from gossip and that he only knew of Person 8's knife from the Employee. Furthermore, management witnesses testified that it was an accepted practice in sheet metal to carry a knife for use in the shop. Person 16 also testified that the sheet metal employees never did like the Employee from the start. This was contrary to what Person 6, Person 7, Person 8 and Employee all had testified. In summary, Person 16's testimony showed an animus against both Person 6 and Person 8 and for the Employee. However, it was neither balanced nor accurate and was not directly relevant to the issue at hand. Finally, although other testimony suggested that Person 8 could use some counseling on how to be more diplomatic, this did not excuse or mitigate Employee' threats to Person 6.

In summary, testimony showed that during his two-year employment, the Employee had gotten into confrontations with several co-workers, as well as with Person 8 and Person 9. He had been suspended for fighting, which apparently even the Union felt was lenient discipline. On that occasion he was warned that any violation of Rule 16, including threat, would result in immediate termination. As was concluded above, three other witnesses characterized his statements to Person 6 as threats, although each used different language. However, their testimony, and that of Person 6, must be credited over that of the Employee. Therefore I must

conclude that he did threaten Person 6. This leaves the question of whether there were any mitigating circumstances to warrant some reduction of the penalty.

The Employer brought out the fact that the Employee had a poor attendance record. He did, but the Employer's attendance control program had not been implemented until recently so he was not on notice for attendance. (It may be noted that his initial confrontation with Person 9 occurred when the latter asked him for a doctor's certificate when he was absent during the time he was denied vacation time off.) Testimony showed Person 12 and Person 1 believed that he was a hard worker. However, they were not in constant contact with him. His direct supervisors testified that often he could not be found at his work place, the amount of his production was poor and he had a lot to learn in sheet metal. In summary, his overall work record was, at best, mediocre.

Thus there were no mitigating factors. The Employer did not discriminate against the Employee, but in fact was perhaps too lenient. He had a fair hearing. His termination was for just cause.

AWARD

1. The Employer did not violate Article XV, paragraphs E and F of the CBA in its conduct of the investigative hearing.

2. The Employer showed just cause for the termination of Michael Tones.

3. No remedy is appropriate in either case.