IN THE MATTER OF ARBITRATION BETWEEN

McQUAY INTERNATIONAL )
                     ) “Employer” )
AND ) ) FMCS Case No. 08-56535
SHEET METAL WORKERS LOCAL NO. 480 )
                     ) “Union” )
                     ) B. Titus Discharge

NAME OF ARBITRATOR: John J. Flagler

DATE AND PLACE OF HEARING: October 31, 2008; Faribault, MN

DATE OF RECEIPT OF POST-HEARING BRIEFS: November 24, 2008

APPEARANCES

FOR THE EMPLOYER: Scott A. Paulsen
Employers Association, Inc.
9805 45th Avenue North
Plymouth, MN 55442

FOR THE UNION: Joe Adamek, Business Manager
Sheet Metal Workers Local No. 480
16 NE 3rd Street, POB 353
Faribault, MN 55021
Richard Dyrdahl, International Organizer

THE ISSUE

Did the Employer violate the parties’ labor agreement when it discharged the Grievant?
LABOR AGREEMENT PROVISIONS

ARTICLE VI
Grievance Procedure

Section 4. Arbitrator’s Authority/Payment of Arbitration Fees
The decision of the arbitrator shall be final and binding on all concerned; provided, however, that the arbitrator shall not have any power to add to, delete, or modify any provision of this Agreement.

ARTICLE XIX
Discipline
The Company shall not discipline or discharge any employee except for just cause.

Section 3. Effect of Past Violations on New Disciplinary Actions
Violations of Plant Rules will stay on an employee’s record for two (2) years, however, if an employee keeps his/her record clear of all violations of Plant Rules for a period of twelve (12) months, such prior violations will not be considered when administering discipline in the event of a subsequent violation.

APPENDIX E
Plant Rules

RULE NUMBER                   1st OFFENSE
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30. Willfully doing the following: spoiling work, defacing, Discharge
    Damaging or destroying Company property, or the property of other employees.

BACKGROUND

McQuay International (the “Company” or “Employer”) designs and manufactures air conditioning, heat, ventilation and refrigeration products. Brandon Titus (the “Grievant”) was employed at McQuay’s plant in Owatonna, MN. The Company opened the Owatonna plant in 2000 to serve as its “flagship” manufacturing facility to meet the most demanding requirements of its customers around the world. Project include major financial centers in foreign countries, convention centers, and major league sports stadiums.

The facts leading to the discharge of the Grievant are largely undisputed. The dispute centers on the level of discipline. The Grievant started his employment in February of 2007 and worked as an assembler on the second shift. On April 18, 2008, the Quality Assurance Tech, Raul Padilla, discovered the Grievant trying to conceal the top of an air conditioning unit with his body. Padilla asked him what he was concealing. He smiled and didn’t respond. Padilla repeated his question and the Grievant moved away from the unit, revealing a series of scribbles
smeared on top of the unit reading “Chuck Loves Obama.” The area was about the size of a sheet of paper.

The Grievant told Padilla not to worry about it because the writing could be removed. Padilla told him that he could lose his job for writing on the unit. He attempted to remove the writing by wiping the area with a rag and a co-worker assisted him. They applied solvent on the unit and after several minutes of rubbing were able to remove the ink. The vigorous rubbing produced a shiny area on the unit, similar to polishing just one area on the hood of a car. General Supervisor Garry Viequt testified that the value of this unit was in the $20,000 range.

Padilla resumed his inspection activities on the production line and some ten (10) minutes later returned to the work area of the Grievant and observed him throwing parts across the assembly line. Rather than walking the extra parts (door handles) back to the storage bin, about ten (1) feet away, the Grievant had thrown the parts over the unit. Some parts missed the bin, the bag broke open and the parts fell on the floor. Padilla told the Grievant to stop throwing the parts because they could be damaged. The Grievant responded that Padilla should not care because he didn’t pay for them. Padilla picked up the parts and inspected them for damage. Satisfied that the parts had not been damaged, he placed the parts in the bin. He then reported both incidents to the Grievant’s supervisor, Dave Stanek. Stanek and the general supervisor, Viequt, subsequently met with the Grievant in the conference room to confront him with Padilla’s report. The Grievant admitted writing on the air conditioning unit with a marker pen. He stated that he had written “Chuck Loves Obama” because he was trying to “lighten the mood” on the production floor by teasing a co-worker. He also acknowledged throwing the parts and making the comment to Padilla about not caring about the parts. He claimed that these actions were also intended to just lighten the mood.

Viegut advised the Grievant that these were serious issues and would be discussed with other members of management before any decisions were made concerning his employment. Later that shift, Viegut sent an e-mail to other members of management summarizing the events. Viegut and Stanek subsequently discussed the incidents with Cynthia Wingert and Kay Hammer from the Human Resources department and Bill Schlueter, the Unit Leader.

On April 22, Viegut, Stanek and Hammer met with the Grievant and advised that the Company had decided to terminate his employment. The discharge was based on violation of rule 30 of the parties’ labor agreement: “willfully doing the following: spoiling work, defacing, damaging or destroying Company property, or the property of other employees.” Since the prescribed penalty for the first offense of the rule 30 is discharge, the supervisors did not feel it necessary to add additional rule violations encompassed by the Grievant’s actions, throwing the parts, wasting time, distracting others, etc.

The discharge was grieved and the parties met on May 14 to review the matter. The Employer denied the grievance and the matter is now before the Arbitrator.
POSITION OF THE COMPANY

Given the negotiated penalty for a rule 30 violation, the Union understandably wants to characterize the Grievant’s actions in terms other than defacement of Company property. The Grievant admits taking a black marking pen and writing “Chuck Loves Obama” on top of an air conditioning unit that was being assembled for shipment to a customer. Since the Grievant had already managed to substantially smear the writing by the time Padilla arrived on the scene, the actual contents of the message depend only on what the Grievant admits. There was also no evidence in the record to support his claim that his message was intended to “lighten the mood” in the workplace. Perhaps his claimed attempt at humor was not shared by the targeted co-worker or others. This may explain why not one co-worker appeared at the hearing to offer any support for the Grievant. Only his mother testified on his behalf.

Regardless of the exact contents or intent of the Grievant’s personal message scribbled on Company property, it is undisputed that it significantly changed the appearance of the unit and rendered it unsuitable for shipment, at least temporarily. The commonly accepted definition of defacement is to mar or change the appearance of something, e.g., Websters 9th Collegiate Dictionary. See also mar: to detract from the perfection or wholeness; spoil, blemish. It is also undisputed that the Grievant and a co-worker managed to remove the ink, leaving a polished area after the vigorous rubbing and solvent. The Union argues that the charge of defacement can’t apply because the defacement was temporary and remedied. According to the Union, because the unit was successfully cleaned and passed inspection for shipment, the Grievant’s conduct amounts to something less than defacement and he should have been charged with some lesser rule violation(s).

This argument would negate most cases of defacement and many other rule violations that can be “remedied.” Defacement is defacement whether the property needs to be buffed out, ground out, or ultimately tossed out to remedy the defacement. A favorable remedy doesn’t prevent a finding of defacement any more than the recovery of stolen property from a thief in the workplace prevents a charge of theft. Making it better or returning the property don’t make willful acts of defacement, destruction, or theft of Company property something less than the original charge.

If Padilla had not come upon the scene when he did this defacement might have gone undetected. The writing may have been discovered at the final inspection point before shipping. But this only means that someone at that final point would have become responsible for reconditioning the unit and reporting the incident to management for investigation. The Union also ignores that the incident caused a significant interruption in the production process and use of management time.

The Grievant engaged in willful defacement of Company property despite the fact that he knew it was wrong. Q – “You knew it was wrong, but did it anyway?” A – “Yes.”

The Grievant’s attempt to conceal the scribbling when Padilla approached him in the incident further confirms that he knew he would be in trouble if discovered. Padilla told the Grievant that he could lose his job for what he did. Several minuets later, the Grievant was
throwing parts on the floor and told Padilla that he shouldn’t care about damaging parts because he (Padilla) didn’t care about the Company’s property.

Schlueter established that the work rule on defacement of property was provided to the Grievant during his orientation, they were posted on the bulletin board, and they are included in the labor agreement provided to all employees. Just a few weeks prior to this incident, the Grievant had been counseled by his supervisor Stanek to not even write on the plastic covering of units.

The “Vision” product line was moved to Owatonna to establish a first class plant to enable the Company to compete with facilities around the world. Employees are continually trained and reminded of the importance of quality and attention to detail. Employees are expected to be their own inspectors and maintain checklists. The Company is currently undergoing ISO recertification which it first achieved about a year after opening in 2000. The Company prides itself on maintaining the best work force in the area.

The work rules are consistent with this commitment to high standards. These rules are specific and consistently enforced, including rule 30. Since the plant opened in 2000 several employees have been discharged for various violations of rule 30. In 2001, the Employer discharged an employee under rule 30 for throwing a screw gun onto the production floor. In 2003, the Employer discharged an employee for cutting-off a padlock from a co-worker’s locker. In 2003, the Employer discharged two (2) employees for defacing Company property. Both employees had written on Company property. In the case of employee Forsythe, the parties reached a settlement in which the discharge was held in abeyance, on a non-precedential basis.

In the case of employee Christenson, the discharge grievance went to arbitration. Arbitrator Gallagher converted the discharge to a fourteen (14) month suspension without backpay or benefits. The work rules were not in the parties’ labor agreement at that time and the Union was successful in persuading Gallagher that the Grievant should be given another opportunity. Arbitrator Gallagher exercised his discretion under the “just cause” standard and concluded, among other things, that Grievant Christianson had a three (3) year employment record without prior discipline. He had written on what was argued by the Union to be a piece of scrap metal, not an air conditioning unit.

In each of the above cases, the Company treated violations of rule 30 to be grounds for discharge. The Company has been equally consistent in handling other rule violations. The only evidence offered by the Union to show any alleged inconsistent application of any work rules was the incident offered by the Grievant’s mother who also works at the Owatonna plant. After her son was terminated she wrote “I hate this place” on a unit and called supervisor Stanek over to show him what she had written. Ms. Warmsbecker had written the comments on a unit panel that was already damaged, and she was obviously trying to bait him in regard to her son’s discharge.

The Union can’t have it both ways. In the instant case, as with the case before Arbitrator Gallagher, the Union wants the Arbitrator to modify the penalty. It may have been proper to make those arguments in the Christianson case, but not now. In the 2006 round of contract
negotiations, the Union proposed to include the work rules and specified penalties in the parties’ labor agreement. The Employer agreed. The penalty for violations of rule 30 did not change. The work rules and disciplinary grid are now included in Appendix E of the 2006-09 labor agreement in effect at the time of the Grievant’s discharge.

By putting the work rules in the contract, the Union wanted to eliminate the Employer’s discretion to unilaterally make changes to them and to impose a level of discipline inconsistent with the negotiated grid. Now, in this case, the Union doesn’t like the result. Recognizing that discharge is now the contractually negotiated penalty for defacement, the Union asks the Arbitrator to find a different rule violation(s) to cover the Grievant’s conduct, with a lesser penalty. This violates both the spirit and intent of the parties’ agreement. Certainly the Arbitrator retains authority to apply the customary elements of just cause, e.g., whether the Grievant engaged in the charged behavior, but the parties have negotiated and included in their labor agreement the just cause element pertaining to the level of discipline to be applied. The Employer submits that the Union is asking the Arbitrator to exceed his authority in violation of Article VI, Section 4.

If the Union wants to change the disciplinary grid, particularly the penalty of discharge for first offenses in rule 30, the collective bargaining table and not the grievance and arbitration procedure is the proper forum.

As outlined above, the Grievant admitted to the defacement of Company property, knew it was wrong, and the parties have negotiated the level of discipline to be imposed. Consideration of any mitigating circumstances to reduce the penalty should not be considered. The Union suggests that the Arbitrator substitute other rule violations for the Grievant’s conduct to produce a result of less than discharge. The attempt at mitigation has no support in the plain facts. The Grievant defaced Company property. Nor does any argument to give the Grievant another chance have support in consideration of his record with the Company. He had only been employed with the Company for fourteen (14) months. Just a few months before this episode, he was suspended for making “offensive comments to co-workers about a piercing you receive on a private body part, and that you referred to a female co-worker in a degrading, sexually suggestive manner during a discussion about the piercing...” Apparently that episode was also an attempt by the Grievant to “lighten the mood” in the workplace. The Grievant also had problems getting to work on a regular basis. After receiving numerous prior warnings on his attendance, he received a final written notice in March, the month before his discharge, that he was near discharge under the attendance policy.

While this young Grievant needs another opportunity to prove himself a productive employee capable of sustained mature conduct in the workplace, the management and employees at this first class production plant, striving to preserve good paying jobs in Minnesota, deserve to have that effort take place elsewhere.
POSITION OF THE UNION

The essential facts in this case are not in dispute with exception of the particular unit that Brandon had written on. Raul Padilla testified that the unit was a galvanized unit. In cross examination he was not sure if it was a galvanized unit. The Grievant testified that he had written on a painted unit not a galvanized unit. If Padilla is not sure of some of the facts of the case then how credible is he on the rest of the facts.

What is in dispute is whether the Company was justified in terminating the Grievant for a rule 30 violation. The facts fail to support a Rule 30 violation. Rule 30 states: “Willfully doing the following; spoiling work, defacing, damaging or destroying company property, or the property of other employees.”

All of the employees either have or have access to dry erase markers for use in making notes or markings on the units that pertain to the assembly process. These markings are routinely done and removed during the assembly process or during final clean up of the unit. In no way do any of the markings with the dry erase markers spoil the work, deface the product, damage or destroy the product. The purpose of using the dry erase markers is so the markings can easily be removed with no damage to the surface.

It is inconceivable that the Grievant’s writing the words “Chuck Loves Obama” would damage and or deface the product any more than other writings that are done on all of the units with the same marker does not damage or to deface the product.

At most this incident should have been one of a rule 2, a rule 3, a rule 8 or a rule 14 violation. Rule 2 states: “Posting, defacing or removal of notices or signs without approval of the Human Resources Department.” Rule 3 states: “Neglect of duty on company time by engaging in activities other than assigned work, such as: loitering, unnecessary absence from own department or work station, soliciting sales or contributions not authorized by Human Resources Department, or causing congregation of employees.” Rule 8 states: “Distracting the attention of others by demonstrations, scuffling, practical jokes, or horseplay, etc.” Rule 14 states: “Intentionally practicing or encouraging the restraint of personal efficiency or limiting or interfering with production in any way.”

The Company presented several past instances where employees have received a rule 30 violation. In all of those cases there was clear damage and or actual defacing that took place. There was a cost factor or reworking that had to take place to rectify those situations. In this case there was no damage or defacing and no cost factor, so it can not be a rule 30 violation. The punishment meted out here does not fit the crime.

Gary Viegut testified that the Grievant was terminated for just cause but in cross examination could not explain what just cause was. He asked Rick Dyrdahl to explain to him just what just cause meant. In his e-mail to others in management documenting the incident there are several inconsistencies with the testimony that was given by Raul Padilla.
Raul testified that in his rounds he observed the Grievant leaning over a unit in an effort to be covering something up. After talking with him Raul stated he got him to move and revealed scribbling on the unit.

That testimony conflicts with the e-mail that Gary Viegut sent to others in management. In his e-mail he states that Raul stated he observed assemblers trying to clean off marker residue from the rooftop of a PPT section. When Raul asked where it came from he was told the Grievant.

The Company raises an issue for the Grievant throwing parts back into a storage bin. This was never included in the original discipline for a rule number 30 violation. When that information was presented in the e-mail from Viegut to others is the first time the Union had information regarding this additional charge.

Bill Schlueter in his testimony stated that no other discipline other than rule 30 was considered. In Gary’s e-mail he clearly writes that it may be a rule 8 violation. It would be inconceivable given the e-mails from Gary to Bill that there was no discussion of other rules Brandon could have potentially been charged with other than the rule 30. The Company was not able to explain how they arrived at their decision of a rule 30 violation to be one of just cause.

Renna Warmsbecker testified that she also wrote on a unit and was not disciplined for violating any of the plant rules. Renna wrote the words “I hate this place” on a unit that was being assembled in the assembly department. She wrote this in plain view of her supervisor. Her supervisor Dave Stanek commented that she could always get a job across the street at one of the fast food restaurants. Her supervisor did nothing to discipline her for the writing of those words. This writing was not cited by the Company as damaging or defacing the product.

Article XIX, Section 1 on page 45 of the agreement states that the Company shall not discipline or discharge except for just cause. In all cases that the punishment must fit the crime.

Rule 2, rule 3, rule 8, or rule 14 would have been a more appropriate level of discipline. Because there was no scrap, no rework and no reassembly required. Just to wipe down the unit which would have occurred in station 7 if it had not already been done sooner. The wiping down of the units is part of the SOP in station 7.

The Company’s investigation shows that the Grievant was trying to lighten the mood in his area. Anyone who has worked in a factory setting knows how monotonous and mind numbing it can be. That is why the Union feels that a more appropriate discipline would have been a violation of rule 8 as he was trying to be funny.

In this case the evidence is clear. The discharge letter received on April 22, 2008 was not for just cause. The Company has not proved their case in that the Grievant is guilty of rule 30 violation.

What he wrote also had little potential averse effect on the Employer, even if it had been seen by others or not removed. It’s not like this was some sort of writing that was obscene or
hateful. There is nothing inherent in the nature of this conduct that makes the risk of its repetition one that is so unacceptable that progressive discipline must be waived.

The Union does not contend that the Grievant is a model employee. He is in fact a young man who is learning from his mistakes. He deserves the right to be treated fairly when it comes to the appropriate level of discipline. He has learned from this experience and the Company would not see a repeat of this again.

DISCUSSION AND OPINION

The Company correctly argues that because the work rules and concomitant penalties were incorporated into the collective bargaining agreement through negotiation, no part of this code of conduct can be deleted or modified by the Arbitrator. Article V, GRIEVANCE PROCEDURE, Section 4 clearly and absolutely prohibits any such exercise of arbitral authority.

Accordingly, any reliance of the earlier award by Arbitrator Gallagher on the common subject matter – discharge for a violation of Rule 30 – would be irrelevant. Arbitrator Gallagher had full authority to reduce the discharge penalty to a long term suspension of the grievant in that case because the parties had not yet incorporated the work rules into the labor contract. In sum, under the collectively bargained disciplinary procedures now in effect, if the Grievant were found guilty of the Rule 30 violations of which he stands charged, the discharge penalty would be mandatory.

In light of the above-stated finding, no consideration of mitigation can apply. The sole issue properly in arbitration centers on whether or not the Grievant, in fact, violated rule 30. That rule is defined in the collective bargaining contract as:

Willfully doing the following; spoiling work, defacing, damaging or destroying company property or the property of other employees.

The function of the Arbitrator in this case involves not only a finding of fact, i.e., did the Grievant engage in misconduct?, but further, did his misconduct actually violate rule 30. As will be seen in the following analysis, the second question is one of contract interpretation in light of the facts – an issue clearly within the scope of the Arbitrator’s authority under the collective bargaining agreement.

The element in rule 30 of which the Grievant was charged with violating is defacing of Company property. He admits to writing on the unit in question. The interpretive question asks whether that particular writing constitutes a “defacing” as the term is meant to apply under Rule 30.

Among the several standards of interpretation which might be relied on is this regard, the Company proposes the “plain language of the contract” rule. Thus, the Company offers the standard dictionary definition of defacing as “to mar or change the appearance of something” see
also “mar: to detract from the perfection or wholeness, spoil, blemish.” Webster’s 9th Collegiate Dictionary.

The common problem with reliance on a dictionary definition is that another dictionary or etiological source can often be found with an entirely different shading of meaning. For instance, Black’s Law Dictionary defines deface as “To mar or destroy…by obliteration…or super inscription” (referring to written instruments) or “injure, defile or desecrate (referring to structures).” Roget’s Thesaurus offers as comparable terms to deface the following: “disfigure, blemish, mutilate, mar.”

The point of this semantic diversion, simply is to show that the “plain meaning” or “plain language” rule often falls well short of revealing the intent and purpose of particular terms of art. Of particular note in regard to common usage sources in the present case is the conspicuous absence of a time dimension in regard to the surface, removable mar caused by the writing on the unit. In short, none of the definitions cited mention temporary or permanent as a distinguishing feature of what constitutes defacement.

The fact that the Grievant’s scribblings were easily removed with no damage, except for a small higher polished area on the unit’s surface, forms the main focus of the Union’s defense. In sum and effect, the Union argues that, absent any permanent blemish or significant cost of removal, it cannot be truly said that the Grievant defaced the unit.

The Company attempts to counter this position by analogizing the Union’s “no harm, no foul” argument to a restoration after a theft – pointing out that the recovery of stolen goods certainly does not serve to exonerate the thief. The Company’s analogy, like most analogies, is flawed, however. The fatal defect in the analogy springs from the fact that, unlike theft, the Grievant’s misconduct contains no element of criminal intent or moral turpitude. The consequential difference is, of course, that while stolen goods or cash might be recovered what is irretrievable in a theft is the essential trust an employer must have in the honesty of an employee.

In light of the inadequacy of the plain meaning of the language test to interpret and apply the prohibited act of defacement, this review turns to an alternative standard of construction – that of “noscitur in sociis” or interpretation by reference to other terms of contract with which the ambiguous word is associated in an agreement or rule. I find it revealing in reference to this interpretive guide, the other acts prohibited by rule 30 include: “spoiling work, damaging or destroying company property.”

What all of these terms share in common is the connotation of serious, if not permanent damage, with the clear implication of significant cost to restore or repair the item. Obviously, the consequences of the Grievant’s scribbling on the particular unit did not even approach this level of severity.

In plain truth, the credible testimony reveals that the only costs of removing of the scribbling was a few ounces of cleaning solvent and a short amount of elbow grease. Even more

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on point is the fact that a work station down the line from the Grievant has the assigned task of cleaning all markings from every unit before it can be shipped.

In light of the testimony that the Grievant used the same type of easy to erase marker that is routinely employed to convey production information, it must be assumed that the chances of his scribbles reaching a customer were extremely remote. Neither can it be said that undue time and/or expense resulted from the on-the-spot cleanup which took place shortly after Padilla’s discovery of the marking.

The conclusion to be drawn from the foregoing findings is that the Grievant’s admitted misconduct falls far short of constituting a violation of rule 30. In sum, no actual defacement resulted from his scribbling on the unit with the dry erase pen chosen by the Company precisely for its easily removable feature.

The Union, by way of contrast, offers a clearly applicable Rules of Conduct that fittingly describe the Grievant’s misconduct – rules 2, 3, 8 and 14.

Rule 2 prohibits, in relevant part, “Posting…of notices or signs without approval…” It takes only a slight stretch to call the Grievant’s marking a notice or sign (of sorts). Certainly no one in supervision approved of such kidding around on work time.

Rule 3 prohibits, in relevant part, “Neglect of duty by engaging in activities other than assigned work…or causing congregation of employees.” Clearly, the Grievant engaged in other than assigned work which subsequently drew the attention of other employees away from their duties.

Rule 8 prohibits, in relevant part, “Distracting…the attention of others by…practical jokes.” Repeats the essence of rule 3 as applied under the facts of this case.

Rule 14 prohibits, in relevant part, “Intentionally limiting or interfering with production in any way.” Obviously production was interrupted and somewhat limited by the Grievant’s misconduct but certainly this was not his considered intent and purpose. He should have known, however, that his prank would result in some loss of production time if it succeeded in getting a rise out of “Chuck” – the butt of the joke and a laugh out of other crew members.

Overall conclusion: In a technical sense, the Grievant’s misconduct violates four rules: 2, 3, 8 and 14. In reality, there is some degree of overlap for the same misconduct as covered by rules 8 and 14. Further, it would be an unreasonable interpretation under these particular facts to conclude that the merely technical overlaps for the same misconduct adds up to a dischargeable violation of rule 33 (four (4) rule violations within a twelve (12) month period).

It cannot be concluded, however, that merely because the Grievant’s careless prank falls short of just cause for discharge that the misconduct was not serious. It should be noted that the message “Chuck Loves Obama” transgresses the generally understood, though unwritten, rule against taunting about race, religion or politics in the workplace.
These topics are widely considered off limits because of the risk of offending others to potential violence. Unfortunately, the threat of violence hung heavily over the then heated presidential race with news reports of shouts of “Kill him” at the mention of Barrack Obama’s name at a Sara Palin rally. Indeed, I was physically threatened in a VFW parking lot because of a “Veterans for Obama” bumper sticker on my truck.

The Grievant testified in regard to question of why he wrote this particular message that it was meant to tease “Chuck” because “he hated Obama.” The record doesn’t reveal whether this person actually hated the now President-elect, but if he did so, the Grievant was reckless in taunting a person who harbored such a dangerous passion. In sum, the Grievant’s misconduct went far beyond some mere innocent prank by actually risking a confrontation involving strong emotions in the workplace. Plainly stated, rather than “lightening the mood,” as the Grievant put it, he risked exacerbating apparently passionate political emotions.

In light of the seriousness of his misconduct and his abysmal attendance record during his short course of employment, there can be no justification for the granting of backpay or benefits in the course of reinstatement of the Grievant to employment with McQuay.

DECISION

1. Based on the foregoing findings and conclusions the Grievant shall be immediately reinstated to the job he held at the time of his discharge.

2. In light of the seriousness of his misconduct, his prior suspension for misconduct, his poor attendance record, and his relatively short period of employment, there shall be no award of backpay or benefits.

12/18/2008
Date

John J. Flagler, Arbitrator