

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF JUDGES  
NEW YORK BRANCH OFFICE

REGAL HEIGHTS REHABILITATION  
AND HEALTH CARE CENTER

and

Case No. 29-CA-30280

WALTERINE BRATHWAITE, An Individual

Ashok Carlos Bodke, Esq., Brooklyn, New York  
for the Acting General Counsel  
Aaron C. Schlesinger, Esq. (*Peckar &  
Abramson, P.C., River Edge, New Jersey*)  
for the Respondent

DECISION

Statement of the Case

MINDY E. LANDOW, Administrative Law Judge. Based upon a charge filed on June 23, 2010,<sup>1</sup> by Walterine Brathwaite, an individual, a complaint and notice of hearing (the complaint) issued on August 20 alleging that Regal Heights Rehabilitation and Health Care Center (Employer or Respondent) violated Section 8(a)(1) and (3) of the Act by issuing written discipline to Brathwaite as a consequence of her concerted, protected activities and her activities on behalf of 1199 Service Employees International Union, United Healthcare Workers East (the Union). The complaint further alleges that Respondent violated Section 8(a)(1) of the Act by threatening employee Lester Spooner that he would no longer be allowed to represent employees in his role as Union delegate. Respondent filed an answer denying the material allegations of the complaint. This case was tried before me on October 5 and 6 in Brooklyn, New York.

On the entire record, including my observation of the demeanor of the witnesses,<sup>2</sup> and after considering the briefs filed by the Acting General Counsel<sup>3</sup> and Respondent I make the following

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<sup>1</sup> All dates are in 2010 unless otherwise indicated.

<sup>2</sup> Credibility resolutions, a number of which are explained in further detail below, have been made based upon a review of the entire record and all exhibits in this proceeding. Witness demeanor and inherent probability of the testimony have been utilized to assess credibility. Testimony contrary to my findings has been discredited on some occasions because it was in conflict with credited testimony or because it was inherently incredible or unworthy of belief.

<sup>3</sup> Hereafter referred to as the General Counsel.

## Findings of Fact

## I. Jurisdiction

5 Respondent is a domestic corporation with a principal office and place of business located at 70-05 35<sup>th</sup> Avenue, Jackson Heights, NY, where it is engaged in providing rehabilitation care, hospice and respite care and related medical services. During the past year, a period which is representative of its annual operations in general, in the course and conduct of its business operations, Respondent derived gross revenues in excess of \$250,000.  
10 Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

Respondent further admits, and I find that at all material times the Union has been a labor organization within the meaning of Section 2(5) of the Act.

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## II. Alleged Unfair Labor Practices

## A. Background

20 Respondent operates a facility which provides rehabilitation and health care services. Kwang Lee is the Administrator of the facility and Norelle Silvero is the Director of Nursing Services (DNS). Both of these individuals have occupied their current positions for approximately 10 years. As DNS, Silvero supervises the Employer's nursing department, including the certified nurse's assistants (CNAs). She is authorized to hire, fire and discipline  
25 employees and, in this capacity, meets regularly with representatives of the Union to adjust grievances. Eileen Castelli is the Director of Environmental Services and, as such, is the supervisor who oversees Brathwaite, who works as a receptionist at the facility.

30 There is a collective bargaining agreement between the Employer and the Union which contains provisions relating to the processing of grievances and the arbitration of disputes or complaints "arising between the parties hereto under or out of [the agreement] or the interpretation, application, performance, termination or any alleged breach thereof. . . ." Brathwaite has served as an employee-delegate for the Union for approximately 10 years. As such she attends grievance meetings as frequently as two to three times per week. Similarly,  
35 Spooner has been a housekeeper at the Employer's facility for about 10 years and, in his capacity as Union delegate, attends grievance meetings frequently. Most of these meetings take place with department heads or their direct subordinates and not with the Administrator of the facility.

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## B. The April 26 Grievance Meeting and Related Discipline

45 On April 26, Union organizer Denise Jones requested that Silvero attend a second grievance meeting regarding CNA Grace Wright. Wright had previously been placed on suspension, pending further investigation, after a resident had complained of abuse. At this time no second meeting had been scheduled, but Silvero accommodated Jones' request and agreed to attend a meeting, which was held shortly thereafter.

50 The parties convened in a conference room located in the Administrator's office suite. Seated outside and adjacent to this room were two employees: Alex Herrera, Assistant to the Administrator and Cecilia Flores, who is the Fiscal Assistant for the facility. The meeting, which lasted only a few minutes, took place behind closed doors.

Attending the meeting on behalf of the Union were several employee-delegates including Brathwaite, Spooner, Thomas Lily, Sandra Smith and Beverly Strachen. In addition, Union representative Jones and Vice-President Dean Williams attended, as did Wright. Silvero was the only representative of management present at the time. The Union representatives situated themselves along one side of a conference table, and Silvero sat at the other.

At the outset of the meeting, Jones asked about the status of Wright's grievance. Silvero replied that, based upon her investigation, she had decided to terminate the employee. Jones immediately protested the decision. Silvero testified that she found Jones' manner to be offensive, especially given the fact that she had courteously agreed to schedule the meeting on such short notice.

Braithwaite testified that she also voiced her objection to the termination decision because the resident had complained that the incident took place during AM care, when Wright was not on duty. According to Brathwaite, Silvero replied that she had not heard the resident say that, and Brathwaite challenged her account on that basis. Brathwaite testified that she told Silvero, "I never thought you were someone like this. I really thought you were different."

During the parties' exchange, Silvero stood up to leave the meeting. According to Brathwaite, she then asked Silvero not to leave and to put Wright back to work. Brathwaite testified that at this point in time she addressed Silvero, "just like I'm speaking right now, because we were across the table. I had no reason to yell." Spooner, who was the only other witness to testify on behalf of the General Counsel stated that several of the delegate members present asked Silvero to sit down and continue the meeting. Responding to specific questions from Counsel for the General Counsel, Spooner stated that there was no screaming or swearing.

Silvero has a different version of what transpired. According to her testimony, when she announced that Wright would be terminated, Jones got very upset and started screaming and yelling that the termination was not fair. Silvero then stood up and announced that she would not continue the meeting. At that point, according to Silvero, "When I stood up, Ms. Brathwaite started telling me you sit down, you sit down, as if I were a dog. . ."<sup>4</sup> Silvero felt very insulted by the manner in which she had been addressed; nevertheless she sat down and sought to continue the meeting. She felt, however, that it was not productive and left. She then went to Administrator Lee and complained about what had just transpired. Lee went across the hall into the conference room and discontinued the meeting.

Both Herrera and Flores, who were sitting outside the conference room, testified that although the doors to the conference room were closed, they heard Brathwaite shout "sit down," and that they recognized her voice because they are familiar with it. The two employees discussed the incident among themselves.

After the meeting, Silvero wrote the following memorandum, which was sent by e-mail,

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<sup>4</sup> Up until this point, Silvero had not testified that Brathwaite had raised her voice; nor had she made any mention or physical indication that Brathwaite or any other Union representative had pointed or made any other gesture toward her. Respondent's counsel then asked the following question: "Okay, Now let me ask you this: when Ms. Brathwaite pointed her finger at you and yelled at you to sit down where was she? Was she standing or sitting? Silvero replied: "She was sitting down. She was sitting down, because I was the one standing up."

to Chief Financial Officer Kevin Place and Lee:

I am writing to you to complain about 1199 Union delegates.

5 Today, April 26, 2010, we held a Union meeting to discuss Ms. Grace Wright, CNAs case. Present in the meeting were: Ms. Denese Jones, Ms. Donna Brathwaite, Mr. Thomas from Dietary, Mr. Spooner, Ms. Beverly Strachan (came late) and a Mr. William (sitting in for Mr. John Seales) and Ms. Grace Wright CNA.

10 During the discussion regarding the final decision of Regal Heights pertaining [to] the status of Ms. Wright, which is termination, Ms. Denese Jones started yelling and raising her voice at me and Donna starting raising her voice. I told all of them in the room that their behavior is disrespectful and that I will not allow them to treat me in this way. I stood up to end the meeting and Donna Brathwaite was ordering me to sit down. Their  
15 voices were so loud that Alex could hear them from her desk even with the conference door closed. It was not a good sight for my own CNA/staff witnessing a delegate screaming disrespectfully and unprofessionally toward the Director of Nursing.

20 This is very disturbing to me as well as very disrespectful and demeaning. In fact, I gave 1199 the courtesy of my time to sit in a meeting EVEN IF IT WAS NOT SCHEDULED. This is totally disrespectful, unprofessional and such behaviors WILL NOT BE TOLERATED and they need to be reprimanded. In the future, I refuse to sit down in any 1199 meeting without the presence of Mr. Lee or Ms. Rowena Gaspar or designee, most especially with the representation of Ms. Denese Jones and Ms. Donna Brathwaite.<sup>5</sup>

25 On the following day, Lee met with Silvero and spoke with Herrera and Flores about what had transpired. He also reviewed Brathwaite's personnel file and found that in January 2007, he had issued Brathwaite a so-called final written warning for "improper conduct resulting in unsatisfactory work."<sup>6</sup> The warning stemmed from an anonymous letter written to an owner of  
30 Respondent's facility whereby the author complained about the "attitude of the receptionist at the front desk, whose manner is very unprofessional, bordering on rudeness," further stating that this individual would answer questions in an abrupt and humorless manner. The offending employee was not named in the letter.<sup>7</sup>

35 As Lee testified, based upon Silvero's report of Brathwaite's conduct during the grievance meeting, the corroboration by Flores and Herrera as well as the prior discipline which had been issued to her, the following written disciplinary notice for improper conduct was issued on April 29:

40 This employee shouted and insulted Ms. Silvero, DNS, during a discussion involving another employee. The employee was given previous warnings and counseling, but has not improved her behavior. This warning will serve as a final warning.

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45 <sup>5</sup> The exemplar of this e-mail in evidence shows that shortly prior to the hearing, on October 1, Lee forwarded a copy of it to Herrera.

<sup>6</sup> Although Lee initially testified that Brathwaite had "prior write ups," this is the only previous discipline in evidence. Lee subsequently acknowledged that that he did not recall issuing Brathwaite any other discipline.

50 <sup>7</sup> When asked about prior discipline, Brathwaite testified that she had received a prior disciplinary notice which had been removed from her file, but General Counsel failed to adduce sufficient evidence for me to conclude that the 2007 warning from Lee was the notice that Brathwaite was referring to.

The discipline was administered by Lee to Brathwaite at a meeting with Castelli and Union delegate Maria Mamalactas in attendance. According to Brathwaite, when she was called to Lee’s office she asked what she had done, and Lee questioned that she did not know why she had been summoned. Lee told Brathwaite that she had yelled at Silvero in a grievance meeting, had bombarded her and she was being written up. Brathwaite started to explain what had occurred in the grievance meeting, and Lee stated that he didn’t want to hear about it. In his testimony, Lee did not specifically address what occurred at this time, and therefore did not dispute Brathwaite’s account of what transpired. Castelli offered no testimony about it either.

C. The May Meeting and Alleged 8(a)(1) Statement

On a date in early May,<sup>8</sup> Brathwaite was told that Lee wanted to see her at his office. Earlier in the day, while working at the reception desk, Brathwaite had been asked to page Lee. She did so, and, according to Lee, called for “Kwang Lee” over the facility intercom.<sup>9</sup> Lee felt that it was not appropriate for Brathwaite to use his first name when paging him in the facility. In addition, as Lee testified, after the April write-up, Herrera had been receiving an increase in the number of phone calls sent directly to the administration office which should have been screened by the receptionist and directed elsewhere.<sup>10</sup> Lee wished to discuss both matters with Brathwaite. As Lee testified: “It was not intended to be a disciplinary action. It was just to let her know that basically these things were brought to my attention and that we were going to have a discussion.”

Brathwaite had not been advised as to why Lee wanted to meet with her and, on the way to his office, she saw Spooner and asked him to accompany her. The two entered Lee’s office.

According to both Brathwaite and Spooner, Lee immediately began challenging Spooner’s presence asking him what he was doing there. Brathwaite stated that she had asked Spooner to come with her because she did not know the purpose of the meeting. Lee asked Spooner why he was present, and Spooner relied that it was because Brathwaite did not trust Lee. As Brathwaite testified, Lee then paged Castelli, who came into the meeting.<sup>11</sup> He told Brathwaite that they were not friends, and she was not to call him Kwang. According to both Brathwaite and Spooner, she remained quiet during this time, but as Spooner acknowledged, he got involved in a dialogue with Lee which became heated. Spooner testified that Lee “got into one rage” and asked how dare Brathwaite call him Kwang, and that they were not friends. As Spooner testified: “So I got angry. I said this is intimidation. This is harassment. And Mr. Lee said to me that – no - I also said that this is the United States. He says, are you trying to insult me? He said as long as I’m administrator here I will see you don’t represent anybody else.”

Brathwaite acknowledged that there was a “back and forth” between Lee and Spooner.<sup>12</sup> According to Brathwaite, Lee told Spooner that, “I’m going to see to it that you don’t represent anyone in here again.” At that point, Brathwaite suggested that they leave the meeting and Lee

<sup>8</sup> The witnesses who testified were unable to recall the precise date of this incident.

<sup>9</sup> Lee initially testified that Brathwaite had called him by his first name over the intercom, but later testified that Brathwaite had called for “Kwang Lee.”

<sup>10</sup> Herrera offered no testimony regarding this matter.

<sup>11</sup> Spooner testified that Castelli was present from the outset. Neither Lee nor Castelli offered any testimony on this issue.

<sup>12</sup> She additionally testified that while Lee became angry, Spooner did not. For the reasons discussed below I do not credit this aspect of her testimony.

told them to get out of his office.

5 According to Lee, he started off the meeting by telling Brathwaite that it was not appropriate for her to call him by his first name over the intercom because the whole building was able to hear it. Lee stated that Brathwaite seemed to have absolutely no idea of what he was talking about, and didn't say much. Spooner spoke on her behalf and asked Lee why he was targeting and badgering Brathwaite. Accordingly to Lee, Spooner became emotionally involved and angry and accused Lee of being a racist. Spooner stood up, and yelled, and said this is intolerable. Lee instructed him to sit down but Spooner would not stop.

10 Lee asked Brathwaite if she had anything to say for herself, but she remained silent. Spooner was still "screaming."<sup>13</sup> According to Lee, he remained seated and found it was difficult to speak with Brathwaite given Spooner's screaming, and further, that Castelli could not get a word in. As Lee testified:

15 So, again I said to Mr. Spooner listen if you're going to behave this way and you're going to take this thing this very personally, clearly I think you shouldn't be representing Ms. Brathwaite in your current condition. You can't take this personally. You need to be a delegate –

20 Lee then stated that the meeting was very non-productive and ended it. On cross-examination Lee denied becoming angry during his exchange with Spooner, replying that he never gets emotional.

25 Castelli also testified about the incident. She stated that the meeting escalated and eventually Spooner stood up and was pointing and yelling at Lee from about two or three feet away. Castelli's testimony regarding what ensued is as follows:

30 Q: And did Mr. Lee tell Mr. Spooner anything in response to the yelling?

A: He told him to sit down –

Q: Did he say anything else?

35 A: --because he was standing up and he was yelling. And he told him that he shouldn't or couldn't -- shouldn't be representing Ms. Brathwaite and he needed to behave, you know, calm down.

40 Q: Did he say that he shouldn't be representing or he could not represent?

A Could not represent if he was going to act in that manner. I can't give you his exact words, but –

45 Q: Did he say that he should not represent him (sic)?

A: No, could not he said.

Q: He could never represent?

50 <sup>13</sup> Lee additionally testified that Spooner pointed a finger in his face, but this testimony was elicited through a leading question from Respondent's counsel.

A: No, he didn't say he could never. No. No. At that moment he said you could not represent.

5 Q: And what did Mr. Spooner say?

A: They were yelling. It was just back and forth yelling.

10 It is undisputed that, after this time, Spooner has represented employees in connection with his role as Union delegate, and he has never been prohibited from doing so.

### III. Analysis and Conclusions

15 A. The Written Warning Issued to Braithwaite violated Section 8(a)(1) and (3) of the Act

The General Counsel has alleged that the disciplinary action issued to Brathwaite stems directly from her concerted, protected and Union activity in processing the grievance of a coworker. General Counsel argues that Brathwaite did not engage in conduct which took her outside the protections of the Act. As such, it is contended that the warning was issued in violation of Section 8(a)(1) and (3) of the Act. Respondent, to the contrary, maintains that its reasons for issuing discipline to Brathwaite were legitimate and non-discriminatory because during the grievance meeting at issue, Brathwaite engaged in flagrant behavior which took her beyond the protections of the Act.

25 1. General legal principles

Under Section 8(a)(1) of the National Labor Relations Act (the Act), it is an unfair labor practice for an employer to "interfere with, restrain or coerce employees in the exercise of the rights guaranteed" by Section 7 of the Act. <sup>14</sup> Section 8(a)(3) provides that it shall be an unfair labor practice for an employer to "discriminate in hiring, or any term of condition of employment, [or] to encourage or discourage membership in a union." Any conduct found to be a violation of Section 8(a)(3) would also discourage employees' Section 7 rights, thereby constituting a derivative violation of Section 8(a)(1). *Chinese Daily News*, 346 NLRB 906, 933 (2006).

35 The Board historically has held that presenting and processing grievances is concerted activity protected by Section 8(a)(1) and (3) of the Act. *Bowman Transportation, Inc.*, 134 NLRB 1419 (1961). This is true even when the grievance in question is not formally stated or does not take place under the auspices of a contractual grievance procedure. *Clara Barton Terrace Convalescent Center*, 225 NLRB 1028, 1033 (1976)(and cases cited therein). The term "grievance," as used in Section 9(a) of the Act, refers "to both disputes over interpretation and application of a collective-bargaining agreement and those matters delimited in Section 9(a) of the Act: rates of pay, wages, hours of employment, or other conditions of employment." *Top Mfg.*, 249 NLRB 424 (1980).

45 Here, the meeting in question was held pursuant to delineated contractual provisions for the purpose of discussing discipline to be issued to a bargaining unit employee. Clearly,

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50 <sup>14</sup> Section 7 of the Act provides, in relevant part, that "employees shall have the right to self organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection."

Brathwaite was engaging in union and concerted, protected activities by virtue of her participation in the grievance meeting relating to a co-worker's suspension and possible termination. Moreover, it cannot seriously be disputed that it was Brathwaite's conduct, or alleged misconduct, during the course of this grievance meeting which led to the issuance of the warning letter at issue.<sup>15</sup>

2. Brathwaite's conduct was and remained protected by the Act

As an initial matter, making the necessary credibility resolutions here, I find that Brathwaite did order Silvero to "sit down" and that she did so in a tone of voice loud enough to be heard outside the conference room through closed doors and in a manner which could reasonably be perceived as disrespectful. I credit the mutually corroborative testimony of Herrera and Flores that they heard Brathwaite shout "sit down." I found that both witnesses testified in a forthright manner, without hyperbole. I further credit Silvero to the extent she testified consistent with my findings. Moreover, Brathwaite acknowledged that she found Silvero's apparent refusal to consider whether Wright had been working at the time the alleged abuse took place to be unfair and so stated. Under such circumstances, I find it likely that her tone of voice would have escalated.<sup>16</sup>

Notwithstanding the foregoing, and contrary to Respondent's suggestion, I do not find that Brathwaite pointed or made any sort of gesture toward Silvero.<sup>17</sup> I further note that it is not disputed that Brathwaite remained seated at the time. Nor did she use threatening or profane language or engage in any other misconduct on this occasion. In this regard, I note that there is no mention of any other alleged misbehavior involving Brathwaite in the report Silvero submitted to her superiors.

As the Board has held, "when an employee is disciplined for conduct that is part of the res gestae of protected concerted activities, the pertinent question is whether the conduct is sufficiently egregious to remove it from the protection of the Act. *Noble Metal Processing, Inc.*, 346 NLRB 795 (2006), quoting *Sanford Hotel*, 344 NLRB 558 (2005). Thus, an employer violates the Act by disciplining an employee engaged in protected, concerted activity unless in the course of that conduct, the employee engages in opprobrious conduct, costing her the protections of the Act. *Atlantic Steel*, 245 NLRB 814, 816-817 (1979). See also *Felix Industries*, 331 NLRB 144, 146 (2000), enf. denied and remanded, 251 F.3d 1051(D.C. Cir. 2001), on remand *Felix Industries, Inc.*, 339 NLRB 195 (2005). In assessing the conduct, the Board looks at four factors: (1) the place of the discussion; (2) the subject matter of the discussion; (3) the nature of the employee's outburst and (4) whether the outburst was, in any way, provoked by the employer's unfair labor practices. *Atlantic Steel*, supra.

Addressing the first factor, under all the circumstances, I find the location of Brathwaite's

<sup>15</sup> Respondent's arguments relating to the relevance of the prior discipline issued to Brathwaite will be discussed below.

<sup>16</sup> I further note that despite the presence of non-employee Union representatives in the room at the time, neither of them testified to offer corroboration of Brathwaite's account as to her tone of voice and demeanor. The only other witness to testify about the events in question, Spooner, responded to specific questioning from Counsel for the General Counsel by denying that there was any swearing or screaming. In my view, however, this testimony is not sufficiently probative to specifically corroborate Brathwaite's assertion that she addressed Silvero in a conversational tone of voice.

<sup>17</sup> I note that there was no reference to finger-pointing contained in Silvero's report. Moreover, when initially describing the incident in her testimony, Silvero made no mention or indication of any finger-pointing or other gesture. Rather, this assertion was first suggested by Counsel for Respondent.

conduct weighs in favor of finding that her conduct remained protected. Brathwaite's outburst did not take place in a work area, but rather occurred in a room designated for a grievance meeting, where she was acting in a representational capacity on behalf of an employee facing discipline. This is precisely the sort of meeting where employees are ostensibly free to raise and discuss difficult issues involving the workplace and is thus an appropriate forum for a union delegate to express her views regarding employee discipline. Moreover, the Board has recognized that under such circumstances tempers may flare. See *Alcoa, Inc.*, 352 NLRB 1222, 1226 (2008); *Stanford Hotel*, supra; *Spann Maintenance Co.*, 289 NLRB 915, 920 (1988).

Weighing somewhat against protection is the fact that Brathwaite's outburst was heard by other employees both inside and outside the conference room. See e.g. *Starbucks Coffee Company*, 355 NLRB No. 135 (2010) (incorporating by reference 354 NLRB No. 99, slip op. at 3 (2009)). However, the meeting in question was held in a location which is apart from where the majority of employees perform their work duties, and there is no evidence that Brathwaite's conduct interfered with patient care or Respondent's operations in general. See *Noble Metal Processing*, supra at 800 (place of discussion weighs in favor of protection where outburst occurred during meeting held away from work area, and thus did not disrupt the work process); *Datwyler Rubber & Plastics, Inc.* 350 NLRB 669, 670 (2007). Thus, while certain employees were inadvertent witnesses to Brathwaite's outburst, I conclude that the location where it occurred on whole favors continued protection under the Act. *Alcoa, Inc.*, supra at 226.<sup>18</sup>

With regard to the second factor, the subject matter of Brathwaite's outburst also weighs in favor of protection. Brathwaite was attending the meeting as an employee-delegate pursuant to a contractual grievance arbitration process. By her comments, Brathwaite was reacting to Silvero's abrupt decision to terminate the meeting and apparent refusal to further discuss the merits of whether Wright had engaged in the misconduct alleged and Silvero's decision to terminate her employment. Thus, Brathwaite's outburst was related to terms and conditions of employment of particular concern to Brathwaite as a union delegate responsible for protecting a unit employee's rights under the collective-bargaining agreement and was an expression of frustration relating to her view that Wright was being unfairly disciplined.

As to the third factor, I find that the nature of the outburst weighs does not weigh against protection. While it is apparent that Silvero found Braithwaite's loud demand that she "sit down" to be disrespectful and offensive, I find that neither the record nor prevailing Board authority supports Respondent's position that Brathwaite's conduct during the grievance meeting went beyond the protections of the Act.

The Board has on many occasions found that that strong, foul and even profane language or (as is more relevant here) what is normally considered to be discourteous conduct, which occurs during the course of protected activity does not justify disciplining an employee who is acting in a representative capacity. *Max Factor & Co.*, 239 NLRB 804, 818 (1978); *Postal Service*, 250 NLRB 4 (1980); *Noble Metal Processing, Inc.*, supra. See also *NLRB v. Thor Power Tool*, 351 F.2d 584, 587 (7<sup>th</sup> Cir. 1965 (member of the union grievance committee lost his temper during a grievance discussion and called the plant superintendent a "horse's ass"). In *Union Fork & Hoe Co.*, 241 NLRB 907 (1979), the Board reaffirmed the principle that in presenting and processing grievances shop stewards retain the protection of the Act except for extreme misconduct in the performance of their union duties.

<sup>18</sup> In this regard, even if I were to find that this factor weighed slightly against protection, I would conclude, for the reasons set forth below, that the second and third *Atlantic Steel* factors strongly support continued protection under the Act so as to outweigh any contrary findings.

In its brief, Respondent cites several cases (two of which pre-date *Atlantic Steel*) where the Board has found an employee’s conduct sufficiently egregious as to remove the employee from the protections of the Act. However, these cases are distinguishable from the instant matter. For example, in *Charles Myers & Co.*, 190 NLRB 448 (1971), the Board, affirming the administrative law judge, concluded that the employer did not unlawfully discharge a union committeewoman, where subsequent to a meeting with management officials, she responded to a directive from the plant superintendent not to talk to anyone during working hours by responding in a voice which “became increasingly loud and vituperative,” which carried a considerable distance on to the shop floor and caused employees to stop work. The committeewoman told the plant superintendent, among other things, that she had her rights, that the superintendent should have his mouth bashed in and that it was high time someone stepped on him (or his toes) and she was the one who was going to do it. The “tirade” concluded with her repeatedly daring the plant superintendent to discharge her, which he did. In addition, the administrative law judge further found that the committeewoman had, on prior occasions, carried out her union-related duties in a fashion that had unnecessarily disrupted operations at the plant and that the employee had previously been warned by both the plant superintendent and her union associates about her tendency to engage in such conduct; thus the culminating moment could not be considered merely a “moment of animal exuberance.” 190 NLRB at 449.

In *Calmos Combining Co.*, 184 NLRB 914 (1970), also relied upon by Respondent, the Board reversed the administrative law judge’s finding that the respondent unlawfully discharged a shop steward. The employee in question was discharged for his conduct during the course of an altercation among the employee and the plant manager and plant superintendent which occurred on the production floor, which followed a grievance meeting involving another employee. During this argument the employee exclaimed, “You can’t shut me up, I’ll shout all I want to.” When the plant manger insisted the employee remain quiet, he replied, “I don’t give a damn what you say, I’ll shout all I want to and if you don’t like it, tell me to leave.” Thus, the Board found that the shop steward’s refusal to follow a direct order to stop shouting and his abusive language on the shop floor, both of which were tangential to the grievance he had been previously pursuing, justified his discharge because his “continued intransigence” was not a part of the “res gestae” of or otherwise related to the prior grievance discussion. 184 NLRB 915.

In *Hyatt on Union Square*, 265 NLRB 612 (1982), the Board affirmed the administrative law judge’s dismissal of a complaint alleging that a shop steward was unlawfully discharged where the judge found the shop steward had engaged in unprovoked, gross insubordination and a threat of violence. In that instance the employee acted in such a way that the supervisor thought he was going to hit him and made comments including, “Fuck you,” “I’ll get even with you later” and “I’ll get you outside”. Similarly, in *Atlantic Steel Company*, supra, also relied upon by Respondent, the Board deferred to the decision of an arbitrator who found the employee in question had been discharged for cause. The Board, applying the four-factor analysis outlined above, found that while the employee had raised legitimate questions about overtime which could be grieved, they had been promptly investigated and answered by his supervisor. Nevertheless, the employee used obscenities toward the supervisor on the production floor during working time (as contrasted to a grievance meeting). The Board deferred to the arbitrator’s finding that employee had thus “reacted in an obscene fashion without provocation and in a work setting where such conduct was not normally tolerated.” 245 NLRB at 817.

Contrary to the cases cited above, Braithwaite’s comments to Silvero were in direct response to Silvero’s attempt to terminate the grievance meeting pertaining to the discharge of a coworker and were therefore part of the “res gestae” of Brathwaite’s protected conduct.

Moreover, the Board has found under a variety of circumstances that conduct more egregious than Braithwaite’s was not sufficient to lose the protections of the Act. Rather, the Board has traditionally allowed a substantial degree of latitude in circumstances where, during the course of representational or otherwise protected conduct, employees engage ostensibly inappropriate activities. See e.g. *Lana Blackwell Trucking, LLC*, 342 NLRB 1059, 1064 (2004)(an employee’s “disrespectful, angry and shocking outbursts” which occurred in the context of concerted activities did not remove the employee from the protection of the Act); *Syn Tech Window Systems*, 294 NLRB 791 (1989) (where the union steward pointed his finger at a management representative and threatened him with an unspecified “problem” if employees’ grievances were not remedied he did not lose the protections of the Act); *Union Carbide Corp.*, 331 NLRB 356 (2000)(employee’s “rude and disrespectful” reference to his supervisor as a “fucking liar” protected when it took place during an argument about seniority in the face of an upcoming lay off); *Severance Tool Industries*, 301 NLRB 1166, 1170 (1991)(employee called the company president a “son of a bitch” and “threatened to discredit his personal reputation.” Such conduct found to be disrespectful, defiant and rude but nevertheless insufficient to remove employee from the protections of the Act); *Stanford Hotel*, supra (spontaneous, provoked outburst of profanity protected); *Beverly Health & Rehabilitation Services*, 346 NLRB 1319, 1323 (2006) (nature of outburst, where employee told another employee to “mind [her] f—king business” during discussion of grievance, weighed in favor of protection); *Datwyler Rubber & Plastics, Inc.*, supra (employee told plant manager that he was a devil, that Jesus Christ would punish him for requiring a 7-day work week and that she was not intimidated by him); *Alcoa, Inc.*, supra (spontaneous profanity in grievance meeting protected as it was not the product of a conscious decision to degrade supervisor).

Based upon the foregoing, I find that Silvero reasonably could have viewed Braithwaite’s behavior as disrespectful and offensive. However it was comprised of a single, verbal outburst, uttered in a grievance meeting and was unaccompanied by physical intimidation, threat or profanity. Moreover, it appears to have been a spontaneous reaction to circumstances and not part of any deliberate effort to undermine Silvero’s authority. *Max Factor & Co.*, supra at 819; *Alcoa, Inc.*, supra at 1226. Thus, when viewed in context—in particular, noting that it took place during a discussion of a grievance relating to a coworker’s termination-- the nature of Braithwaite’s conduct does not weigh in favor of her losing the protection of the Act.

Finally, I find that the fourth factor, provocation, does not weigh in favor of protection as there was no evidence of prior or concurrent unfair labor practices related to the outburst or the underlying grievance. See *American Steel Erectors, Inc.*, 339 NLRB 1315, 1317 (2003). However, this is the only factor which I have found favoring a finding that Braithwaite’s conduct was not protected.

In sum, under the four-factor test of *Atlantic Steel*, I cannot conclude that Braithwaite’s conduct was sufficiently egregious to cost her the protection of the Act. Accordingly, I find that the warning issued to her in response to her conduct at the grievance meeting on April 26 violated Section 8(a)(1) and (3) of the Act.

### 3. Respondent’s asserted *Wright-Line* defense

In its post-hearing brief, Respondent urges that this case should be analyzed pursuant to the standards set forth in *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1<sup>st</sup> Cir. 1981), cert denied, 455 U.S. 989 (1982), approved in *NLRB v. Transportation Management Corp.*, 462 U.S. 393 (1983). In particular, the Respondent argues that the General Counsel has not and cannot show that it exhibited an anti-union motive by issuing a written warning to Braithwaite based upon her behavior at the April 2010 grievance meeting and, further, that there

is no evidence to establish causation between the issuance of the warning and any protected, concerted activity necessary to set forth a prima facie case. Respondent additionally argues that Brathwaite’s prior history of inappropriate conduct, as evidenced by her 2007 disciplinary action, led to the issuance of the warning at issue here.

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Although I am of the view that the circumstances of the instant case are properly analyzed pursuant to *Atlantic Steel*, see e.g. *Felix Industries*, supra; *Beverly Heath & Rehabilitation Center*, supra; *Noble Metal Processing*, supra at 795, fn. 2; *Datwyler Rubber & Plastics, Inc.*, supra, I will address Respondent’s contentions in the event they are raised before the Board.<sup>19</sup>

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The Board’s *Wright Line* standards come into play when an employer’s motivation is at issue. To prove a violation of Section 8(a)(3) and (1) under *Wright Line*, the General Counsel must first prove, by a preponderance of the evidence, that the employee’s protected conduct was a motivating factor in the employer’s decision to take action against the employee. *Manno Electric, Inc.*, 321 NLRB 278, 280 (1996). The General Counsel makes a showing of discriminatory motivation by proving the employee’s protected activity, employer knowledge of that activity and animus against the employee’s protected conduct, *Naomi Knitting Plant*, 328 NLRB 1279, 1281 (1999). If the General Counsel is successful, the burden of persuasion then shifts to the employer to show that it would have taken the same action even in the absence of the protected conduct. *Wright Line*, 251 at 1089; *Septix Waste, Inc.*, 346 NLRB 494, 496 (2006); *Williamette Industries*, 341 NLRB 560, 563 (2004). Once the General Counsel has met its initial burden under *Wright Line*, an employer does not satisfy its burden merely by stating or demonstrating a legitimate reason for the action taken, but instead must persuade by a preponderance of the credible evidence that it would have taken the same action in the absence of the protected conduct. *T&J Trucking Co.*, 316 NLRB 771 (1995); *Manno Electric, Inc.*, supra at 280 fn. 12 (1996).

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Here, I find that the General Counsel has met its initial burden of proof. Although Lee testified that he took Brathwaite’s prior discipline into account in deciding that the April 2010 warning was warranted, the record establishes that her conduct during the grievance meeting was nevertheless a “motivating factor” in his decision to issue it. There is no evidence that the April 2010 discipline would have been issued but for Brathwaite’s participation in and conduct at the grievance meeting. The prior warning had been issued more than three years before the events at issue, and there is no evidence of any other intervening misconduct or inappropriate behavior on Brathwaite’s part. As I have found that Brathwaite’s conduct during the grievance meeting fell within her role as a Union representative and was protected, and it is apparent that it was a motivating factor in Respondent’s decision to discipline her, I therefore conclude that General Counsel has met its initial burden with regard to the elements of union activity, employer knowledge and has generally established the motivation for the adverse action.

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Respondent argues that there is no evidence of anti-union animus here. I note that the Board and the courts have long recognized that direct evidence of unlawful motivation may not be available to the General Counsel. The General Counsel may, then, attempt to meet its burden by reliance upon circumstantial evidence and the record as a whole from which it may be inferred that protected activity motivated the employer’s adverse action. *Flour Daniel, Inc.* 304 NLRB 970 (1991). Such circumstantial evidence, however, must be substantial and create more than a suspicion that union activity was behind the employer’s decision. *Ronin Shipbuilding Inc.*,

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<sup>19</sup> In this regard, I note that in its post-hearing brief, Counsel for the General Counsel has, in part, argued the instant case under *Wright Line* as well.

330 NLRB 464 (2000).

5 In his post-hearing brief, Counsel for the Acting General Counsel argues that a sufficient inference of unlawful motivation can be made from Respondent's failure to allow Brathwaite an opportunity to respond to the allegations made against her. General Counsel further notes that, in her memorandum describing the incident in question, Silvero primarily complains about Jones' conduct rather than Brathwaite's and suggests that the nature of Brathwaite's alleged misconduct has been exaggerated. In this regard, the General Counsel argues that Silvero's animus toward the grievance committee's vigorous representation of Wright should be imputed to Respondent. *C&L Systems Corp.*, 299 NLRB 366, 379 (1990).

10 Although it is apparent that the parties have a long standing collective-bargaining relationship, I agree with the General Counsel that the evidence supports a finding of unlawful motivation in this instance. The Board has long held that where adverse action occurs shortly after an employee has engaged in protected activity an inference of unlawful motive is raised. See *McClendon Electrical Services*, 340 NLRB 613, fn. 6 (2003) (citing *La Gloria Oil*, 337 NLRB 1120 (2002), enfd. mem. 71 Fed Appx. 441 (5<sup>th</sup> Cir. 2003) (Table)). Here, Brathwaite's disciplinary notice was issued within days of her protected conduct (and more than three years after any other alleged infraction) with no other intervening event. I further infer animus from Lee's refusal to allow Brathwaite the opportunity to explain her behavior at the time the warning was given to her. *Embassy Vacation Resorts*, 340 NLRB 846, 849 (2003) (and cases cited therein).

15 Moreover, there is direct evidence of unlawful motivation in the issuance of the discipline itself, which as noted above, would not have been issued but for Brathwaite's protected conduct. Accordingly, under *Wright Line*, the burden now shifts to the Respondent that it would have taken the same action even in the absence of the protected activity. To meet this burden, Respondent has argued that Brathwaite's conduct at the grievance meeting was worthy of reprimand, a contention which I have rejected as a matter of fact and law.

20 Accordingly, inasmuch as the General Counsel has satisfied the elements of a prima facie case, and Respondent is unable to come forward with evidence to meet its burden to show, by a preponderance of the evidence, that it would have issued the same discipline to Brathwaite absent her protected conduct, I find that under the *Wright Line* analysis propounded by Respondent, the discipline to Brathwaite was in violation of Section 8(a)(1) and (3) of the Act, as alleged in the complaint.

25 B. Respondent Unlawfully Threatened Spooner Regarding Future Representation of Employees

30 The General Counsel has alleged that at a meeting on May 11, Lee unlawfully told Spooner that he would not be allowed to represent employees in his role as a Union delegate. Respondent denies that Lee ever made such a statement and asserts that any comment made to Spooner was in the form of an opinion based upon the behavior Spooner was exhibiting at the time. Respondent further points to the fact that since the meeting in question, Spooner has continued to represent employees as he had in the past.

35 As Lee testified, he summoned Brathwaite to an "informative meeting" to discuss certain perceived deficiencies in her job performance: in particular, a failure to properly screen calls transferred to his office and a reference to him, over the facility intercom, which included the use of his first name. Brathwaite, who had recently received a disciplinary final warning from Lee, asked Spooner to accompany her to the meeting.

I credit the mutually corroborative testimony of Brathwaite and Spooner that Lee challenged Spooner’s presence at the meeting, repeatedly asking him what he was doing there. I note that Lee did not specifically rebut this testimony, and find that it is inherently probable  
5 under the circumstances.<sup>20</sup>

Spoooner admitted, and I find, that he lost his temper at the meeting.<sup>21</sup> Although Lee claims that he did not respond in kind, asserting that he never gets emotional, I do not credit this testimony, and note that it was contradicted by Castelli, who testified that “they were yelling, it  
10 was just back and forth yelling.”

I further credit the mutually corroborative testimony of Brathwaite and Spooner that Lee told Spooner that he would not be allowed to represent employees. Respondent asserts that due to Spooner’s conduct Lee told Spooner, in effect, that he should not be representing  
15 Brathwaite in his present state, and that he needed to act as a delegate; however for the following reasons I find this improbable and not credible under the circumstances.

As an initial matter, the interaction as described by Lee is predicated on the contention that while Spooner became angry, Lee remained calm and was merely expressing his opinion that Spooner could not adequately represent Brathwaite in his then-current condition. As noted  
20 above, I have found that Lee did not retain his composure at the time. Moreover, inasmuch as I have found that Lee challenged Spooner’s very presence at the meeting, I find it improbable that he would appear solicitous about any apparent compromise in Spooner’s ability to adequately represent Brathwaite.  
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Further, the strained nature of Respondent’s characterization of Lee’s comments is illustrated by Castelli’s testimony regarding this issue, quoted above, where she clearly is struggling (with the aid of repeated prompting by Respondent’s counsel) to come forth with the right words to support Respondent’s position. I conclude from the totality of her testimony,  
30 together with her demeanor on the witness stand, where she appeared hesitant and uncertain, that she was actually unable to specifically recall what was said at this meeting, in the apparent heat of the moment, where both Spooner and Lee were yelling back and forth.

Moreover, I find it inherently unlikely that both Brathwaite and Spooner would fabricate testimony which would not only be adverse to the interests of their employer, but which could  
35 also be specifically rebutted by not one, but two high-ranking managers of the facility. Brathwaite and Spooner’s status as employees is a factor which I may, and do consider in evaluating their testimony. *Flexsteel Industries*, 316 NLRB 745 (1995) enfd. mem. 83 F.3d 419 (5<sup>th</sup> Cir. 1996).  
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Accordingly, based upon the credited evidence I find that, in the heat of the moment, Lee told Spooner that in the future Spooner would not be allowed to represent other employees.

This, of course, does not fully answer the question of whether by doing so Lee violated  
45 the Act. Thus, if Spooner had engaged in conduct which would have excused Respondent’s refusal to further deal with him, Respondent’s statement that it would no longer do so would, accordingly, not be a violation of the Act.

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<sup>20</sup> Castelli did not rebut it either; however, the evidence is not clear that she was present when Lee made his initial comments.  
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<sup>21</sup> In this regard, I discredit Brathwaite to the extent she testified to the contrary.

Here, I find that while Spooner’s conduct at the meeting was unfortunate and inappropriate, it was not so opprobrious as to excuse an actual prohibition on his future representation of employees. As the Board has held:

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Section 7 of the Act encompasses the right of employees, acting through their union, freely to select their representatives for the processing of grievances and discussion of workplace matters... Although a party may, under certain circumstances, refuse to meet with another party’s bargaining representatives, the party making such a refusal must establish that the representatives which whom it refuses to meet have created by their own actions an atmosphere of such ill will that good-faith bargaining is virtually impossible or that their participation in bargaining otherwise represents a clear and present danger to the bargaining process.

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*Missouri Portland Cement Co.*, 284 NLRB 432, 433 (1987). See also *KDEN Broadcasting Co.*, 225 NLRB 25, 35 (1976) (requiring *persuasive evidence* that the presence of the banned representative would create ill-will and make good faith bargaining impossible) (emphasis in original).

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In those situations where the Board has sanctioned an employer’s refusal to deal with a particular union representative, the conduct at issue is generally violent, threatening, or of a similarly egregious nature. For example, in *King Scoopers, Inc.*, 338 NLRB 269 (2002), the Board found that an employer had not violated the Act when it condoned an employer’s refusal to deal with a union representative who had previously been discharged for misconduct which included throwing a meat hook at an employee, throwing a 40-pound piece of meat into a saw, thereby breaking its blade, throwing a knife into a box, and threatening a supervisor. The Board found that, in light of this individual’s apparent propensity to react violently during confrontations, employer agents assigned to deal with him might be reasonably apprehensive and preoccupied with their safety if they did not agree during adversarial meetings. See also *Fitzsimmons Mfg. Co.*, 251 NLRB 375, 379 (1980), *enfd.* 670 F.2d 663 (6<sup>th</sup> Cir. 1983) (employer lawfully refused to deal with union representative who physically assaulted employer’s personnel director at grievance meeting); *Sahara Datsun*, 278 NLRB 1044 (1986), *enfd.* 811 F.2d 1217 (9<sup>th</sup> Cir. 1987) (conduct outside the bargaining process justified an employer’s refusal to deal with a union representative where that individual disseminated a newsletter accusing company owners of involvement in prostitution and the use and sale of cocaine; union representative also made unsubstantiated accusations to employer’s bank that certain management officials, including those expected to be involved in bargaining, had engaged in fraudulent financial practices).

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Nor was Spooner’s misconduct as severe as that engaged in by a union representative in *Victoria Packing Corp.*, 332 NLRB 597 (2000) where, during the course of a meeting with the company owner, a shop steward and two other company representatives, the union representative engaged in a shouting match with the owner and, at one point, approached the owner while pointing a finger at him and shouted, “I’m going to get you and [your] fucking company.” There, the Board affirmed the administrative law judge’s finding that while the union representative’s conduct was “rude” and could be considered “excessive” in other settings, was not “the type of conduct which could reasonably be construed as tainting the bargaining process as long as he was involved.” The judge further explained that, “for better or worse, the obligation to bargain also imposes the obligation thicken one’s skin and to carry on even in the face of what otherwise would be rude and unacceptable behavior.” *Victoria Packing*, *supra* at 600.

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Here, Spooner’s conduct did not involve any profanity, physical contact or explicit or implied threat. Nor was it of such severity that it would pose a threat to future grievance

processing or other negotiations, as has been demonstrated by subsequent events, i.e. Spooner’s continued representation of employees at Respondent’s facility. Thus, Spooner’s conduct was not sufficiently opprobrious that Lee could lawfully refuse to meet with him as a chosen representative of Respondent’s employees. Accordingly, by threatening Spooner that he would no longer be allowed to represent employees in his role as a Union delegate, Respondent engaged in conduct which violated Section 8(a)(1) of the Act.<sup>22</sup>

Conclusions of Law

1. By issuing written discipline to Walterine Brathwaite because she engaged in concerted, protected and Union activities, Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) and (3) of the Act.

2. By threatening Lester Spooner that he would no longer be allowed to represent unit employees in his role as Union delegate, Respondent violated Section 8(a)(1) of the Act.

3. The above-described unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, I recommend that it be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. I also recommend that Respondent be ordered to, within 14 days of the Board’s Order, remove from its files the written discipline issued to Brathwaite on April 29, 2010 or any reference to such discipline, and within 3 days thereafter notify Brathwaite that this has been done and that the discipline will not be used against her in any way.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>23</sup>

ORDER

The Respondent, Regal Heights Rehabilitation and Health Care Center, Jackson Heights, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Issuing written discipline to employees because they engage in concerted, protected and Union activities,

(b) Unlawfully threatening employees that they will no longer be allowed to represent unit

<sup>22</sup> With regard to Respondent’s contention that Spooner has since been allowed to represent employees, I note that while Lee’s threat may have been proven to be an empty one, it is nonetheless a threat sufficient to constitute interference, restraint or coercion of employees in the exercise of their rights within the meaning of Section 8(a)(1) of the Act.

<sup>23</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board’s Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

employees in their role as Union delegate

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

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2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of the Board’s Order, remove from its files any reference to the unlawful discipline issued to Walterine Brathwaite and within 3 days thereafter notify Brathwaite in writing that this has been done and that the discipline will not be used against her in any way.

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(b) Within 14 days after service by the Region, post at its facility in Jackson Heights, New York copies of the attached notice marked “Appendix.”<sup>24</sup> Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondent’s authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to the physical posting of paper notices, notices shall be distributed electronically, such as by e-mail, posting on an intranet or an internet site and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since August 29, 2010.

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(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

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Dated, Washington, D.C., December 21, 2010.

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Mindy E. Landow  
Administrative Law Judge

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<sup>24</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading “Posted by Order of the National Labor Relations Board” shall read “Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.”

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APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the  
National Labor Relations Board  
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join, or assist a union
- Choose representatives to bargain with us on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities

WE WILL NOT issue written discipline to you because you engage in concerted, protected and Union activities,

WE WILL NOT unlawfully threaten you that you will no longer be allowed to represent unit employees in your role as Union delegate

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed to you by Section 7 of the Act.

WE WILL remove from our files any reference to the unlawful discipline issued to Walterine Brathwaite and WE WILL within 3 days thereafter notify Brathwaite in writing that this has been done and that the discipline will not be used against her in any way.

REGAL HEIGHTS REHABILITATION  
AND HEALTH CARE CENTER

\_\_\_\_\_  
(Employer)

Dated \_\_\_\_\_ By \_\_\_\_\_  
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: [www.nlr.gov](http://www.nlr.gov).

One MetroTech Center (North), Jay Street and Myrtle Avenue, 10th Floor  
Brooklyn, New York 11201-4201  
Hours: 9 a.m. to 5:30 p.m.  
718-330-7713.

**THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE**

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 718-330-2862.