

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 34

GAYLORD HOSPITAL

Charged Party

and

JEANINE CONNELLY, AN INDIVIDUAL

Charging Party

**Cases 34-CA-013008
34-CA-013079**

**AFFIDAVIT OF SERVICE OF COUNSEL FOR THE ACTING GENERAL
COUNSEL'S ANSWERING BRIEF TO THE BOARD**

I, the undersigned employee of the National Labor Relations Board, state under oath that on January 25, 2013, I served the above-entitled document(s) by e-mail and regular mail upon the following persons, addressed to them at the following addresses:

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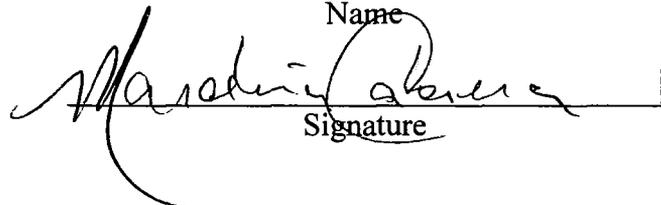
January 25, 2013

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NLRB

Date

Name

Signature



**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SUBREGION 34**

GAYLORD HOSPITAL

and

JEANINE CONNELLY, AN INDIVIDUAL

**Case 34-CA-13008
34-CA-13079**

**COUNSEL FOR THE ACTING GENERAL COUNSEL'S
ANSWERING BRIEF TO THE BOARD**

Respectfully submitted,

**Claire T. Sellers
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National Labor Relations Board
Subregion 34
Hartford, Connecticut**

Pursuant to Section 102.46(d) of the Board's Rules and Regulations, Counsel for the Acting General Counsel files the following Answering Brief to the Exceptions and Brief in support thereof filed by Respondent.

I. STATEMENT OF THE CASE

On September 6, 2012, Administrative Law Judge Lauren Esposito issued her Decision in the instant case, finding that Gaylord Hospital (herein called Respondent) violated Section 8(a)(1) of the Act by: 1) issuing a written warning to Jeanine Connelly on April 1 for engaging in protected concerted activity on March 31; and 2) prohibiting Connelly on April 1 and thereafter from discussing terms and conditions of her employment.¹ In addition, the judge incorrectly found that Respondent did not violate Section 8(a)(1) of the Act by: 1) suspending and discharging Connelly on April 5 and discharging her on April 8, mere days after the issuance of the unlawful written warning; and 2) threatening Connelly with job loss in retaliation for her protected concerted activities.

On November 7, 2012, Counsel for the Acting General Counsel filed exceptions to the judge's finding regarding Connelly's suspension and discharge. On December 20, 2012, Respondent filed 14 cross exceptions to the judge's finding and recommended order regarding Connelly's written warning and a supporting brief. For the reasons set forth below, and based upon the record as a whole, Counsel for the Acting General Counsel respectfully urges the National Labor Relations Board (the

¹ Throughout this brief, the following references will be used:

Respondent's Answering Brief..... RAB (followed by page number)
Respondent's Cross Exceptions..... RXE (followed by page number)
Respondent's Brief Supporting Cross Exceptions... RSB (followed by page number)
Acting General Counsel's Exceptions..... GXE (followed by number)
Acting General Counsel's Brief Supporting Exceptions..... GCSB (followed by page number)
Administrative Law Judge's Decision..... ALJD (followed by page number)
Transcript..... Tr. (followed by page number)

Board) to reject all of Respondent's exceptions and to affirm the Administrative Law Judge's rulings, findings and conclusions, and to adopt her recommended Order, as described herein.²

II. OVERVIEW

These cases concern Respondent's unlawful reaction to and intolerance for its employee, Jeanine Connelly, engaging in protected concerted activity. Connelly was the voice of her coworkers in a difficult work environment and when that threatened Director Paul Trigilia's job and Respondent's standing with the Connecticut Department of Public Health, Respondent made the decision to rid itself of Connelly. Judge Esposito correctly found that Respondent unlawfully reacted to Connelly raising terms of conditions of employment with her Supervisor, Michael Burke, by issuing her a written warning and telling Connelly she could not discuss terms and conditions of employment with her co-workers. Respondent's sole defense at hearing was that Connelly was rightfully disciplined because Connelly was not disciplined for the content of her conversation with Burke but for the manner in which she conducted herself. For the following reasons, the Board should reject Respondent's rehashed argument set forth in their Exceptions, and affirm the judge's well-reasoned decision with regard to Connelly's unlawful written warning.

III. RELEVANT FACTS

On Thursday, March 31, 2011³, at about 7:00 a.m., Connelly arrived at work and went directly to the Respiratory Therapy (RT) Department (Tr. 352-353, 1127, 1250).

² Counsel for the Acting General Counsel has taken Exceptions, submitted separately, to the judge's recommendation to dismiss the suspension and discharge of Connelly alleged in the Consolidated Complaint that the judge did not find to be unlawful.

³ All subsequent dates are in 2011 unless otherwise indicated.

After receiving the shift report, Connelly went to the nearby employee break room and read the posted minutes from the March 28 meeting she had not attended (Tr. 353). Connelly had spoken to multiple of her fellow Respiratory Therapists (RTs) after the March 28 meeting about their concerns regarding the new occurrence reporting requirement that Respondent was instituting. Upon reading that portion of the minutes relating to occurrence reports, Connelly understood the legitimacy of the many concerns that her fellow RTs had expressed to her throughout the week, particularly those concerns that revolved around their collective belief that occurrence reports could be used as a basis of discipline or even jeopardize an RT's license (Tr. 354-355). Connelly then spoke about the occurrence report issue with RTs William Hutson and Helena Egolum, both of whom were also in the break room at this time (Tr. 356-358, 832). Hutson and Egolum shared the same concerns that the RTs had been expressing to each other (Tr. 832).

After checking her mailbox and learning that her vacation request had been denied, Connelly decided to speak to her supervisor, Michael Burke about the occurrence reports and her vacation (Tr. 359; GCX 10). At about 7:20 a.m., Connelly went to Supervisor Burke's office, located a mere ten feet or so from the break room where Hutson and Egolum remained (Tr. 1128). The door to Burke's office was open, and Connelly stood in the doorway throughout the conversation (Tr. 833, 1130).

Even though Respondent repeatedly characterized the conversation between Connelly and Burke as a verbal assault, the conversation actually started by Connelly asking Burke whether he was available to talk to which Burke assented. Connelly then raised her and the other RTs concerns regarding the new requirement to complete

occurrence reports (Tr. 1128-1132). As Connelly explained the RTs concerns, she testified that she accentuated her point by stating, "This is just going to constantly cause...trouble. We're going to have more trouble, more trouble, more trouble" (Tr. 362, 445). Burke testified that during this portion of the conversation he heard her say "you're trouble," referring to Burke, for implementing such a requirement (Tr. 1128). It is unclear whether Connelly or Burke was the individual to raise their voice, but it is clear that the tone of the conversation became elevated at this point (Tr. 362-363, 1128). Both Connelly and Burke admitted to raising their voice during the conversation (Tr. 363, 1129). Burke responded to Connelly by explaining that the new occurrence report requirement was not his idea; rather, it was a directive from Vice President of Clinical Service Charlotte Hyatt (Tr. 363). At this point, both Burke and Connelly lowered their voices and continued the conversation. Connelly suggested to Burke that the new requirement was too severe and that they should talk to Hyatt (Tr. 363, 833). Burke responded that it was the course the Hospital had chosen (Tr. 364, 833, 1128). Connelly realizing Burke had a limited role in the matter changed the subject to discuss the denial of her vacation with Burke (Tr. 367, 1131).

After a very brief discussion about her vacation, RT Egolum approached Connelly and told her that they needed to get to work (Tr. 368, 833, 1133). According to both Connelly's and Burke's testimony, the entirety of the above conversation lasted about three to four minutes (Tr. 833, 1130). It is undisputed that Connelly never threatened Burke; that she never uttered any obscenities whatsoever, either directed at Burke or otherwise; and that she did not physically touch or approach Burke, or seem out of control in any manner during the length of the discussion (Tr. 364, 368-372, 834-

835, 1130). Although Burke testified that at some point during his conversation with Connelly he heard a nearby door close, he also testified that he did not know who closed the door or why it had been closed because he was never approached by the individual who allegedly closed that door (Tr. 1129-1130). On the other hand, RT Hutson, a neutral witness, testified that he observed the conversation between Burke and Connelly and said that the discussion “wasn’t disruptive,” nor did he observe anyone close their office door during that timeframe (Tr. 834).

IV. RESPONDENT’S EXCEPTIONS ARE WITHOUT MERIT

As noted above, Respondent filed 14 exceptions to the judge’s decision. Exception 1 disputes the judge’s finding that Respondent violated Section 8(a)(1) of the Act by issuing Connelly a written warning. Exceptions 2 and 3 concern the judge’s analysis of Connelly’s written warning under *Atlantic Steel Co.*, 245 NLRB 814 (1979). Exceptions 4 – 7 and 13 except to the judge’s findings of fact surrounding the conversation between Connelly and Burke for which Respondent gave Connelly a written warning. Exceptions 8 – 12 and 14 except to the judge’s alleged failure to consider what Respondent deems relevant evidence to the judge’s analysis of the events surrounding the conversation between Connelly and Burke for which Respondent issued Connelly a written warning. All of Respondent’s exceptions are without merit.

A. Respondent’s exceptions concerning whether Connelly lost the protection of the Act under *Atlantic Steel*

In its brief in support of its cross exceptions, Respondent rehashes its arguments from its brief to the ALJ regarding the appropriateness of the *Atlantic Steel* analysis. Respondent, in both briefs, argues that *Atlantic Steel* is inappropriate because its

workforce is not unionized, there is no organizing campaign involved, and Respondent operates a hospital, not an industrial facility. Similarly, in both briefs, Respondent argues that an *Atlantic Steel* analysis is only applicable in cases involving discharge. However, as the judge explained, the Board has not limited *Atlantic Steel* to apply only to unionized or organizing settings, industrial settings, or in cases involving employee discharge (ALJD 19, lines 43-52; ALJD 20, lines 1-5); See, e.g., *Plaza Auto Center*, 355 NLRB No. 85 (August 16, 2010), *enfd* in relevant part, 664 F.3d 286 (9th Cir. 2011) (outburst by car salesman in non-unionized dealership); *Lee's Industries, Inc.*, 355 NLRB No. 206, (September 30, 2010) (*Atlantic Steel* analysis applied to outburst by home health aide); *Datwyler Rubber and Plastics*, 350 NLRB 669 (2007) (statements by employee in non-union automobile parts plant); *Beverly Health & Rehabilitation Services*, 346 NLRB 1319, 1322-1323 (2006) (applying *Atlantic Steel* to conduct occurring at a nursing home that resulted in a 3-day suspension).

The Board has repeatedly held that *Atlantic Steel* is the appropriate analysis where an employee was clearly disciplined for engaging in protected concerted activity. *Beverly Health & Rehabilitation Services*, *supra* at 1322. As the judge explained, an employee engages in protected concerted activity when they “act with or on the authority of other employees.” (ALJD 19, lines 19-23); *Meyers Industries, Inc.*, 268 NLRB 493, 496 (1984) (“*Meyers I*”), *remanded sub nom. Prill v. NLRB*, 755 F.2d 941 (D.C. Cir. 1985), *on remand, Meyers Industries, Inc.*, 281 NLRB 882 (1986) (“*Meyers II*”), *enfd sub nom. Prill v. NLRB*, 835 F.2d 1481 (D.C. Cir. 1981). “Employee activity may be concerted where it arises out of prior group activity, where the employee acts either formally or informally on behalf of the group, or when the employee solicits other

employees to engage in group action.” (ALJD 19, lines 24-27); *The TM Group, Inc.*, 347 NLRB No. 98, at p. 14 (2011) quoting *Asheville School*, 347 NLRB 877 (2006).

Here, Connelly went to her Supervisor’s office to discuss the medication occurrence reports, which Respondent’s own witnesses admitted were of great concern to all RTs. As the judge correctly found, “RTs had discussed the occurrence reports and the extent to which they might result in discipline, amongst themselves, and were worried that completing the occurrence reports would constitute disciplining one another, or ‘writing each other up.’” (ALJD 19, lines 32-34). Respondent’s own witnesses testified to the great angst the occurrence reports raised in the RT department, which resulted in Harper sending an email to Hyatt regarding “the considerable stir surrounding the new RT requirement that staff report staff.” Because of the widespread concern, Respondent held several RT Department meetings throughout April specifically to address the medication occurrence reports. Connelly’s discussion with Burke on the morning of March 31, was at the pinnacle of this “stir” and immediately followed Respondent’s March 28 announcement that occurrence reports were now required. Therefore, when Connelly went to Burke’s office to discuss the medication occurrence reports, the judge correctly found that Connelly was at a minimum acting “informally on behalf of the group” and was engaged in protected concerted activity. As such, the appropriate analysis to determine whether Respondent’s written warning to Connelly was unlawful is *Atlantic Steel*.

Finally, Respondent argues that *Atlantic Steel* is too blunt an instrument to analyze the circumstance under which Connelly received a written warning and that a better approach would be to consider the totality of the circumstances. Respondent

cites *Fresenius USA Mfg. Inc.*, 358 NLRB 1, fn. 8 (2012) for the proposition that it is unclear whether cases should be analyzed under *Atlantic Steel* or under the totality of the circumstances approach. However, while it is true that the Board has applied a totality of the circumstances approach in some cases where statements are made by one employee to another, *Atlantic Steel* has always been applied by the Board in cases where the statements are made by an employee to a supervisor, as is the case here. *Fresenius USA Mfg. Inc.*, supra at 7; see e.g. *Stations Casinos, LLC*, 358 NLRB 1, 4 (2012); *UPS Supply Chain Solutions, Inc.*, 357 NLRB No. 106 (November 4, 2011); *Crowne Plaza Laguardia*, 357 NLRB No. 95 (September 30, 2011); *Kiewit Power Constructors Co.*, 355 NLRB No. 150 (August 27, 2010); *Datwyler Rubber & Plastics, Inc.*, 350 NLRB 669 (2007); cf. *Honda of America Mfg., Inc.*, 334 NLRB 746 (2001); *Traverse City Osteopathic Hospital*, 260 NLRB 1061 (1982). Considering the above, the judge correctly concluded that *Atlantic Steel* is the appropriate legal standard upon which to analyze Connelly's discussion with Burke.

The Board in *Atlantic Steel* established that "an employee who is engaged in concerted protected activity can, by opprobrious conduct, lose the protection of the Act." 245 NLRB 814, 816 (1979). The judge properly noted that in determining whether an employee loses the protection of the Act due to opprobrious conduct in the course of such activities, the Board will consider: (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 provoked by the employer's conduct, including unfair labor practices (ALJD 20, lines 9-11). The judge's analysis of the second factor, the subject matter, and the fourth factor, whether the discussion was provoked by an unfair labor practice,

was straightforward. The judge correctly found that the subject matter of the discussion weighed in favor of protection as it involved a conversation about the medication occurrence reports which were a matter of ongoing concern to RTs who were upset about the possibility of having to “write each other up” – a clear term and condition of employment. (ALJD 21, lines 25-36). Weighing against a finding of protection is the fact that the discussion was not provoked by an unfair labor practice (ALJD 22, lines 13-15). However, this does not mean that the statements will be unprotected. Furthermore, while the conversation did not stem from unfair labor practices and was not directly provoked by Respondent’s conduct, it certainly was in response to Respondent’s actions and was a reasonable means for addressing those concerns.

The remaining *Atlantic Steel* factors – the location of the conversation and the nature of the outburst – the judge gave slightly more attention to as Respondent argued they caused Connelly to lose the protection of the Act. The judge found that the conversation took place in non-patient care area and that there was no evidence that patients or visitors overheard the conversation (ALJD 20-21). Respondent would like us to believe that Connelly should lose the protection of the Act because she chose the location of the conversation and initiated the conversation (RSB 18). However, Respondent’s logic is flawed. In the cases cited by Respondent⁴, it was the location of the conversation combined with the nature of the outbursts, which were repeated, sustained, and profane, that caused the employees to lose the protection of the Act.

⁴ See *Verizon Wireless*, 349 NLRB 640, 642 (2007) (employee referred to supervisors as “that bitch” and “f-cking supervisors” in an area in close proximity to supervisory and nonsupervisory personnel); *Daimler Chrysler Corp.*, 344 NLRB 1324, 1328-1329 (2005) (calling a supervisor an “asshole” and saying “fuck this shit and don’t have to put up with this bullshit” in an area in close proximity to supervisory and nonsupervisory employees); *Aluminum Co. of America*, 388 NLRB 20 (2002) (a probationary employee referred to supervisors as a “son of a bitch”, “chickenshit bosses”, “those mother fuckers, and accused supervisors of trying to “pull some bullshit” in an area in close proximity to supervisory and nonsupervisory personnel).

Here, as discussed in detail further below, Connelly and Burke's conversation does not even rise to the level of an "outburst." This is evidenced by the fact, as the judge found, that Respondent's operations in terms of patient care and other functions were not disrupted by the conversation (ALJD 21, 10-15); see also *Datwyler Rubber & Plastics, Inc.*, 350 NLRB 669, 670 (2007) (outburst which took place during a meeting in the employee break room not disruptive to employer's work processes); *Noble Metal Processing*, 346 NLRB 795, 800 (2006) (place of discussion weighs in favor of protection where outburst occurred during employee meeting held away from employees' work area, and thus did not disrupt the work process. While Respondent argues that a physician had to close the office door because of the conversation, there is no testimony as to why the physician actually closed his door and no complaint from a physician, an employee of Respondent, or patient regarding the conversation. Furthermore, in each of the cases cited by Respondent, the Board found that the employee's outburst would tend to undermine the supervisor's authority. In contrast, here, it is undisputed that two other RTs overheard the conversation, but as the judge correctly noted, the evidence clearly showed that Burke's supervisory authority was not undermined by his discussion with Connelly (ALJD 21, lines 7-10). Since the conversation did not disrupt Respondent's work environment, negatively impact Burke's supervisory authority, or take place in a patient care area, the judge correctly found that the first of the *Atlantic Steel* factors weighed slightly in favor of a finding that Connelly's conduct remained protected (ALJD 21, lines 20-23).

As to the nature of the outburst, the judge concluded that it strongly favored a finding that Connelly did not lose the protection of the Act (ALJD 21, lines 38-39). In its

brief in support of its cross exceptions, Respondent refers to Connelly's conversation with Burke as a verbal assault, an attack, berating, and abuse (RSB 14-16, 18). Respondent must live in Pleasantville to find Connelly's behavior to amount to assault or abuse. As the judge noted, at worst Connelly referred to Burke as "trouble" in an elevated voice and "that characterization would be insufficient to divest Connelly's activity of the Act's protection (ALJD 21, lines 39-41). The judge went on to remind us that such a characterization is "positively genteel" compared to other language found protected by the Board (ALJD 21, lines 41-42); see *Alcoa, Inc.*, 352 NLRB 1222, 1225 (2008) (referring to a supervisor as "egotistical fucker"); *Union Carbide Corporation*, 331 NLRB 356, 359 (2000) (calling supervisor a "fucking liar"); *Burle Industries*, 300 NLRB 498, 502, 504 (1990) (calling supervisor a "fucking asshole"); *Thor Power Tool Co*, 148 NLRB 1379, 1380 (1964), enfd 351 F.2d 584 (7th Cir. 1965) (referring to supervisor as a "horses ass"); see also *Max Factor & Co.*, 239 NLRB 804, 818 (1978); *Postal Service*, 250 NLRB 4 (1980).

Connelly's "outburst" is most akin to the employee's outburst in *Datwyler Rubber & Plastics, Inc.*, 350 NLRB 669, 669 (2007) in which an employee told a supervisor that he was a devil and that Jesus Christ would punish him and the employer for requiring employees to work a 7-day work week. The Board held that the nature of the employee's conduct weighed in favor of protection, noting that while the conduct did occur in the presence of other employees, the "outburst did not contain profane language and it was spontaneous, brief, and unaccompanied by physical contact or threat of physical harm." *Id.* at 670. Similarly here, even assuming *arguendo* Connelly

did call her supervisor “trouble,” she did not use profane language, the comment was spontaneous, brief, and unaccompanied by physical contact, profanity or threats.

Based on the foregoing, the judge correctly concluded that the third factor under *Atlantic Steel* weighed heavily in favor of Connelly maintaining the protection of the Act. Respondent argues that the judge erred in this conclusion because Connelly’s behavior was not impulsive (RSB 19). Respondent’s argument that Connelly’s behavior was not spontaneous is simply unsupported. Respondent relies on the fact that Connelly had discussed the issue regarding the medication occurrence reports with fellow coworkers before going to her supervisor to raise the issue as evidence that Connelly’s speech was not spontaneous. In *Traverse City Osteopathic Hospital*, supra, the discriminatee was engaged in conversation with coworkers about the union in a hospital cafeteria. During the course of the conversation, he became upset which led to a brief outburst where he told a coworker “If you want to be a brown-nose suck-ass, you can, but I’m not going to be and I never will be one.” The Board found this reaction to be spontaneous and that the discriminatee did not lose the protection of the Act. In *Beverly Health and Rehabilitation Services*, supra, the discriminatee was discussing a grievance in the nursing center’s employee breakroom when another employee expressed her opinion and upset the discriminatee. The discriminatee responded by telling her to “mind your fucking business”. The Board found this spontaneous outburst protected. Here, Connelly was engaged in conversation with Burke about a subject matter clearly covered under Section 7 as admitted to by Respondent in its brief in support of its cross exceptions (RSB 19). Like the discriminatees found time and again to be protected under *Atlantic Steel*, Connelly became upset during the conversation, raised her voice

and at worst referred to her supervisor as “trouble.” She then calmed down and the conversation continued. Her reaction was completely spontaneous and therefore, appropriately analyzed by the judge under *Atlantic Steel*.⁵

For the foregoing reasons, the judge correctly found that three of the four factors under *Atlantic Steel* weighed in favor of a finding that Connelly did not lose the protection of the Act during her conversation with Burke and thus, Respondent’s written warning issued to Connelly violated Section 8(a)(1) of the Act.

B. Respondent’s remaining exceptions

Respondent further excepts to the judge’s findings of fact surrounding the conversation between Connelly and Burke on March 31. Specifically, Respondent excepts to the judge’s characterization of the interaction between Connelly and Burke, the length of the discussion, the judge’s characterization of the location of the discussion, and the judge’s conclusion that a physician “may” have closed his/her door as a result of Connelly’s and Burke’s discussion. Respondent bases its objection to each of the foregoing on the judge’s analysis of the credible record evidence. Respondent’s argument solely relies on a finding that the judge erred in her understanding of the credible testimony. In making her determinations, the judge credited Burke as Respondent concedes. Based on Respondent’s endorsement its dispute with the judge’s determinations is peculiar (RSB 7). Based on Respondent’s

⁵ Furthermore, it does not matter that Connelly would have been expressing her own opinion if she did call Burke “trouble.” In no case analyzed under *Atlantic Steel* has the Board found the discriminatee to lose the protection of the Act because the potential outburst, even against a supervisor, was that individual’s sole opinion and not part of the group action. For example, there is no evidence that when the discriminatee in *Alcoa, Inc.*, supra, referred to a supervisor as “egotistical fucker” that this opinion was shared by other employees.

endorsement of Burke's testimony, it should have no dispute with the judge's determinations.

First, Burke testified that Connelly began the conversation by asking him if he was available to talk and by explaining her concerns about the new requirement to complete occurrence reports (Tr. 1128-1132). The conversation did not begin as a verbal assault, attack or berating as characterized by Respondent (RSB 14-16, 18). At one brief point during the conversation, Burke testified that both he and Connelly raised their voices at each other (Tr. 1129). However, Burke testified that once he explained to Connelly that the decision had come from Vice President Hyatt, the subject changed to discussing the denial of Connelly's vacation request, which was not a heated conversation (Tr. 1131). Given the foregoing, it is hard to understand why Respondent would consider a few sentences exchanged between two parties in an elevated voice to constitute a verbal assault or attack. Instead, what is clear is that the judge was correct in characterizing the interaction between Burke and Connelly as a conversation.

Second, Burke testified that the discussion between Connelly and him lasted three to four minutes (Tr. 1130). This evidence was corroborated by Connelly and Hutson (Tr. 833). Thus, the judge correctly determined the length of the conversation in light of the credible evidence.

Third, with regard to the location of the discussion, Respondent takes issue with the judge's finding that the location of the discussion between Burke and Connelly as taking place in a non-patient care area. The credible evidence shows that the suite of offices in which Burke's office was located was adjacent to a speech therapist's office, who occasionally sees patients (Tr. 1250). However, the credible evidence showed that

the speech therapist was not present during the conversation, no patients were present during the conversation, and that the speech therapist does not see patients at 7:20 a.m. (Tr. 1250). Given that Respondent supplied no evidence that a patient was anywhere near the vicinity, the judge correctly concluded that the area of the conversation between Burke and Connelly was not a patient care area.

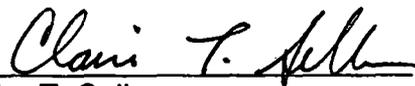
Finally, Burke testified that at some point during his conversation with Connelly he heard a nearby door close, but that he did not know who closed the door or why it had been closed (Tr. 1129-1130). Thus, the judge's conclusion that a door "may" have closed is reasonable.

V. CONCLUSION

For all of the above reasons, Counsel for the Acting General Counsel submits that Respondent's exceptions are without merit, and respectfully urges the Board to affirm Judge Esposito's decision regarding her finding that Respondent violated Section 8(a)(1) of the Act by issuing Connelly a written warning.

Dated at Hartford, Connecticut, this 25th day of January 2013.

Respectfully submitted,



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