

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 12**

TRINITY TECHNOLOGY GROUP, INC.

and

Case 12-CA-165643

MARK SCHUMERTH, an Individual

**OPPOSITION TO RESPONDENT'S  
MOTION FOR SUMMARY JUDGEMENT**

Pursuant to Section 102.24 of the Rules and Regulations of the National Labor Relations Board (the Board), Counsel for the General Counsel submits this Opposition to Respondent's Motion for Summary Judgment filed in the above-captioned case by Trinity Technology Group, Inc. (Respondent) on September 27, 2016. The Motion should be denied because the pleadings and the Motion both raise substantial and material issues of fact, including issues of credibility, which can best be resolved by a hearing, as explained herein. Further, Respondent's argument that the Complaint issued in this proceeding is barred as a matter of law by Section 10(b) of the Act is without merit.

**I. THE LEGAL STANDARD FOR SUMMARY JUDGMENT**

Section 102.24(b) of the Board's Rules and Regulations provide that, the Board, in its discretion, may deny a motion for summary judgment:

[W]here the motion itself fails to establish the absence of a genuine issue, or where the opposing party's pleadings, opposition and/or its response indicate on their face that a genuine issue may exist.

As the Board recently affirmed:

It is settled principal that for summary judgment to be appropriate, the record must show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

*Security Walls, LLC*, 361 NLRB No. 29 (2014), citing *Conoco Chemicals Co.*, 275 NLRB 39, 40 (1985) (citing *Stephens College*, 260 NLRB 1049, 1050 (1982)); see also Fed. R. Civ. P. 56(a).

**II. SUMMARY JUDGMENT IS NOT APPROPRIATE BECAUSE THERE ARE DISPUTES REGARDING MATERIAL FACTS IN THE PLEADINGS AND IN RESPONDENT'S MOTION FOR SUMMARY JUDGMENT**

As noted above, summary judgment should only be granted in cases where there is no genuine dispute as to any material fact. Thus, any dispute concerning a material fact in the case properly defeats a motion for summary judgment. As is made evident by Respondent's Answer and its Motion for Summary Judgment with Incorporated Memorandum of Law (the Motion), material factual disputes exist in this case. Therefore, the Motion must be denied.

**A. The Pleadings Establish that Material Facts are in Dispute.**

The Complaint and Notice of Hearing (the Complaint) in this matter was issued on June 30, 2016. A copy of the Complaint is attached as General Counsel Exhibit No. 1. Respondent filed Answer and Affirmative Defenses to Complaint (the Answer) on July 12, 2016. The Answer is attached as General Counsel Exhibit No. 2.

In its Answer, the Respondent denied directing employees not to talk to other employees about wages and not to speak negatively about Respondent, as alleged in paragraph 4 of the Complaint. Respondent further denied that employee Schumerth engaged in protected concerted activities, as alleged in paragraphs 5(a) and 5(b) of the Complaint, and that it discharged Schumerth because of that activity, as alleged in paragraph 6(b) of the Complaint.

Thus it is apparent from the face of the pleadings that there are genuine issues of fact in dispute, and therefore the Respondent's Motion for Summary Judgment must be denied.

**B. Respondent's Motion for Summary Judgment Establishes that Material Facts are in Dispute.**

On September 27, 2016, Respondent filed its Motion for Summary Judgment, together with a memorandum of law, affidavits and numerous exhibits. Respondent's Motion acknowledges that there are facts in dispute regarding this matter. First, in its Motion, Respondent does not concede that it instructed employees not to discuss their terms and conditions of their employment as alleged in paragraph 4 of the Complaint; nor does the Motion concede that alleged discriminatee Mark Schumerth engaged in protected concerted activity when he called a national radio program to discuss wages and other terms and conditions of employment, as alleged in paragraphs 5(a) and 5(b) of the Complaint; nor does the Motion concede that employee Schumerth was discharged for engaging in such conduct, as alleged in paragraph 6(b) of the Complaint.

To the contrary, in its Motion Respondent argues that "there is no evidence that Charging Party was acting on behalf of other employees, and his conduct was not protected by the NLRA," thus demonstrating that there are issues of material fact as to whether Schumerth engaged in protected concerted activity on behalf of himself and other employees. This dispute over a threshold fact in this case makes summary judgment inappropriate.

Further, although Respondent argues that there are no material facts in dispute as to whether employee Schumerth breached his duty of confidentiality when he made comments on a national radio program, General Counsel disputes this contention. The determination as to the nature of the duty Schumerth had to keep certain information confidential, and as to whether or not Schumerth breached such duty cannot be properly made until after both parties have had the opportunity to present witness testimony and other evidence regarding these issues. General Counsel disputes Respondent's conclusory statement that no dispute exists in regard to employee

Schumerth's alleged breach of his duty of confidentiality which Respondent claims led to his discharge by Respondent, particularly in view of the widespread public information available at the time when Respondent claims that Schumerth in misconduct, concerning breaches of security involving the Transportation Security Administration and its contractors such as Respondent.

### **III. THE COMPLAINT IS NOT PROCEDURALLY BARRED**

#### **A. The Charge and Amended Charge have Sufficient Factual Specificity.**

Section 10(a) of the Act provides:

[T]he Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce.

Section 10(b) of the Act provides: provides:

[W]henver it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect.

Section 10(b) thus mandates only that a charge be filed before a complaint issues. Congress chose to prevent the Board from initiating complaints on its own motion. *NLRB v. Kohler Co.*, 220 F.2d 3 (7th Cir. 1955); *Consumers Power Co. v. NLRB*, 113 F.2d 38 (6th Cir. 1940).

Section 10(b) does not require that the charge be specific nor that the charge and the subsequent complaint be identical. As the Supreme Court stated almost 50 years ago, "[t]he charge is not proof. It merely sets in motion the machinery of an inquiry. When a Board complaint issues, the question is only the truth of its accusations. The charge does not even serve the purpose of a pleading." *NLRB v. Indiana & Michigan Electric Co.*, 318 U.S. 9, 18 (1943). Based on these principles, the Board has long held that a charge alleging a violation of Section 8(a)(1) of the Act in general terms is sufficient to support a complaint alleging a particularized violation of Section 8(a)(1) of the Act. *Brookville Glove Co.*, 116 NLRB 1282 (1956).<sup>6</sup> See also *Columbia University*, 250 NLRB 1220 fn. 2 (1980).

It is also noted that Section 10(b) of the Act does not bar the General Counsel from alleging in a complaint and/or introducing at trial, facts not set forth in the underlying charge, even where those facts form part of the basis for concluding that an unfair labor practice occurred.

In the present case, the original charge alleged that Respondent violated Section 8(a)(1) of the Act by discharging Mark Schumerth for engaging in protected concerted activity. Thus, the charge put Respondent on notice that Schumerth alleges that he was discharged in violation of the Act. Respondent had ample opportunity to respond to this allegation, and in a position statement submitted to the Regional Office on January 15, 2016, Respondent directly addressed the merits of the charge.

Respondent objects that the additional allegation in the amended charge, that Respondent “prohibited employees from discussing wages and terms and conditions of employment,” did not specify that employees were told “not to speak negatively about Respondent at checkpoints.” However, the amended charge sufficiently supports the allegation in paragraph 4 of the Complaint that Respondent supervisors and agents directed employees not to talk about their wages and not to speak negatively about Respondent at checkpoints. Thus, employer rules about what employees may or may not say, and where and/or when they may or may not say it, constitute terms and conditions of employment.

For these reasons, the original and amended charges adequately put Respondent on notice of the allegations that are in the Complaint.

**B. The Charge and Amended Charge were Timely Filed.**

Respondent argues that the amended charge filed on December 24, 2015, alleging that in late May 2015, Respondent prohibited employees from discussing wages and terms and conditions of employment during working hours, was not timely filed because more than six

months had passed before the allegation was made and it is thus barred by Section 10(b) of the Act. However, as alleged in the Complaint, the evidence will show that Respondent directed employees not to talk to other employees about their wages and not to talk negatively about Respondent at checkpoints. Respondent's directive amounts to an ongoing unlawful rule maintained by Respondent, and is therefore a continuing violation of Section 8(a)(1) of the Act and is not time-barred by Section 10(b) of the Act.

Moreover, even if the Board was to ultimately find that allegation in paragraph 4 of the Complaint is untimely filed based on Section 10(b) of the Act, it would be improper to grant summary judgment before a record is made regarding the facts surrounding the alleged directive and Respondent's subsequent conduct related thereto. Accordingly, Respondent's Motion for Summary Judgment on the basis that the amended charge was not filed in a timely manner should be denied.

#### **IV. CONCLUSION**

For the above reasons, Counsel for the General Counsel respectfully submits that Respondent's Motion for Summary Judgment should be denied.

Dated: October 4, 2016.

Respectfully submitted,

/s/ John "Wes" Plympton

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John "Wes" Plympton  
Counsel for the General Counsel  
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Region 12  
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**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing document, Counsel for the General Counsel's Opposition to Respondent's Motion for Summary Judgment, was served on October 4, 2016, as follows:

**By electronic filing at [www.nlr.gov](http://www.nlr.gov) to:**

Hon. Gary W. Shinnors, Executive Secretary  
National Labor Relations Board  
1015 Half Street SE  
Washington, D.C. 20570-0001

**By electronic mail to:**

Arianne B. Suarez, Esquire  
Douberley, McGuinness & Cicero  
1000 Sawgrass Corporate Parkway, Suite 590  
Sunrise, Florida 33323  
Telephone No. (954) 838-8832  
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Counsel for Respondent

Mark Schumerth  
6363 Gulf Winds Dr., Apt. 235  
St. Pete Beach, FL 33706-3742  
Email: [cwpmfs@gmail.com](mailto:cwpmfs@gmail.com)

**/s/ John "Wes" Plympton**  
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**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 12**

TRINITY TECHNOLOGY GROUP, INC.

and

Case 12-CA-165643

MARK SCHUMERTH, an Individual

**COMPLAINT AND NOTICE OF HEARING**

This Complaint and Notice of Hearing is based on a charge filed by Mark Schumerth (the Charging Party), an individual, against Trinity Technology Group, Inc. (Respondent). It is issued pursuant to Section 10(b) of the National Labor Relations Act, 29 U.S.C. § 151 et seq. (the Act), and Section 102.15 of the Rules and Regulations of the National Labor Relations Board (the Board), and alleges that Respondent has violated the Act as described below:

1.

(a) The original charge in this proceeding was filed by the Charging Party on December 8, 2015, and a copy was served on Respondent by U.S. mail on that same date.

(b) The first amended charge in this proceeding was filed by the Charging Party on December 24, 2015, and a copy was served on Respondent by U.S. mail on December 28, 2015.

2.

(a) At all material times, Respondent has been a Virginia corporation with an office and place of business at the Sarasota-Bradenton International Airport in Sarasota, Florida (Respondent's Sarasota Airport facility), and has been engaged in the business of providing passenger and baggage security screening services and other security services to agencies of the United States Government, including the United States Department of Homeland Security,

GENERAL COUNSEL EXHIBIT NO

Transportation Security Administration (TSA).

(b) During the past 12 months, in conducting its operations described above in paragraph 2(a), Respondent purchased and received at facilities in the State of Florida, goods valued in excess of \$50,000 directly from points outside the State of Florida.

(c) At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

3.

At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent within the meaning of Section 2(11) of the Act, and agents of Respondent within the meaning of Section 2(13) of the Act:

- Douglas Bullock - President and Chief Executive Officer
- Mark Harding - Chief Operating Officer
- Kristen O'Donnell - Deputy Program Manager, Sarasota-Bradenton International Airport
- Beth Parker - Vice President of Human Resources
- William Scott - Program Manager, Sarasota-Bradenton International Airport
- Brian Tessier - Deputy Program Manager, Sarasota-Bradenton International Airport
- Norm Williamson - Vice President of Security Screening Operations

4.

On a date in May 2015, a more precise date being presently unknown to the undersigned, Respondent, by William Scott and Brian Tessier, at Respondent's Sarasota Airport facility,

directed employees not to talk to other employees about their wages and not to speak negatively about Respondent at checkpoints.

5.

(a) On or about dates in May 2015, more precise dates being presently unknown to the undersigned, employee Mark Schumerth engaged in protected concerted activity with other employees of Respondent for the purposes of mutual aid and protection, by discussing wage reductions and other terms and conditions of employment.

(b) On or about June 3, 2015, employee Mark Schumerth engaged in protected concerted activity by calling a national radio show and discussing employee wage rates, staffing levels, overtime, and other terms and conditions of employment.

6.

(a) On or about June 11, 2015, Respondent discharged employee Mark Schumerth.

(b) Respondent engaged in the conduct describe above in paragraph 6(a) because employee Mark Schumerth engaged in the conduct described above in paragraphs 5(a) and 5(b), and to discourage employees from engaging in these or other protected concerted activities.

7.

By conduct described above in paragraphs 4, 6(a) and 6(b), Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act, in violation of Section 8(a)(1) of the Act.

8.

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

**WHEREFORE**, as part of the remedy for Respondent's unfair labor practices described above, the General Counsel seeks an order requiring that Respondent reimburse the employee named above in paragraphs 6(a) and 6(b) for all search-for-work and work-related expenses regardless of whether the employee received interim earnings in excess of these expenses, or at all, during any given quarter, or during the overall backpay period.

The General Counsel further seeks all other relief as may be just and proper to remedy the unfair labor practices alleged.

### **ANSWER REQUIREMENT**

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the complaint. The answer must be **received by this office on or before July 14, 2016, or postmarked on or before July 13, 2016**. Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

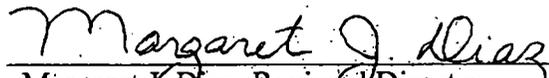
An answer may also be filed electronically through the Agency's website. To file electronically, go to [www.nlr.gov](http://www.nlr.gov), click on **E-File Documents**, and follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not

represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the complaint are true.

**NOTICE OF HEARING**

PLEASE TAKE NOTICE THAT on **October 26, 2016**, at **9:30 a.m.**, at the **National Labor Relations Board Hearing Room, 201 E. Kennedy Blvd., Ste. 530, Tampa, Florida**, and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

DATED: June 30, 2016.

  
Margaret J. Diaz, Regional Director  
National Labor Relations Board, Region 12  
201 E. Kennedy Blvd., Suite 530  
Tampa, FL 33602-5824

Attachments

UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD  
NOTICE

Case 12-CA-165643

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end.

An agreement between the parties, approved by the Regional Director, would serve to cancel the hearing. However, unless otherwise specifically ordered, the hearing will be held at the date, hour, and place indicated. Postponements *will not be granted* unless good and sufficient grounds are shown *and* the following requirements are met:

- (1) The request must be in writing. An original and two copies must be filed with the Regional Director when appropriate under 29 CFR 102.16(a) or with the Division of Judges when appropriate under 29 CFR 102.16(b).
- (2) Grounds must be set forth in *detail*;
- (3) Alternative dates for any rescheduled hearing must be given;
- (4) The positions of all other parties must be ascertained in advance by the requesting party and set forth in the request; and
- (5) Copies must be simultaneously served on all other parties (listed below), and that fact must be noted on the request.

Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing.

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## Procedures in NLRB Unfair Labor Practice Hearings

The attached complaint has scheduled a hearing that will be conducted by an administrative law judge (ALJ) of the National Labor Relations Board who will be an independent, impartial finder of facts and applicable law. **You may be represented at this hearing by an attorney or other representative.** If you are not currently represented by an attorney, and wish to have one represent you at the hearing, you should make such arrangements as soon as possible. A more complete description of the hearing process and the ALJ's role may be found at Sections 102.34, 102.35, and 102.45 of the Board's Rules and Regulations. The Board's Rules and regulations are available at the following link: [www.nlr.gov/sites/default/files/attachments/basic-page/node-1717/rules\\_and\\_regs\\_part\\_102.pdf](http://www.nlr.gov/sites/default/files/attachments/basic-page/node-1717/rules_and_regs_part_102.pdf).

The NLRB allows you to file certain documents electronically and you are encouraged to do so because it ensures that your government resources are used efficiently. To e-file go to the NLRB's website at [www.nlr.gov](http://www.nlr.gov), click on "e-file documents," enter the 10-digit case number on the complaint (the first number if there is more than one), and follow the prompts. You will receive a confirmation number and an e-mail notification that the documents were successfully filed.

**Although this matter is set for trial, this does not mean that this matter cannot be resolved through a settlement agreement.** The NLRB recognizes that adjustments or settlements consistent with the policies of the National Labor Relations Act reduce government expenditures and promote amity in labor relations and encourages the parties to engage in settlement efforts.

### I. BEFORE THE HEARING

The rules pertaining to the Board's pre-hearing procedures, including rules concerning filing an answer, requesting a postponement, filing other motions, and obtaining subpoenas to compel the attendance of witnesses and production of documents from other parties, may be found at Sections 102.20 through 102.32 of the Board's Rules and Regulations. In addition, you should be aware of the following:

- **Special Needs:** If you or any of the witnesses you wish to have testify at the hearing have special needs and require auxiliary aids to participate in the hearing, you should notify the Regional Director as soon as possible and request the necessary assistance. Assistance will be provided to persons who have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.603.
- **Pre-hearing Conference:** One or more weeks before the hearing, the ALJ may conduct a telephonic prehearing conference with the parties. During the conference, the ALJ will explore whether the case may be settled, discuss the issues to be litigated and any logistical issues related to the hearing, and attempt to resolve or narrow outstanding issues, such as disputes relating to subpoenaed witnesses and documents. This conference is usually not recorded, but during the hearing the ALJ or the parties sometimes refer to discussions at the pre-hearing conference. You do not have to wait until the prehearing conference to meet with the other parties to discuss settling this case or any other issues.

### II. DURING THE HEARING

The rules pertaining to the Board's hearing procedures are found at Sections 102.34 through 102.43 of the Board's Rules and Regulations. Please note in particular the following:

- **Witnesses and Evidence:** At the hearing, you will have the right to call, examine, and cross-examine witnesses and to introduce into the record documents and other evidence.
- **Exhibits:** Each exhibit offered in evidence must be provided in duplicate to the court reporter and a copy of each of each exhibit should be supplied to the ALJ and each party when the exhibit is offered.

**in evidence.** If a copy of any exhibit is not available when the original is received, it will be the responsibility of the party offering such exhibit to submit the copy to the ALJ before the close of hearing. If a copy is not submitted, and the filing has not been waived by the ALJ, any ruling receiving the exhibit may be rescinded and the exhibit rejected.

- **Transcripts:** An official court reporter will make the only official transcript of the proceedings, and all citations in briefs and arguments must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation. Proposed corrections of the transcript should be submitted, either by way of stipulation or motion, to the ALJ for approval. Everything said at the hearing while the hearing is in session will be recorded by the official reporter unless the ALJ specifically directs off-the-record discussion. If any party wishes to make off-the-record statements, a request to go off the record should be directed to the ALJ.
- **Oral Argument:** You are entitled, on request, to a reasonable period of time at the close of the hearing for oral argument, which shall be included in the transcript of the hearing. Alternatively, the ALJ may ask for oral argument if, at the close of the hearing, if it is believed that such argument would be beneficial to the understanding of the contentions of the parties and the factual issues involved.
- **Date for Filing Post-Hearing Brief:** Before the hearing closes, you may request to file a written brief or proposed findings and conclusions, or both, with the ALJ. The ALJ has the discretion to grant this request and to will set a deadline for filing, up to 35 days.

### III. AFTER THE HEARING

The Rules pertaining to filing post-hearing briefs and the procedures after the ALJ issues a decision are found at Sections 102.42 through 102.48 of the Board's Rules and Regulations. Please note in particular the following:

- **Extension of Time for Filing Brief with the ALJ:** If you need an extension of time to file a post-hearing brief, you must follow Section 102.42 of the Board's Rules and Regulations, which requires you to file a request with the appropriate chief or associate chief administrative law judge, depending on where the trial occurred. You must immediately serve a copy of any request for an extension of time on all other parties and furnish proof of that service with your request. You are encouraged to seek the agreement of the other parties and state their positions in your request.
- **ALJ's Decision:** In due course, the ALJ will prepare and file with the Board a decision in this matter. Upon receipt of this decision, the Board will enter an order transferring the case to the Board and specifying when exceptions are due to the ALJ's decision. The Board will serve copies of that order and the ALJ's decision on all parties.
- **Exceptions to the ALJ's Decision:** The procedure to be followed with respect to appealing all or any part of the ALJ's decision (by filing exceptions with the Board), submitting briefs, requests for oral argument before the Board, and related matters is set forth in the Board's Rules and Regulations, particularly in Section 102.46 and following sections. A summary of the more pertinent of these provisions will be provided to the parties with the order transferring the matter to the Board.

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 12**

TRINITY TECHNOLOGY GROUP, INC.,

and

Case No. Case 12-CA-165643

MARK SCHUMERTH,  
\_\_\_\_\_ /

**ANSWER AND AFFIRMATIVE DEFENSES TO COMPLAINT**

Respondent, Trinity Technology Group, Inc., by and through undersigned counsel, hereby responds to Claimant's Complaint as follows:

1.

a) Respondent admits that a copy of the charge identified in paragraph 1(a) was served upon Respondent and denies the remainder of the allegations of paragraph 1(a).

b) Respondent admits that a copy of the charge identified in paragraph 1(b) was served upon Respondent and denies the remainder of the allegations of paragraph 1(b).

2.

a) Admitted.

b) Admitted.

c) Admitted.

3.

Respondent admits that the individuals listed in this paragraph have at times been "supervisors" for some purposes within the meaning of Section 2(11) of the NLRA and denies the remainder of the allegations of paragraph 3.

GENERAL CORRESPONDENCE EXHIBIT NO. 1

4.

Denied.

5.

a) Denied.

b) Denied.

6.

a) Admitted.

b) Denied.

7.

Denied.

8.

Denied.

Respondent denies that Claimant is entitled to any of the relief set forth in the Wherefore Clause immediately following paragraph numbered 8 of the Complaint.

**GENERAL DENIAL**

Respondent denies all allegations not specifically admitted to herein.

**AFFIRMATIVE DEFENSES**

Having fully responded to the Complaint and without prejudice to its denials and other statements of its pleadings, Respondent asserts the following affirmative defenses as to all claims

by Claimant. By asserting the following affirmative and other defenses, Respondent does not assume any burden of production or proof that it does not otherwise have.

1. Some or all of the claims asserted in the Complaint are barred by the six month statute of limitations set forth in Section 10(b) of the NLRA.

2. Respondent did not violate Section 8(a)(1) of the NLRA as it did not interfere with, restrain or coerce employees in the exercise of the rights guaranteed in Section 7 of the NLRA.

3. The remedy requested in the Complaint is contrary to law because it violates and interferes with the protection of national security interests as set forth by the Department of Homeland Security Transportation Security Administration.

4. The remedy requested in the Complaint is punitive to Respondent because it interferes with and impedes the performance of its tasks as directed by the Department of Homeland Security Transportation Security Administration.

5. Claimant did not engage in any protected concerted activity under Section 8(a)(1) of the NLRA.

6. Claimant's statements on national public radio were unprotected because they were unauthorized disclosures of confidential and sensitive security information.

7. Claimant's disclosures were not protected because the information that was disclosed was of a type which Respondent had a right to expect would be treated as confidential, such that the disclosure was fundamentally a breach of trust and constituted disloyal conduct.

8. Claimant's statements on national public radio were unprotected because they were made with knowledge of their falsity or with reckless disregard for their truth or falsity.

9. Respondent states that, to the extent Claimant has failed to diligently seek other employment, his claim should be reduced or barred for failure to mitigate his damages.

10. To the extent Claimant seeks recovery of back pay, lost benefits, front pay, or other lost earnings, he has failed to mitigate his damages.

11. Claimant's Demand fails to state a claim upon which relief can be granted.

12. Claimant's claims fail because he cannot demonstrate that Respondent acted with the requisite intent.

13. Claimant's claims fail because he cannot show he was damaged as a direct and proximate result of the conduct he alleges the Respondents engaged in.

14. Claimant's alleged damages for lost earnings, if any, should be reduced by the amount of interim earnings Claimant has received.

15. Claimant's alleged damages for lost earnings, if any, should be reduced for any period of time during which Claimant was unavailable for work for any reason to the extent Claimant's unavailability for work has or will be affected by other reasons unrelated to the acts or omissions of the Respondents alleged in the Complaint.

16. Claimant's claims and/or claims for damages are barred (or limited) to the extent it is shown he engaged in misconduct prior to, during, or in connection with, his employment, that otherwise would have resulted in his discharge if such conduct were then known to Respondent.

17. No act, breach or omission of Respondents proximately caused or contributed to whatever damages, if any, Claimant may have sustained and, on account thereof, Claimant is not entitled to any recovery from Respondent. The proximate cause of Claimant's alleged damages, if any, was the conduct of the Claimant and not the Respondent.

18. Some or all of the allegations in the Complaint fall outside the scope of the underlying charges.

19. The allegations of the Complaint are vague and fail to identify the issues to be considered at trial.

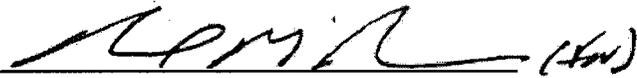
20. Any alleged protected activity by Claimant was not a motivating factor in any adverse action by Respondent.

21. The Respondent would have taken the same action even in the absence of any alleged protected activity.

22. Any alleged adverse actions were based on legitimate and non-discriminatory/non-retaliatory and non-pretextual business reasons

WHEREFORE, having fully answered the Complaint and having raised legal defenses thereto, Respondent respectfully requests that this action be dismissed with prejudice in its entirety and that judgment be entered in favor of Respondent.

DATED: July 12, 2016

By:  (Att)  
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**CERTIFICATE OF SERVICE**

I certify that on July 12, 2016, I electronically filed the foregoing document through the National Labor Relations Board E-File Documents system and that the document was served on this day by U.S. Mail upon:

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