UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

KANKAKEE COUNTY TRAINING CENTER
FOR THE DISABLED, Inc.

and

Cases 25-CA-166729
25-CA-166765
25-CA-166785
25-CA-168799
25-CA-168802

AMERICAN FEDERATION OF STATE , COUNTY
AND MUNICIPAL EMPLOYEES (AFSCME),
Council 31, AFL-CIO

**ANSWERING BRIEF OF KANKAKEE COUNTY TRAINING CENTER FOR THE DISABLED, INC. TO CHARGING PARTY'S EXCEPTIONS AND BRIEF TO THE DECISION OF ADMINISTRATIVE LAW JUDGE**

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**I. The Administrative Law Judge correctly found that the Section 8(a)(1) allegations and the Section 8(a)(1) and (3) allegations and the Section 8(a)(1) and (5) allegations should be dismissed.**

Pursuant to Section 102.46 of the NLRB Rules and Regulations, the Respondent, Kankakee County Training Center, Inc., (KCTC) files this Answering Brief to Charging Party's Brief in Support of Exceptions to the Decision of the Administrative Law Judge of September 14, 2016.

**Response to Charging Party's Argument I.**

Contrary to the Union's assertion that the Administrative Law Judge erred as a matter of law by finding that the Respondent unlawfully prohibited employees from talking about the union at work in violation of Section 8(a)(1), a review of the complaint alleges in regard to this issue "About November 13, 2015, the Respondent, by Julie Galeaz, at Respondent's Bradley, Illinois facility, prohibited employees from talking about the union during working time while permitting employees to talk about other non-work subjects"

Some of the primary allegations in the complaint itself were undercut by Brian Mazzuchi's own testimony, wherein he recognizes that generally employees are not allowed to have conversations that interfere with production work. See Mazzuchi testimony as quoted by Charging Party Counsel Tr. Page 147 "As far as I know we had that freedom as long as it didn't interfere with our production or anything we did at work at that time". Respondent respectfully submits that the complaint which alleges that he was prohibited from talking about the union while he could talk about anything else is contradicted by his own testimony. In fact, the testimony as a whole revealed that his conversations would

have been limited to work related issues. The evidence demonstrates that this is a vocational training facility for developmentally disabled individuals and that he was to be a model worker, and that conversations unrelated to work were generally limited to conversations with clients when the production line was down, or when it was very slow, and that those conversations took place generally between DSPs and clients as part of the clients' active treatment. Tr. Page 148, Line 9 through 149 Line 5. Mazzuchi recognizes that DSP's provide active treatment and that it was not his job to provide active treatment. Although Mazzuchi had been verbally counseled in the past regarding interrupting work, we suppose it is possible that he did not understand that he was not supposed to really be talking, but those conversations between clients and DSPs were active treatment. Nevertheless, the evidence demonstrated that he was interrupting work. Even he admits that he was not supposed to be doing that, presumably regardless of the nature of the conversation. Additionally, as noted, the Administrative Law Judge found Beverly Flowers testimony particularly credible. He makes no such finding for good reason which is amply supported by the record, that Mazzuchi or Williams were particularly credible. The Charging Party's counsel argues that since Galeaz did not specifically deny the allegations of Mazzuchi or Williams, those allegations must be taken as truth. On the other hand, Julie Galeaz was not specifically asked what occurred at the meeting between Mazzuchi, herself and Bev Flowers. Nor was she specifically asked what any of the parties said at those meetings. Bev Flowers on the other hand was specifically asked what was said at those meetings. Tr. 392. She essentially indicated that Mr. Mazzuchi was told that he could not have conversations that interrupted work and that he said OK and that was the end of the meeting. Further contrary to Charging Party's assertion that Mr. Mazzuchi asked who had

made the complaint, she specifically denies that he asked and indicated that since it was not a disciplinary action, but a simple counseling, that information would not have been provided during that meeting. Tr. Page 413. Counsel asks two questions in one, and Ms. Flowers answered "no" to both. This was presumably because the evidence shows that if the Respondent were going to make this part of a disciplinary action, they would have provided statements in advance, as they did in the case of Ms. Williams.

Next counsel for Charging Party indicates as significant a conversation testified to by Priscilla Williams, that allegedly occurred between Priscilla Williams and Ms. Flowers in or about May, 2015, wherein Flowers allegedly asked Williams why did she want a union. Ms. Williams also testified that others were present including Schwana Murphy and another witness Annette Roberts, both of whom presented testimony at trial, Tr. Page 162, but neither corroborated nor were they asked to corroborate by the Charging Party, Ms. Williams' testimony in this regard. Flowers was not asked regarding any such conversation by either party. That does not mean that she agrees that such a conversation took place. Additionally, if Priscilla Williams is to be believed and such a conversation did take place, several workers were discussing the union on the production work floor during work time, an action that the Charging Party alleges was not allowed.

Finally Charging Party asserts that since the Judge did not discuss a finding as to Williams' comments that Galeaz allegedly told her to "control her reps", the Administrative Law Judge's findings should for some reason be set aside. If one believes Bev Flowers account of the conversation that occurred with Ms. Williams, then no discussion about "strong-arming" or "controlling reps" ever occurred. Once again, whether the conversation occurred is a credibility issue.

Under the Charging Party's interpretation of the law, the Respondent only violates the act when employees are forbidden to discuss a union but are free to discuss other subjects unrelated to their work. If the employer's version of the facts are believed, at the time that this arose the parties agree as the employer asserts that Brian Mazzuchi was properly counseled only because he was talking when he should have been working, a proposition that even he concedes is true, then the employer did not violate because employees would not have been free to discuss other subjects unrelated to their work, particularly at that time. While they may have disputed the timing of those discussions, the testimony was that the production line was up and running and people should not have been talking about anything unless it was related to work by all accounts.

*Standard Drywall Products, Inc. V NLRB* 188 F2d 362 relied upon by General Counsel does not discuss a preponderance of all relevant evidence, it simply holds that the evidence supporting a decision is substantial when viewed in the light furnished by the record in its entirety including the body of evidence opposed to the prevailing party. Accordingly, it is not the volume of evidence, nor is it an assessment of every piece of evidence to see whether it was specifically rebutted or not which was likely the approach advanced by the non-prevailing party in *Standard Drywall.* In fact, they argued that there was not sufficient evidence on the "whole record" (probably each and every point of evidence) which is exactly what Charging Party is setting forth–that there is not sufficient evidence on every point raised and accordingly they argue, the Administrative Law Judge should be reversed. Specifically *Standard Drywall* holds that the standard is whether or not there was substantial evidence on the record by its entirety to support the conclusion. There is clearly substantial evidence in the record in its entirety to support the conclusion

of the Administrative Law Judge on this issue. If their witnesses Brian Mazzuchi and Priscilla Williams were not believed, the Charging Party clearly failed to establish a violation of any type on this issue. Simply because Julie Galeaz or Bev Flowers were not specifically asked, that does not necessarily make Brian Mazzuchi's or Priscilla Williams's testimony true.

There is substantial evidence in the record as a whole that Brian Mazzuchi was never told he could not talk about the union. There is substantial evidence in the record as a whole that Priscilla Williams was never told to keep her reps under control.

The Charging Party's incorrect reading of *Standard Drywall* undercuts the Charging Party's reliance on the case. Accordingly, the Administrative Law Judge's decision should be affirmed.

**Response to Charging Party's Argument II**

Charging Party's counsel points out that animus may be inferred from the record in whole including timing and disparate treatment of the adverse employment action. Worth noting in this regard, is that the suspension and discharge of Ms. Williams took place approximately eleven months after the election, after she had participated as a union representative, and after she had completed all of the pre-election activities. There was no clear showing that the employer had a disagreement with the representation she had provided or was adverse to her in any regard. Eleven months would have been a considerable period of time to harbor and to put into effect some sort of anti-union animus or disparate treatment aimed at a person for their union activities. Moreover, April Gaines is a union rep and on the committee, and the record demonstrates so was Margo Smith, but these individuals never alleged any disparate treatment relative to themselves, nor did

they ever allege any disparate treatment relative to Priscilla Williams per se. There was no evidence that demonstrated that the Employer had singled out Priscilla Williams or that she had been targeted by management for disparate treatment. Margo Smith indicated that if one is cussing and arguing in front of a client that would constitute grounds for immediate dismissal as a critical offense. Tr. Page 248 Lines 5-7. Priscilla Williams admits as much also in her testimony that had the behavior that was alleged against her taken place, it would have warranted her discharge. Tr. Page 194 Lines 17-23. (Ms. Williams first denied that a client was in the parking lot but later admitted the client was within eyeshot on the patio. Tr. Page 199 Lines19-23.) What better evidence is there than that, of a lack of disparate treatment as well as demonstrating that the employer would have acted the same regardless of the individual's involvement in any sort of union activity. Instead the Charging Party relies heavily on a few prior disciplinary actions.

The first disciplinary action took place more than three years prior to Ms. Williams suspension and discharge. The documents also reflect that Priscilla Williams was an eye witness to the events that occurred, and she did not corroborate Shwana Murphy's version of the facts. Not only did Williams fail to corroborate Murphy's testimony, Murphy's testimony was not consistent with the warning and written notes from interviews taken at the time of the incident. For some reason, Ms. Murphy was much more willing to come forth about her conduct and admit her wrongdoing three years after the fact than she was at the time of the occurrence.

Relative to Diamond Jordan, she was given notice of her suspension on a form disciplinary action, which Charging Party's counsel wants to assert without any evidence other than the document itself, that the suspension was intended to be the net result of

action against that employee. That document does not explain that Diamond Jordan tendered her resignation the day that she was suspended. Her resignation letter dated February 6, 2014, suggested that her last day on the job would be March 28, 2016. But the unrebutted evidence is that Diamond Jordan never returned to work after she was suspended on February 6, 2014. Julie Galeaz testified that they met on the 10th to further discuss the issue. Most importantly, the form relied upon by Charging Party does not explain that this person who was alleged to have threatened another employee, never returned to the job–just like in the case at bar. While Charging Party takes issues that Taylor Hines, was not terminated because she participated in an argument with Diamond Jordan, a fair reading of the record indicates that minor verbal disagreements alone even in the presence of a client would not be a critical offense. Moreover, Ms. Hines never threatened anyone. Additionally the evidence regarding Priscilla Williams in the parking lot incident was that it lasted somewhere between 15 and up to 30 minutes. There is no evidence that the 2014 incident was more than a brief interchange.

Relative the issue with Wayne Orwig, the Charging Party suggests disparate treatment because he was not discharged because he cussed. The evidence as a whole is that one utterance of a cuss word would not necessarily rise to the level of a critical offense that would result in immediate termination.

Relative to Christina Vargas, there is no evidence that the exchange took place in front of clients, no evidence of an extensive argument involving supervisors trying to de-escalate the situation, and no evidence that any one was threatened.

Threatening, prolonged cussing and swearing, and arguing in front of a consumer, while a supervisor was attempting to de-escalate the situation is really a substantially

different scenario. Moreover, while threatening is an independent grounds for immediate dismissal, a critical offense in some of the instances requires that employer evaluate the facts and circumstances surrounding the incidents What was the severity and duration of the occurrence, who was present, did the behavior continue in front of and despite efforts of supervisory staff to end it. All of those are valid questions that have to be determined when employer decides to determine the level of discipline that is appropriate. In summation these are simply not comparable instances of policy violations. They pale when compared to Ms. Williams' activities that led to her discharge.

Charging Party then turns to attempting to establish that the credibility finding of the Administrative Law Judge were incorrect. Counsel announces no legal standard for determining the Judge's credibility findings, but instead begins with a multi-page analysis of segments of testimony while ignoring other relevant testimony, and applying an interpretation most favorable to Priscilla Williams of that testimony in an effort to urge reversal of the Administrative Law Judge's decision. A few examples of issues the Charging Party ignores in its review, is the fact that of the three witness statements presented by Ms. Williams, none of those statements speak to the issue of whether or not Priscilla Williams threatened Antonio Viveros. It is almost unfathomable that Priscilla Williams, or representatives on her behalf would make no written denial of the charges. It is hard to believe that they would have presented three statements that do not speak to essential allegations regarding the proposed discipline, but they did, and they chose to rely upon those.

In addition, one of the individuals who originally gave a written statement, Erika Ayala, was not called as a witness by the Charging Party and her absence as a witness

was not explained by the Charging Party. Accordingly, it can only be presumed that her testimony would not have been favorable to Priscilla Williams. Moreover, they presented a witness statement of April Gaines who confirms that a client was present during this incident. The Charging Party ignores the fact that the record is clear that while Priscilla Williams and presumably her representatives knew of the existence of a number of other witnesses at the time of her pre-disciplinary hearing. Oddly, those witnesses were produced at trial on her behalf, namely Schwana Murphy, Annette Roberts, and Carolyn Lawrence. Those witnesses gave no statements at the time of the pre-disciplinary meeting even though Ms. Williams as well as her representative Margo Smith, knew and understood that a failure to rebut or refute the allegations, would result in her discharge. The Charging Party also gave no explanation at trial as to why Schwana Murphy, Annette Roberts and Carolyn Lawrence's statements were not produced at the pre-disciplinary meeting. Given those circumstances, one is hard pressed to avoid the conclusion that most likely the position of those witnesses was developed sometime after the pre-disciplinary meeting, but before the trial, causing significant questions regarding credibility of those witnesses. Charging party asserts that April Gaines testified credibly. Respondent urges the Board to review April Gaines testimony and see how it was substantially different from her original written statement, and her live testimony also changed during cross examination. The Charging Party also seizes upon the idea that in some respect all facts testified to were not included in the employer's witnesses statements. She ignores the fact that those witnesses gave sworn testimony in other administrative hearings that were consistent with the testimony given at trial. She raises no issue that the written statement of Lemoris Burtis was essentially two or three sentences, but that he gave infinitely more detailed testimony

at the hearing. Moreover the record establishes that the furthest that Gary, the client , was from the incident was about 20 feet, which is pretty close given the fact that the parties agree that voices were raised and people were yelling. It appears there is no legitimate dispute that he would have heard and been subject to what was being said and what was occurring at the time of the incident. For a more thorough discussion with cites to the transcript please see Employer's Post Hearing Brief which is incorporated by reference herein. Additionally, the testimony of the witnesses in support of Ms. Williams' position regarding the incident, including her own, often contradicted the testimony of other witnesses and failed to corroborate their testimony.

The Charging Party attempts to discredit Bev Flowers by alleging she should have attended to the needs of the client rather than intercede between Priscilla Williams and Tony Viveros. At page 28 of the Charging Party's brief, she alleges that Bev Flowers testified that Gary was right next to them in the parking lot, flinging his arms and yelling and upset, but Bev Flowers testified that: "I left the building to go out to the parking lot. I proceed out to the patio, past the patio, and as I'm coming off the patio, I have a client that is coming up off the sidewalk from the parking lot. So as I'm coming out there, he's got his arms all up in the air, and he's flinging them, and he's like you need to go handle Priscilla. She's out there yelling and cussing. You need to take care of her." Tr. 396-397. The synopsis of Charging Party does not appear to accurately reflect the testimony actually given. In addition, several witnesses state that Bev Flowers was interceding and secondly, according to Bev Flowers' testimony, the client was asking her to go do something about Priscilla, and that is exactly what she was doing, what the client requested of her. Further, Bev Flowers testified that Priscilla Williams had Tony Viveros bent over the car, and it is

presumptive to assume that Bev Flowers would not attempt to de-escalate and deal with the most immediate situation. Again demonstrating the Charging Party alleges their own version of the facts, whether reasonable or not.

Contrary to the Charging Party's assertion, the Administrative Law Judge found that the Charging Party failed to establish evidence of anti-union animus. Additionally, he also found that to the extent that the burden could be deemed to have been shifted to the employer, the employer met its burden under *NLRB v Wright Line* 662 F.2d 899, demonstrating that Ms. Williams would have been suspended and discharged for her conduct on November 13, 2015, regardless of her involvement with the Union.

A point worth touching on and rehashing however, is that the Charging Party recurrently alleges that Respondent treated Ms. Williams unfairly because she was not interviewed prior to her suspension and discharge. It is true that she was not interviewed prior to the decision to suspend her. Worth noting in this regard is that at the time the decision was made to suspend her, there were by count, five individuals, three of whom were bargaining unit employees, and two of whom were supervisors, who witnessed all or substantial portions of the event, and heard Priscilla Williams threaten Tony Viveros. Moreover, Ms. Williams was given an opportunity to present whatever evidence she deemed necessary to refute or rebut those allegations before she was sent a letter terminating her employment. Employer asserts under the circumstances it would not have been prudent to allow Ms. Williams to continue to work with the person who at the time she was alleged to have threatened.

The Administrative Law Judge concluded that there was no anti-union animus. He made his finding based upon the evidence that was introduced at the hearing. There was

substantial evidence in the record in its entirety to support the Judge's decision on this issue. He was specifically relying mostly on Williams admission about Diana Graham's position regarding the union, as well as that at best there was only one meeting where Steve Mitchell told employees he did not believe they needed a union. The Charging Party asserts that Diana Graham attempts to deny she was aware of union organizing campaign, but Diana Graham testified that she became aware when the employer received notice from the NLRB. That unfairly characterizes the testimony of Diana Graham. At Page 27, Diana Graham testified "I don't believe so" when asked about employer meetings. The Charging Party unfairly characterized the testimony of Diana Graham. In fairness there was one meeting held and her only response was that essentially she did not think one was held. She did not answer yes or no–she just giving her best recollection. Moreover, as to the point of whether or not she was there, ten union employees testified, only four were asked about the meeting and three employees testified that Diana Graham was there, and one could not recall, and the remainder were not asked. A fair reading of her testimony indicates that she was not aware of an organizing campaign, but she did become aware that an election was going to be held. In addition, the testimony of Priscilla Williams indicates that in the month before the election, she had a conversation with Diana Graham, See Tr. Page 177 that: "She (Diana Graham) said that why we feel we need a union. I told her because we want to be respected at the workplace and we wanted a voice, and she said it doesn't bother her either way it goes, if you get a union or you don't get a union."

Moreover, the Judge did not find anything particularly anti union about the meeting that was held. In light of the foregoing, the Respondent asserts that the Administrative Law

Judge's decision did not err in his factual or legal findings.

**Response to Charging Party's Argument III**

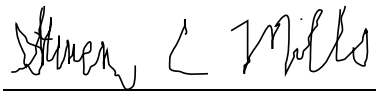
The unrebutted evidence is that Respondent had multiple servers go down which are necessary for its billing, client care and other exigent business circumstances. The Judge properly limited his finding to the occurrence alleged in the complaint. Nevertheless, given the finding of the court, one would be hard pressed to see how other instances of a similar nature would result in a different conclusion.

In light of the foregoing, the Respondent asserts that the Administrative Law Judge's decision did not err in his factual or legal findings.

## IV. Conclusion

The decision finding that the employer did not violate Section 8(a )(1), Sections 8(a)(1) and (3), and Sections (8) (a)(1) and (5) of the NLRA should stand.

Respectfully submitted,



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Certificate of Service

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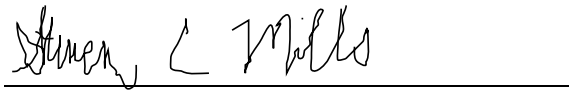

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