

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION TWENTY-FIVE

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

GENERAL COUNSEL'S REPLY BRIEF TO RESPONDENT'S  
ANSWERING BRIEF TO GENERAL COUNSEL'S EXCEPTIONS TO THE  
DECISION OF THE ADMINISTRATIVE LAW JUDGE

Respectfully submitted by:

Raifael Williams

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Comes now Counsel for the General Counsel and respectfully submits to the Board this Reply Brief to the Answering Brief to General Counsel's Exceptions to the Decision of the Administrative Law Judge filed by Kankakee County Training Center for the Disabled, Inc., hereinafter referred to as the Respondent. Counsel for the General Counsel hereby requests that Respondent's answering brief be denied and that the Administrative Law Judge's Decision in the instant cases, which issued on September 14, 2016, be affirmed except as modified by Counsel for the General Counsel's exceptions, which were filed on October 24, 2016, and Counsel for the General Counsel's answering brief to Respondent's exceptions, which was filed on November 18, 2016.

In its answering brief, the Respondent asserts that, with the exception of Employee Schwana Murphy, every witness testified that fighting, arguing, cursing, and threatening particularly done in the presence of a client would result in discharge. Even though the

Respondent asserts that, with the exception of Murphy, every witness testified that fighting, arguing, cursing, and threatening particularly done in the presence of a client would result in discharge, this assertion is not supported by the record and the Respondent has failed to identify any witness or provide specific testimony in support of its assertion.

Employee Murphy testified that, on October 19, 2012, she and Employee Kanesha Jones got into a conflict at the time clock when Jones tried to cut in front of Murphy. Murphy threatened to beat Jones' ass. Jones threatened to beat Murphy's ass. Murphy testified that there were clients and employees present at the time. Instead of being terminated, Murphy received a written warning (TR 227-229; GC Ex 8).

Record evidence also demonstrates that, on February 6, 2014, Employee Diamond Jordan received a two-day suspension because she engaged in an altercation with another Employee Taylor Hines. Specifically, Jordan told Hines that she wanted to choke Hines. Hines was given a written warning. The written warning stated that the Respondent could not tolerate any staff having words with other staff in front of consumers (GC Ex 9). Thus, it is clear that record evidence demonstrates that the Respondent has issued written warnings and suspensions to employees for using profane language, threatening other employees, and engaging in altercations in the presence of clients. However, there is no evidence demonstrating that the Respondent has ever discharged any employee for using profane language, threatening other employees, and engaging in altercations in the presence of clients other than Employee Priscilla Williams. Since there is no evidence demonstrating that the Respondent has ever discharged any employee for using profane language, threatening other employees, and engaging in altercations in the presence of clients other than Williams, the Respondent cannot sustain its burden of demonstrating that it would have suspended and discharged Williams even in the absence of her

Union and protected concerted activities. Wright Line, 251 NLRB 1083, 1089 (1980), enforced 662 F.2d 899 (CA 1981), cert. denied 455 U.S. 989 (1982). Furthermore, since there is no evidence demonstrating that the Respondent has ever discharged any employee for using profane language, threatening other employees, and engaging in altercations in the presence of clients other than Williams, one may conclude that the reasons proffered by Respondent for the suspension and discharge of Williams are pretextual. Therefore, since the Respondent's proffered reasons for the suspension and discharge of Williams are pretextual, one may also conclude that Williams was in fact suspended and discharged for engaging in Union and protected concerted activities. Southside Hospital, 344 NLRB No. 79 (2005).

In its answering brief, the Respondent asserts that, in support of his argument concerning disparate treatment, Counsel for the General Counsel incorrectly asserted that the warning issued to Employee Murphy concerning the incident with Employee Jones about October 19, 2012 indicated that Murphy had also slapped Jones' hand away when Jones attempted to clock out before her. The Respondent is correct. The written warning itself did not state such. However, a written synopsis of the incident, which was attached to the written warning, stated that Murphy had also slapped Jones' hand away when Jones attempted to clock out before her. Based upon the testimony of Murphy, it appears that Human Resources Director Julie Galeaz prepared the written synopsis of incident ( TR 231-234). Either way, it is clear that the written synopsis of the incident, which appears to be a part of the written warning, was used by the Respondent as a basis for the written warning issued to Murphy (GC Ex 8).

For the above-stated reasons, the Counsel for the General Counsel respectfully requests that the answering brief be denied and that the Administrative Law Judge's Decision in the

instant cases, which issued on September 14, 2016, be affirmed except as modified by Counsel for the General Counsel's exceptions and answering brief to Respondent's exceptions .

DATED at Indianapolis, Indiana, this 8<sup>th</sup> day of December, 2016.

Respectfully submitted,

/s/ Raifael Williams

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing GENERAL COUNSEL'S REPLY BRIEF TO RESPONDENT'S ANSWERING BRIEF TO GENERAL COUNSEL'S EXCEPTIONS TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE was filed with the Executive Secretary electronically and was electronically served upon the following persons on this 8th day of December 2016:

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