

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

KANKAKEE COUNTY TRAINING CENTER FOR
THE DISABLED, INC.,

Respondent

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

Charging Party

**REPLY BRIEF OF THE CHARGING PARTY TO RESPONDENT'S
ANSWERING BRIEF TO CHARGING PARTY'S EXCEPTIONS**

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Argument

The Employer suspended and discharged Priscilla Williams in retaliation for engaging in protected union and concerted activity in violation of Section 8(a)(3) and (1) of the Act.

The Employer asserts that “while threatening is an independent grounds [sic] for immediate dismissal, a critical offense in some of the instances requires that employer [sic] evaluate the facts and circumstances surrounding the incidents.” Employer Answering Brief to Charging Party’s Exceptions at 8. The Employer also asserts that the evidence in the record showing disparate treatment of Priscilla Williams compared to other employees “are simply not comparable instances of policy violations.” Employer Answering Brief to Charging Party’s Exceptions at 8.

The Employer incorrectly asserts that employee 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.” Employer Answering Brief to Charging Party’s Exceptions at 6, citing Tr. 248, lines 5-7. The transcript page cited shows that Smith was asked about her understanding of what might constitute a critical offense. However, she was not asked whether and did not testify that “cussing and arguing in front of a client” would constitute grounds for dismissal. Tr. 248. The Employer also incorrectly asserts that “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.” Employer Answering Brief to Charging Party’s Exceptions at 6, citing Tr. 194, lines 17-23. Priscilla Williams actually testified that: “It wasn’t no clients in the parking lot. So if a client was there, no, I wouldn’t – we wouldn’t have went that far, I think.” Tr. 194.

The Employer, in fact, presented absolutely no evidence at the hearing that, prior to the discharge of Priscilla Williams, the Employer ever discharged any employee for using profane

language, threatening other employees, or engaging in altercations with other employees in the presence of clients.

The evidence shows that the Employer has issued written warnings and short suspensions to other employees who were found to have used profane language and to have engaged in altercations, including altercations involving threats of physical harm directed at other employees, and one incident involving an employee slapping another employee, and including altercations in the presence of clients.

The Employer asserts that Schwana Murphy's discipline took place more than three years prior to Williams' suspension and discharge. Employer Answering Brief to Charging Party's Exceptions at 6. However, the Employer does not assert that its discipline policy changed during that time period. The Employer incorrectly asserts that Murphy's testimony was not consistent with the warning and associated interview notes in the Employer's records. However, Murphy testified that she and employee Kanasha Jones used profane and threatening language to each other in the presence of clients and were "in like each other face," and had to be separated by co-workers. Tr. 228. The written warning given Schwana Murphy by Julie Galeaz states the basis for the warning to be: "vile, foul language – conflict w/ co-worker which others had to come between unprofessional." GC Ex. 8; Tr. 229. According to Galeaz' notes of her interviews with employees regarding the incident, Jones, called "DeDe," in the notes, reported that: "came to clock out – clocked out – Schwana slapped her hand away She that was disrespectful – went to go outside – SM was saying I don't mess w/ kids. B get away to your car." GC Ex. 8. The Employer at the hearing offered no explanation whatsoever for the great disparity in the discipline given Schwana Murphy compared to that given Priscilla Williams.

The Employer asserts that the Employer's records with respect to employee Diamond Jordan, which show that Jordan was given only a short suspension for threatening to choke another employee (GC Ex. 9), do not necessarily establish the final result of action taken against Jordan. Employer Answering Brief to Charging Party's Exceptions at 6-7. However, while the evidence shows that Jordan subsequently resigned from employment, the Employer introduced no evidence that it took any disciplinary action against her beyond the short suspension. GC Ex. 9.

The employee involved in the altercation with Jordan, Taylor Rae Hines, was given a written warning as a result of the incident. GC Ex. 9, p. 4. The written warning notice states as the reason for the warning: "we can not tolerate any staff having words with other staff in front of consumers." GC Ex. 9, p. 4. The Employer asserts with respect to Hines that "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." Employer Answering Brief to Charging Party's Exceptions at 7.

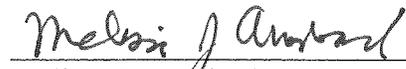
Since the Employer presented no evidence whatsoever showing that the Employer has ever discharged any employee for using profane language, threatening other employees, or engaging in altercations with other employees in the presence of clients, the Employer has not sustained its burden of showing that it would have suspended and discharged Priscilla Williams in the absence of her protected union and concerted activity. *Wright Line*, 251 NLRB 1083, 1089 (1980), *enfd.*, 662 F.2d 899 (1st Cir. 1981), *cert. denied* 455 U.S. 989 (1982). Since the Employer failed to show that it has discharged any employees other than Priscilla Williams for using profane language, threatening other employees, or engaging in altercations with other employees in the presence of clients, the evidence shows that the Employer's stated reasons for Williams' suspension and discharge are pretextual. Since the Employer's stated reasons for Williams' suspension and discharge are

pretextual, the evidence shows that Williams was in fact suspended and discharged in retaliation for engaging in protected union and concerted activity. *Camaco Lorain Mfg. Plant*, 356 NLRB 1182, 1184-5 (2011).

Conclusion

For the Foregoing reasons, and for the reasons set forth in Charging Party's Brief in Support of Exceptions, the Board should find, in addition to the violations found by the Administrative Law Judge, that the Respondent violated Section 8(a)(1) of the Act by prohibiting employees from talking about the Union during working time while permitting employees to talk about other non-work subjects; violated Section 8(a)(3) and (1) of the Act when it suspended and discharged employee Priscilla Williams in retaliation for engaging in concerted activities; and violated Section 8(a)(5) and (1) of the Act when it outsourced bargaining unit IT work without affording the Union notice and an opportunity to bargain over such conduct.

Respectfully submitted,



Melissa J. Auerbach

Attorney for the Charging Party

Dated: December 12, 2016

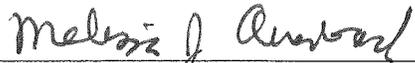
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CERTIFICATE OF SERVICE

Melissa J. Auerbach, an attorney, hereby certifies that on December 12, 2016, she caused the foregoing **Reply Brief of the Charging Party to Respondent's Answering Brief to Charging Party's Exceptions** to be filed electronically with the Office of the Executive Secretary and that on the same day she caused a copy of such document to be served electronically on the following:

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