

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
WASHINGTON, DC

UNITED STATES POSTAL SERVICE,

Respondent

and

Case 07-CA-170211

SHELLEY KAY OGLESBY

an Individual

Joseph Canfield, Esq.,
for the General Counsel.
Mark Wilson, Esq.,
for the Respondent.

DECISION

STATEMENT OF THE CASE

CHRISTINE E. DIBBLE, Administrative Law Judge. This case was tried in Grand Rapids, Michigan, on September 21, 2016.¹ The Charging Party, Shelley Kay Oglesby (Oglesby), filed the charge in Case 07-CA-170211 on February 22, 2016.² Oglesby filed an amended charge April 27. The Regional Director for Region 7 of the National Labor Relations Board (NLRB/the Board) issued a complaint and notice of hearing on May 25. Respondent filed a timely answer denying all material allegations in the complaint.

The complaint alleges that Respondent violated Section 8(a)(1) of the National Labor Relations Act (NLRA/the Act) when on about February 16, Respondent, through Annette McMillan (McMillan), at its Walker Avenue facility, threatened to discharge Oglesby because she requested union representation. The complaint also alleges Respondent violated Section 8(a)(1) and (3) of the Act when on about February 16, Respondent, through McMillan, at its

¹ General Counsel's exhibits, Respondent's exhibits, and Charging Party's exhibits are identified as "GC Exh.," "R. Exh." and "CP Exh.," respectively. Joint exhibits are identified as "Jt. Exh." The hearing transcript is identified as "Tr." The General Counsel and Respondent posthearing briefs are identified as "GC Br." and "R. Br.," respectively. The Charging Party did not introduce exhibits into the record or file a posthearing brief.

² All dates are in 2016, unless otherwise indicated.

Walker facility, issued Oglesby a critical 30-day evaluation and probationary report; and on about February 16, Respondent discharged Oglesby.

5 On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and Respondent, I make the following

FINDINGS OF FACT

A. I. Jurisdiction

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Respondent provides postal service for the United States and operates facilities nationwide, including in the State of Michigan and its facility located at 1625 Walker Avenue, in Grand Rapids, Michigan (Walker Avenue facility). Respondent admits and I find that Section 1209 of the Postal Reorganization Act, 39 U.S.C. § 101, et seq. (PRA) gives the NLRB 15 jurisdiction over Respondent in this matter.

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At all material times, Western Michigan Area Local 281, American Postal Workers Union (APWU), AFL-CIO (the Union) has been labor organizations within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

A. Overview of Respondent's Operation

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Respondent processes and delivers mail nationwide, and is organized into seven distinct regions: Northeast, Eastern, Great Lakes, Capital Metro, Southern, Western, and Pacific. Each region is divided into districts; and the districts consist of postal locations that are grouped into an installation. Installations are comprised of a number of postal facilities within a certain city. The Great Lakes region, which is involved in this case, has seven districts: Detroit, Lakeland, 30 Greater Michigan, Greater Indiana, Gateway, Central Illinois, and Chicago.³ The facility at issue is the Northwest Station Walker Avenue facility.⁴ The Walker Avenue location has approximately 70 employees. A large portion of those employees are city carrier assistants (CCA). A CCA is responsible for casing and delivering mail.⁵

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McMillan is and was at all relevant times the station manager for the Walker Avenue facility, overseeing its entire operation from retail to delivery. She is also on the work floor to coach and mentor CCAs. Part of her responsibility as a station manager includes monitoring employees' work and performing employee evaluations. Occasionally, she accompanies

³ I have taken judicial notice of Respondent's administrative structure as set forth on its website. See <http://about.usps.com>. F.R.E. 201(b); *Doron Precision Systems, Inc. v. FAAC, Inc.*, 423 F.Supp. 2d 173, 179 fn. 8 (S.D.N.Y. 2006) ("a court may take judicial notice of information publicly announced on a party's website, as long as the website's authenticity is not in dispute and it's capable of accurate and ready determination.")

⁴ The City of Grand Rapids, Michigan has seven "stations" which are under the authority of Postmaster Theresa Mullins.

⁵ "Casing" is a term unique, in this context, to the United States Postal Service. McMillan defines it as a method of preparing mail for delivery with the CCA taking mail from a bin and sorting it into cases that "have street addresses on it for the customers." (Tr. 50.)

employees on their delivery routes for a firsthand look at their performance before conducting employee reviews. In the year leading up to the hearing, she had performed approximately 30 performance evaluations on CCAs.⁶

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B. Oglesby Delivery Route on February 16, 2016

Oglesby was hired on January 16, 2016, as a CCA. As part of new employee training, Oglesby, and about 13 or 14 other new hires, attended an orientation meeting conducted by a union representative, Scott McHale (McHale), who instructed them on their employee rights. In the orientation, McHale told the trainees that if called into a meeting with management, they should request union representation and not speak or sign any documents until a union representative is present. There is no evidence that management agreed with McHale's sentiments. Approximately 2 weeks into her employment, Oglesby joined the union.

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On February 16, Oglesby was assigned to work at the Walker Avenue facility for the first time. Her route was scheduled to start at 9 a.m. but before leaving the facility she first had to case the mail on her route. Management estimated that her route would take 6-1/2 hours to complete. (R. Exh. 1.) Since February 16 was the day after a holiday, management anticipated that the routes would be heavy; and it would take all of the CCAs slightly longer to deliver their mail. Due to the postholiday mail crush and Oglesby's first day working at the facility, McMillan instructed one of the supervisors to give Oglesby assistance with casing to enable her to start her route earlier. Brittany Tran (Tran), a swing carrier, was assigned to provide Oglesby with 1.25 hours of help casing her mail.⁷

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The goal established by management was to have the delivery routes completed and the carriers back at their facility by 5 p.m. As the day progressed, it became obvious to management that Oglesby would need assistance completing her route on time. Consequently, management sent several carriers to help Oglesby deliver her route. Janet Makowsks (Makowsks) provided .56 hour of route assistance; Jim Martin (Martin) gave 1.49 hours of help; Tran provided about an hour of assistance on the route; and J. R. Sicaro was also sent to help but Oglesby's route had been completed before he arrived.⁸ Oglesby received in total over 4 hours of assistance with her route.⁹

⁶ The performance evaluations for newly hired CCAs are performed at 30-day, 60-day, and 90-day intervals. The 30-day evaluation is performed by the station manager where the CCA is assigned at their 30-day mark. Oglesby was assigned at the Walker Avenue station on her 30-day mark. Consequently, McMillan was responsible for performing Oglesby's 30-day evaluation.

⁷ McMillan defines a "swing carrier" as a carrier responsible for casing and delivering routes for regular carriers on their scheduled days off of work. A "swing carrier" is also referred to as a "T-6" employee. Swing carrier Tran covered the five regular carriers' routes as needed.

⁸ Oglesby testified that she also received help in the morning delivering her route, but McMillan noted that would have been unusual because the carrier would have had to finish his/her route before assisting Oglesby. Moreover, unlike the other carriers, there is no documentation of Oglesby receiving help in the morning with route delivery. It is possible she misunderstood the question from counsel at the hearing and was testifying about the help she received casing mail that morning from Tran.

⁹ Oglesby testified that she received only 1.45 hours of assistance with her route. I do not credit her testimony on this point. The clock rings clearly establish that she was afforded more than 3 hours of assistance. (R. Exh. 1) Moreover, McMillan provided undisputed testimony that for about an hour Tran also assisted Oglesby with delivering her route.

Sometime after 5 p.m., McMillan asked the “closing” supervisor if there were carriers still on the street delivering mail. The “closing” supervisor responded that despite receiving help from four carriers, Oglesby had not returned to the facility. McMillan called Oglesby while she was delivering her route and told her to come to her office when she returned to the facility so they could talk about the reasons for the difficulties Oglesby had delivering her mail route.¹⁰

C. February 16, Meeting Between McMillan and Oglesby

On February 16, Oglesby returned to the Walker Avenue facility; and about 5:25 or 5:30 p.m. proceeded to McMillan’s office as instructed. Oglesby and McMillan testified to different versions of the subsequent meeting.

Oglesby testified that immediately after entering McMillan’s office and closing the door, McMillan, in an angry and aggressive manner, told her it was unacceptable that Oglesby needed four employees help to finish her route. McMillan continued by stating that they were going to discuss it. Oglesby responded that if there was going to be any disciplinary action taken against her or if this was a disciplinary meeting she wanted a union representative. McMillan answered, “well, don’t you think you know everything about how things work around here, only being here for 3 weeks and asking for a union representative already.” (Tr. 22.)¹¹ Oglesby countered that it was her right to have union representation at the meeting and she was not going to say anything until it was provided. According to Oglesby, McMillan told her it was okay if she did not want to talk but she was going to listen. At this point in the conversation, Oglesby claims that McMillan called an unidentified person for her personnel file and other paperwork.¹² Oglesby also testified that when she reiterated to McMillan that she was not going to say or sign anything until she was given union representation, McMillan allegedly crossed her arms and leaned towards Oglesby to angrily respond, “. . . well, since you’re not going to say anything or sign anything and because you’re requesting union representation, I’m firing you. If you’re not going to sign it or say anything without union representation, then I want your badge.” (Tr. 23.) In response to Oglesby’s insistence that she would not speak, McMillan told her that was “fine” and she could sit and listen to what she had to tell her. Oglesby insisted that it was not until after

¹⁰ Oglesby testified that McMillan called her while she was on her route and instructed her to come to her office when she returned to Walker Avenue station. McMillan could not remember if she made the call but admitted it was not unusual for her to personally call an employee on their route if a supervisor is otherwise occupied. I do not find it necessary to reconcile the discrepancy between their testimonies on this point because it is not essential to my decision regarding the merits of the case. Nonetheless, I will credit Oglesby’s testimony on this point because McMillan could not recall whether she or a supervisor made the telephone call to Oglesby.

¹¹ McMillan testified that she was unsure whether she said to Oglesby “well, don’t you think you know everything, even though you’ve only been here 3 weeks.” (Tr. 71) However, she admitted that she might have said something along those lines. I credit Oglesby testimony on this point because, although she could not recall the exact remark, McMillan agreed she made a similar statement. *Id.*

¹² McMillan denied calling anyone to get Oglesby’s personnel file or any other paperwork pertaining to her. She noted that she did not need to research Oglesby’s personnel file or call another station for information about her. Oglesby admitted that she did not know who was on the telephone with McMillan. I credit McMillan’s testimony on this point because Oglesby admitted she did not know who was on the line with McMillan; and there is no evidence that during their meeting McMillan ever received Oglesby’s personnel file or other paperwork related to her employment. Oglesby’s testimony on this point strikes me as illogical.

McMillan terminated her that she was informed that the purpose of the meeting was to give her a performance review.¹³

5 McMillan denied that she dealt with Oglesby in an angry and aggressive manner; and testified that when she asked to meet with Oglesby at the end of her shift it was not her intent to terminate her. She noted that because of her personal experience as a “casual” (at that time the equivalent of a CCA) when she was first hired to work for Respondent, she was very sympathetic to the challenges of a newly hired CCA. She testified that the CCA position was a difficult job, and it was not uncommon for new employees to fail. As an example of the job’s challenges, McMillan noted that between February 2015 and February 2016, the Walker Avenue facility had about 25 probationary CCAs with 25-30 percent of them leaving the job because they failed to meet the standards. Consequently, McMillan is frequently on the workroom floor to coach and mentor CCAs. Moreover, she performs “follow-up” conversations with any employee who has difficulty on a route to ascertain the cause of the problem so that she can help them perform better.

According to McMillan, when she learned that Oglesby needed four employees to help her complete her route; and she was still late returning to the facility, McMillan was concerned. In an effort to ascertain and address the problem, McMillan testified that she asked Oglesby to explain why she struggled with her route that day. After hearing Oglesby’s response, it was McMillan’s intent to personally go with Oglesby or have a supervisor go with her the next day on her route to observe areas where Oglesby needed improvement. McMillan testified, “. . . I already was developing a plan in my mind based upon the information, that if she [Oglesby] would have gave me anything as far as why the day fell apart, we were going to go back out to assist her—to try to improve upon so that she could do better and be more confident.” (Tr. 75.) However, Oglesby informed her that she was not talking and asked if she was going to be disciplined. McMillan responded “no” and told her it was just a performance review to help her to understand why Oglesby had such a difficult time delivering her route. In anticipation of recording Oglesby’s response, McMillan retrieved a Form 1750¹⁴ and blank piece of paper. However, Oglesby repeated that she was not going to talk. McMillan testified that again she tried to assure Oglesby that she only wanted to understand what happened on Oglesby’s route, told her she was not going to be disciplined, and that their talk was simply a performance review. Oglesby insisted that she was not going to talk unless she received a union representative. McMillan repeated that she was not going to take disciplinary action against Oglesby and it was simply a performance review. Nonetheless, Oglesby refused to talk without a union representative. McMillan testified that since her assurances to Oglesby that she was not going to take disciplinary action against her did not convince Oglesby to explain why she had trouble delivering her route, McMillan finally responded, “. . . well there’s nothing else to talk about. You’re terminated.” She ended the interview by telling Oglesby to return her badge and she would escort her out of the building. McMillan escorted Oglesby to get her personal belongings

¹³ McMillan testified that in response to Oglesby’s question about whether she was going to be disciplined, she told her it was performance review to determine why she had difficulty delivering her route and that she would not be disciplined. I credit McMillan’s testimony on this point because, for reasons previously noted, I found her to be overall a more credible witness than Oglesby.

¹⁴ Form 1750 is used to conduct 30-, 60-, and 80-day performance reviews for probationary employees. (Tr. 63.)

and then out of the building. The meeting lasted approximately 10 minutes. Within minutes of escorting Oglesby from the building, McMillan wrote an email to Postmaster Mullins detailing her actions and the reason for Oglesby's discharge. (R. Exh. 3)

5 I credit McMillan's testimony regarding her meeting with Oglesby because she was an overall more credible witness based on her demeanor and candor. Moreover, her version of the conversation was more logical and, unlike Oglesby, had the ring of truth.

10 Their testimonies about the meeting on February 16 differ on several minor points but the most significant contradiction involves whether McMillan stated she was terminating Oglesby because she asked for a union representative. McMillan denies making the statement while Oglesby insists that she did. I credit McMillan's testimony on this point and overall. Based on her demeanor and the passion and detail that she went into in speaking about her experience as a newly hired casual, I found McMillan to be sincere when she testified about the empathy she felt
15 for newly hired CCAs; and her desire to work with them to help them succeed. Consequently, I credit her testimony that she denied being aggressive and angry with Oglesby during their meeting or raising her voice; and her insistence that she did not get upset when Oglesby asked for a union representative. Moreover, I found McMillan's candor admitting to unflattering statements attributed to her a contributing factor in my overall positive impression of her
20 truthfulness as a witness. As an example, McMillan did not deny making the comment, in response to Oglesby's demand for a union representative, that "well, don't you think you know everything about how things work around here, only being here for 3 weeks and asking for union representation already."

25 Moreover, I find it is highly improbable that McMillan, a 30-plus veteran with Respondent, who has worked with the unions and in management, would have been so reckless and foolish to have made such a clear statement ("because you're requesting union representation, I'm firing you.") that is violative of the Act. I believe McMillan when she testified that she understands and appreciates the value of working collaboratively with the union
30 because it results in a peaceful work environment with "happy" employees. She also noted that in her 20-plus years in management she has never had a charge filed against her for "disparaging remarks or engaging in discriminatory activity against employees because of their union activity." (Tr. 40.)

35 In contrast I found Oglesby to be a sullen and less than credible witness. In addition to her overall demeanor, her testimony on several key points contributed to my finding that she was not a credible witness. An example is Oglesby's unsuccessful attempt to minimize the assistance that she received from other employees in delivering her route. While the objective evidence clearly established that she received over 3 hours of assistance with her route, Oglesby insisted
40 that she got only about an hour and 45 minutes of help. She also tried to paint McMillan as an aggressive and angry manager who bluntly informed her that she was being terminated because of her protected activity. As noted previously, Oglesby testimony on this point does not ring true. According to Oglesby, McMillan first stated she was being discharged because of her refusal to provide input about her performance review. It is therefore not logical or reasonable to
45 believe that McMillan would have followed this statement up by gratuitously providing Oglesby with a clear violation of the Act by explicitly stating she was terminating her because of her

protected activity. I find there is nothing in the record to support a finding that McMillan was that stupid or incompetent to commit such a clear violation of the Act.

III. DISCUSSION AND ANALYSIS

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A. Allegation of Threat to discharge Oglesby Because of Protected Activity

Section 8(a)(1) of the National Labor Relations Act (NLRA/the Act) provides that it is an unfair labor practice for an employer to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 7 of the Act. The rights guaranteed in Section 7 include the right “to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection.” See *Brighton Retail, Inc.*, 354 NLRB 441, 441 (2009).

The General Counsel alleges that Respondent violated Section 8(a)(1) of the Act by threatening to discharge Oglesby because she requested a union representative. The counsel for the General Counsel posits that the violation occurred after the second time Oglesby informed McMillan she was not going to speak unless she had a union representative present. In his brief, the counsel for the General Counsel contends that “. . . McMillan folded her arms and leaned over her desk, and in an aggressive and angry voice said that a union representative was not available, and that this was just going to be a review, but since Oglesby was not going to say anything or sign anything, and because she was requesting union representation, she was firing her. McMillan then also said that if Oglesby was not going to say anything or sign anything without union representation, then she wanted Oglesby’s badge. At that point, the termination was not yet in effect, but McMillan’s statement did constitute a threat to terminate Oglesby because she asked for union representation.” (GC Br. 6.)

The General Counsel’s theory is based on facts that I have previously discredited. I discredited Oglesby’s testimony that McMillan was aggressive and angry with her. More importantly, I dismissed as not credible Oglesby’s testimony that McMillan stated or threatened to discharge her because she would not say or sign anything without union representation. In summation, the General Counsel’s theory is based on Oglesby’s discredited version of the conversation between her and McMillan.

Regarding the merits of the allegation that Oglesby was threatened with discharge because she requested a union representative, I find that the General Counsel has failed to prove its case. Based on my findings of fact detailed above, I did not find credible Oglesby’s testimony that McMillan told her that she was going to be terminated because she asked for a union representative. I noted that I did not find Oglesby to be as credible a witness overall as McMillan, she prevaricated on certain points, and on occasion her testimony was nonsensical.

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Accordingly, I recommend that paragraph 6 of the complaint be dismissed.

B. Oglesby Allegedly Issued an Evaluation and Discharged Because of Protected Activity

5 The General Counsel alleges that the Respondent violated Section 8(a)(1) and (3) of the
Act by issuing Oglesby a critical 30-day Evaluation and Probationary report because she
requested a union representative during her meeting with McMillan. Respondent counters that
McMillan never made the statement attributed to her by Oglesby; and the performance review
10 was conducted on Oglesby's 30th day of employment as part of Respondent's normal course of
business. Moreover, Respondent insists that McMillan conducted the performance review in an
attempt to determine the type of assistance and training Oglesby might require in the future so
that she would succeed as a CCA in Respondent's employ.

15 The Board applies the *Wright Line*¹⁵ analysis to 8(a)(3) discrimination cases and 8(a) (1)
concerted activity cases that involve disputes about an employer's motivation for taking an
adverse employment action against employees. *Hoodview Vending Co.*, supra; *Saigon Gourmet
Restaurant, Inc.*, 353 NLRB 1063, 1065 (2009). The burden is on the General Counsel to
initially establish that a substantial or motivating factor in the employer's decision to take
20 adverse employment action against an employee was the employee's union or other protected
activity. Under the *Wright Line* framework, as developed by the Board, the elements required
for the General Counsel to show that protected activity was a motivating factor in an employer's
adverse action are union or protected activity, employer's knowledge of that activity, and union
animus on the part of the employer. *Adams & Associates, Inc.*, 363 NLRB No. 193, slip op. at 6
(2016); *Libertyville Toyota*, 360 NLRB 1298, 1301 (2014); enf. 801 F.3d 767 (7th Cir. 2015).
25 Once the General Counsel has met its initial showing that the protected conduct was a motivating
or substantial reason in employer's decision to take the adverse action, the employer has the
burden of production by presenting evidence the action would have occurred even absent the
protected concerted activity. The General Counsel may offer proof that the employer's
articulated reason is false or pretextual. *Hoodview Vending Co.*, supra 359 NLRB No. 36, slip op
30 at 5. Ultimately, the General Counsel retains the ultimate burden of proving discrimination.
Wright Line, id. However, where "the evidence establishes that the reasons given for the
Respondent's action are pretextual—that is, either false or not in fact relied upon—the
Respondent fails by definition to show that it would have taken the same action for those
reasons, absent the protected conduct, and thus there is no need to perform the second part of the
35 *Wright Line* analysis." *Golden State Foods Corp.*, 340 NLRB 382, 385 (2003) (citing *Limestone
Apparel Corp.*, 255 NLRB 722 (1981), enf. 705 F.2d 799 (6th Cir. 1982)). The *Wright Line*
analysis is not applicable when there is no dispute that the employer took action against the
employee because the employee engaged in protected concerted activity. *Phoenix Transit
System*, 337 NLRB 510, 510 (2002), enf. 63 Fed.Appx. 524 (D.C. Cir. 2003).
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Based on its investigation, by letter dated May 18, Region 7 notified Oglesby that the
Weingarten portion of her charge was dismissed. Despite Region 7's dismissal of the
Weingarten allegation, counsel's for the General Counsel entire posthearing brief argued a

¹⁵251 NLRB 1083, 1089 (1980), enf. 662 F.2d 899 (1st Cir. 1981), cert denied 455 U.S. 989 (1982).

Weingarten violation.¹⁶ However, it is settled Board law that motive-based allegations are analyzed using the framework set forth in *Wright Line*. See *T.N.T. Red Star Express*, 299 NLRB 894, 895 fn. 6 (1990) (*Wright Line* analysis appropriate in complaint of discipline imposed because employee asserted *Weingarten* rights); *Wal-Mart Stores, Inc.*, 351 NLRB 130, 133 (2007) (*Wright Line* framework utilized where discharge allegedly based on employee's protected insistence on his *Weingarten* right to a witness). Under the *Wright Line* framework, in order to sustain its initial burden of proof, the General Counsel must first prove that Oglesby engaged in a protected activity which was a motivating factor in Respondent's decision to issue the 30-day critical evaluation and ultimate discharge.

I find that there is no credible evidence that McMillan told Oglesby that she was going to issue her a 30-day evaluation because she requested a union representative. I previously credited McMillan's denial that she threatened Oglesby with an adverse employment action or discharged her because she asked for union representation. Accordingly, I find that the General Counsel has failed to meet its initial burden of showing discriminatory motive.

Even assuming arguendo that the General Counsel met its initial burden, I find that Respondent established that the 30-day evaluation would have been issued to Oglesby even in the absence of the protected conduct. See *Wright Line*, supra, 251 NLRB at 1089. The evidence clearly established that pursuant to company policy, Oglesby was issued the 30-day evaluation because February 16, was the 30th day of her probationary period; and the evidence was undisputed that it was standard procedure for the manager of the facility where the employee was assigned on their 30th day of employment to issue the 30-day evaluation.

Accordingly, I find that Respondent's issuance of the 30-day evaluation and probationary report to Oglesby does not violate Section 8(a)(1) and (3) of the Act; and I recommend, therefore, that paragraph 7(a) of the complaint be dismissed.

The General Counsel also alleges that the Respondent violated Section 8(a)(1) and (3) of the Act by discharging Oglesby because she requested a union representative during a meeting

¹⁶ Based on its investigation, by letter dated May 18, 2016, Region 7 notified Oglesby that the *Weingarten* portion of her charge was dismissed. Consequently, Respondent filed a motion to strike the portions of the General Counsel's posthearing brief that allege a violation of the Act in relation to the *Weingarten* rule. In response, counsel for the General Counsel admitted that at the time he submitted his brief, he was unaware that the Region had dismissed the *Weingarten* allegation. Consequently, counsel for the General Counsel noted that he "does not object to the ALJ striking the cases supporting a *Weingarten* violation or argument that the ALJ should find the same." (GC Br. 4.) Since I have discredited the factual bases of the General Counsel's argument for finding a violation in this complaint, I deny as moot Respondent's motion to strike. Even assuming that I did not find moot Respondent's motion to strike portions of the General Counsel's posthearing brief, I would grant Respondent's motion because there is no *Weingarten* allegation before me.

with McMillan about her work performance. Respondent, however, counters that Oglesby was discharged solely because she refused to talk to McMillan about the challenges she faced in delivering her route on February 16. Respondent noted, “By blatantly refusing to talk to McMillan at all Oglesby was refusing to participate in her own training, which made any chance for improvement generally impossible, or even addressing the problems that may have occurred that day.” (R. Br. 8.)

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The General Counsel’s case primarily hinges on Oglesby’s contention that McMillan specifically said she was firing her and effectuated her discharge because she requested a union representative during her meeting with McMillan on February 16. However, I previously found that McMillan did not make the discriminatory statements attributed to her by Oglesby. The General Counsel also argues that Oglesby had a reasonable basis to believe that her meeting with McMillan would lead to her termination because McMillan admitted that in the previous calendar year she had evaluated about 25 CCAs and 25 to 30 percent of them were not successful. The General Counsel also notes that evidence showing McMillan disciplined several employees following her review on their form 1750 reinforced Oglesby’s belief that discipline would follow. Since, however, the record is devoid of evidence that Oglesby was aware of these facts at the time she met with McMillan and requested union representation, the General Counsel’s argument is unpersuasive. Moreover, the record contains no other evidence, objective or otherwise, to support a finding that Oglesby’s discharge was because McMillan harbored discriminatory animus against her.

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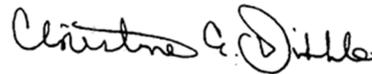
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Accordingly, I find that Oglesby’s discharge does not violate Section 8(a)(1) and (3) of the Act; and I recommend, therefore, that paragraph 7(b) of the complaint be dismissed.

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Dated: April 18, 2017



Christine E. Dibble (CED)
Administrative Law Judge

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