

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION SEVEN

BANNUM PLACE OF SAGINAW, LLC,

Case No. 07-CA-207685 et al.

Respondent,

and

Case Nos: 07-CA-207685
07-CA-211090
07-CA-215356

LOCAL 406, INTERNATIONAL
BROTHERHOOD OF TEAMSTERS (IBT),

Charging Party Local 406,

and

ERNIE AHMAD, an Individual

Charging Party Ahmad.

Clifford L. Hammond (P62164)
Foster, Swift, Collins & Smith, P.C.
Attorneys for Respondent
28411 Northwestern Highway
Suite 500
Southfield, MI 48034
(248) 539-9900
chammond@fosterswift.com

RESPONDENT BANNUM PLACE OF SAGINAW'S POST TRIAL BRIEF

TABLE OF CONTENTS

I. Introduction	2
II. Witness Credibility	2
John Rich	2
Kenneth Schramm	4
Greg Price	5
Ernie Ahmad	15
Shandra Nash	18
Marianne Novak	19
Matthew Call	19
III. Statement of Facts	21
IV. Argument	26
V. Joint Employer	38
VI. Conclusion	39

TABLES OF AUTHORITIES

Cases

<i>Bath Iron Works Corp.</i> , 302 NLRB 898 (1991)	32
Chicago Tribune Co. v. NLRB, 962 F.2d 712, 716 (7 th Cir. 1992)	26
<i>Farm Fresh Company, Target One, LLC</i> , 361 NLRB No. 83, slip op. at 14 (2014).....	36
<i>KSM Industries</i> , 336 NLRB 133, 133 (2001)	36
Loy Food, 697 F.2d at 801. [<i>Carry Cos. v. NLRB</i> , 30 F.3d 922, 926, 1994 U.S. App. LEXIS 19597, *8, (1994)].....	27
<i>McClatchy Newspapers, Inc.</i> , 339 NLRB 1214 (2003)	33
<i>Metro One Loss Prevention Services</i> , 356 NLRB No. 20, slip op. at 13-14 (2010).....	37
<i>Mondelez Global, LLC</i> , 369 NLRB No. 46 (2019).....	28
NLRB v. Advance Transp. Co., 965 F.2d 186, 191 (7th Cir. 1992)	27
NLRB v. Transportation Mgt. Corp., 462 U.S. 393, 399, 76 L. Ed. 2d 667, 103 S. Ct. 2469 (1983); <i>Missouri Portland Cement</i> , 965 F.2d at 219	27
<i>Raytheon Network Centric Systems</i> , 365 NLRB No. 161 (2017).....	32
Rhino Northwest, LLC 2019 NLRB 630 (2019)	33
<i>Stabilus, Inc.</i> , 355 NLRB 836, 850 (2010)	36, 37
<i>Station Casinos, LLC</i> , 358 NLRB 1556, 1573-1574 (2012).....	36
<i>Tschiggfrie Properties, Ltd.</i> , 368 NLRB No. 120, slip op. at 5-8 (2019).....	28, 29
<i>Westwood Health Care Center</i> , 330 NLRB 935, 939 (2000).....	37
Wright Line, a Div. of Wright Line, Inc., 251 N.I.R.B. 1083 (1980), enf ^d , 662 F.2d 899 (1 st Cir. 1981), cert. denied, 455 U.S. 989 (1982).....	27, 28, 34
<i>Yellow Ambulance Service</i> , 342 NLRB 804, 810 (2004).....	37, 38
<i>Yoshi's Japanese Restaurant & Jazz House</i> , 330 NLRB 1339, 1339 fn. 3 (2000).....	36

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION SEVEN

BANNUM PLACE OF SAGINAW, LLC,

Case No. 07-CA-207685 et al.

Respondent,

and

Case Nos: 07-CA-207685
07-CA-211090
07-CA-215356

LOCAL 406, INTERNATIONAL
BROTHERHOOD OF TEAMSTERS (IBT),

Charging Party Local 406,

and

ERNIE AHMAD, an Individual

Charging Party Ahmad.

Clifford L. Hammond (P62164)
Foster, Swift, Collins & Smith, P.C.
Attorneys for Respondent
28411 Northwestern Highway
Suite 500
Southfield, MI 48034
(248) 539-9900
chammond@fosterswift.com

RESPONDENT BANNUM PLACE OF SAGINAW'S POST TRIAL BRIEF

I. Introduction

This case involves allegations of unfair labor practices against Respondent Bannum Place of Saginaw (“Bannum”) regarding the discharge of two short-term employees, and allegations of unilateral changes to its vacation and scheduling policies, and other actions and alleged threats in retaliation for union activities or in violation of the National Labor Relations Act (“Act”). In reality, the trial hearing in this case, primarily focused on the proper discharge of two individuals that violated company policies and the complete distortion of facts by biased and/or discredited witnesses presented by the General Counsel. The evidence presented at trial makes it clear that Bannum was completely justified in terminating the Charging Parties Greg Price and Ernie Ahmad and did so with no consideration whatsoever for any alleged union activity. Further, Plaintiff’s allegations with respect to Bannum and its former Director’s actions and statements are either wholly untrue or blatant misrepresentations. Accordingly, the charges brought forth are nothing more than baseless complaints made by two disgruntled former employees and should be dismissed as meritless.

II. Witness Credibility

The Administrative Law Judge has asked the parties to first address the credibility of the witnesses in the post-hearing brief.

John Rich

Mr. Rich is the President of Bannum, Inc. [Tr. 323, ln. 21] His testimony was not impeached by any witness. He resides in Florida and none of the witnesses for the Charging

Party have ever met Mr. Rich prior to the trial. [Tr. 207, ln.12-15] In fact, the witnesses did not know Mr. Rich oversees multiple locations and one of his roles is to oversee Federal Bureau of Prison (“BOP”) requirements for personnel and staffing components of Bannum's contract with the Bureau of Prisons (“BOP”). [See: Tr. 327-329 generally] Mr. Rich explained the specific requirements of Bannum’s operations, Bannum Place of Saginaw interrelation with the BOP, Bannum Place, Inc.'s other locations as well as the strict requirements placed on Bannum by the BOP through its contract, including the Standard of Work (“SOW”) (*Id.*)

Mr. Rich testified he makes termination decisions at Bannum. [Tr. 329, ln. 19-21] This central fact was unrebutted. Specifically, he terminated Mr. Price [P. 330, ln. 18-19] and Mr. Ahmad. [Tr. 368, ln. 6-10]

No evidence was raised at hearing that any witness ever heard Mr. Rich voice anti-union animus. No evidence contradicted Mr. Rich’s position that union activities or sympathies played absolutely no role in the discipline of either Mr. Price or Mr. Ahmad. Mr. Rich testified, truthfully for two days on his role in discipline and overseeing the facilities, and actions in the discipline of the two employees. Simply put, the record shows Mr. Rich was an executive in Florida who made decisions to terminate employees in Michigan based on facts and information provided to him in the ordinary course of business. He was not on the ground in Saginaw, Michigan or involved in the union campaign. No anti-union animus was established and he dispassionately and concisely answered counsel and the ALJ’s questions and he continued to be available, despite having a medical matter of a close relative that he was unable to attend to in order to remain on the witness stand for his second day of testimony.

Specifically, Mr. Rich addressed the discipline of Mr. Price as a very straight forward case of job abandonment per the handbook and Mr. Price’s incredibly unique and unfortunate actions. [Tr. 365, ln. 4-11] and Mr. Ahmad's termination was a similarly straight forward for

decision due to absenteeism and lack of integrity for calling off twice I two weeks after being denied time off. [Tr. P. 368] He was credible and consistent in his testimony and handling of these disciplinary matters.

Kenneth Schramm

Mr. Schramm had nothing to gain in the hearing. He is no longer employed by Bannum, having left voluntarily for another position at another company, testified due to a subpoena, and was sequestered for two and a half days in the halls of the federal building before being permitted to testify at the conclusion of in-person witnesses. Mr. Schram testified he did not terminate Mr. Price or Mr. Ahmad. He testified to his statements and knowledge to the allegations to the best of his ability, three years after his involvement.

While Mr. Price described his working relationship with Mr. Schram as very good [Tr. 106], the record showed Mr. Price was far from reciprocal to Mr. Schram. Mr. Schram continually explained the false statements of Mr. Price and convincingly demonstrated he simply did not care if a union was or was not elected, [493] until he overheard Mr. Price say he did not care about the Counselor Aides. [Tr. 494] After that time, Mr. Schram indicated he was not in favor of the union efforts, but credibly testified he did not take any adverse or improper actions toward Mr. Price or any other employee based on their union sympathy or activities.

In response to allegations from Mr. Price, that Mr. Schram told Mr. Price the employees were asking for too much, Mr. Schram, testified he never said employees were asking for too much to Mr. Price. [Tr. 536] Mr. Schram explained the scheduling process, how day to day operations, time off, and vacation were handled, and addressed the allegations of unlawful actions levied against him. Mr. Schram was exceedingly more consistent throughout his testimony than the General Counsel's witnesses. Mr. Schram's consistent position that he did not

want to engage in detailed discussions on a union drive with Mr. Price, but that he did overhear some discussions in the small work space and knew Mr. Price was involved in a union campaign, are consistent and contrast to the clearly erroneous and self-serving positions of the General Counsel's witnesses.

Greg Price

Greg Price is a disgruntled former employee. He was fired, after coming to work nearly 7 hours before his scheduled shift, clocking in, immediately leaving, and then coming back 9 hours later, only to clock out in the middle of his shift, after abandoning an important procedural due process hearing he was to assist Mr. Schram with, at the Bay County Sheriff's Department regarding an inmate, on September 27, 2017. He concedes he clocked in for 9 hours on that date and did no work, abandoning his job and driving over 100 miles away. He does not have much credibility after demonstrating he will do what he wants, when he wants, and how he wants to get the results *he* believes *he* is personally entitled.

Mr. Price wanted to be the Director of Bannum, but Bannum selected Mr. Schram instead. That clearly did not sit well and is a motivating factor that undermines his credibility. On April 24, 2017 Mr. Schram was hired instead of Mr. Price. [Tr. 221, ln. 22-24; Tr. 463, ln. 10-11] Mr. Price testified, "I was over looked on the director position that Mrs. Teal and Mrs. Jones wanted me to apply for, and I sent it to Mr. Rich and they hired Schram instead of me." [Tr. 221, ln. 18-21] Since that time he maintained a clearly hostile and disrespectful pattern toward Mr. Schram and Bannum.

Less than two months after being passed over for the Director position, Mr. Price began seeking out a union. [Tr. 86-91] He tried to place Mr. Schram in a clearly awkward position by telling Mr. Schram he was going to seek a union. Mr. Schram, not wanting to violate the law or

get himself in trouble, told Mr. Price, to do what he had to do. [Tr. 89] And Mr. Schram said, he did not want to know anything about going to meetings. [Tr. 515, ln. 19-21]

Mr. Price was relentless in pursuing the issue and essentially trying to mock Mr. Schram by pushing the issue, saying at hearing that he told Mr. Schram, but also believed Mr. Schram should have told his supervisors there was a union and that he should not have been allowed to go to meetings:

...Or I wasn't running to Mrs. Teal. That was Schram's job.

He should have done that.

Q. Okay. But to your knowledge, he didn't?

A. He shouldn't have allowed me to go to the meetings on the clock. [Tr. 22, ln. 5-9]

Price was bullying Mr. Schram, trying to get a response, because he thought he would have handled the management of the facility differently. When he didn't get the response he wanted from the man who took the job he thought he should have, Mr. Price placed Mr. Schram's personal cell number on the representation petition instead of the facility's. [Tr. 112] All for the man Mr. Price said he had a great working relationship with. The facts do not provide credibility to Mr. Price's picture of what was really going on.

Price's was shown to have lied in both his affidavit to the NLRB and at hearing under oath. His affidavit and his testimony at hearing stated that he left Bannum to attend a meeting with Melanie Turner at the Teamsters' Union Hall on August 21, 2017 and that he returned back to Bannum at 4:00, where he then spoke to Mr. Schram about what happened at the union meeting. At that time on August 21st, Mr. Price alleges Mr. Schram had a long discussion with Mr. Price about another employee and even asked Mr. Price his advice on what to do with her. Price read his affidavit into the record about this meeting and discussion after he says he returned from the union meeting at 4:00 p.m. on August 21, 2017 [Tr. 224]. He also testified that when he arrived back at Bannum at 4:00 he had this discussion with Mr. Schram:

A. Mr. Schram asked me what was the conversation about. I told him wages, better lighting, cameras around the facility, cost of living, shift premiums, and we requested that we get retirement.

Q. Did Mr. Schram respond?

A. He did respond.

Q. What did he say?

A. He shook his head and said we were asking way too much, and Mr. Rich wasn't going to approve none of it. And furthermore, he responded that Mr. Rich would just shut the place down and Schram commented as he would do if he was in that position.

Q. Okay. Do you recall anything else about that conversation?

A. Mr. Schram kept me in his office and at that time, he expressed the concern of Mrs. Torres' tardiness, leaving Bannum without permission, leaving Bannum on the clock to go to Saginaw County Court to file paperwork, leaving to go get her kids from school when they were sick, and I asked him -- she's a single mother. She has nobody. What do you want her to do? And what did you do about it? Mr. Schram replied nothing. [Tr. 104-105]

The problem is that testimony in support of the allegations that Mr. Schram interrogated Mr. Price and stated futility, could not have occurred. The record shows, that Mr. Price testified he and fellow employee Melonie Turner came back from the union meeting at 4:00 p.m., but both of their time records show they actually **clocked out** and left Bannum **at 3:48** on August 21, 2017 and he and Ms. Turner did not return back until 7:43 (Price) and 7:45 (Turner). [See also Respondent 4 and 9]. It is impossible for him to both be at a meeting in another city with the union and simultaneously clock out and leave Bannum before he ever got back to the building according to his sworn testimony. But there is more. Mr. Price conceded under cross examination that he signed a log book at the facility on August 21, 2017, with his initials, stating, "3:48 Mr. Price out completing HC checks with Mrs. Turner." [See Tr. Admission, 193-194; see also Respondent 5]

This was no mistake; it was seminal and critical admission of false statements in both an affidavit and under oath at hearing. But he would not back down, even when confronted with his log book signature and the time records with his own initials he conceded were his in Respondent 5, still maintaining he went to the meeting, returned at 4:00 and spoke with Mr. Schram. But making things worse, was the fact that Mr. Schram himself was not even in the building *after 2:23 p.m. on August 21st*. He signed the log book stating “2:23PM Schram out” [Respondent 5] and Mr. Schram’s time records reflect he left at 2:23 and did not come back. [See pa. 3 of 12 of Respondent 10] This is no minor detail or slip. Mr. Price testified and signed an affidavit that August 21st was the day Schram pushed him after returning at 4:00, about what happened at the meeting, Schram then told Price it was futile to organize, and that they were asking for too much, on a day neither Mr. Price or Mr. Schram could have had any such discussion as a matter of irrefutable facts.

Further undermining Mr. Price’s credibility that Mr. Schram permitted employees to go to union meetings during the work day while being paid is there are no notes or attendance sheets of any of the meetings. Ms. Novak, the union organizer and Mr. Price even disagree when the alleged meetings occurred. Ms. Novak stated the meeting was August 1, 2017 and Mr. Price volunteered later that Ms. Novak was wrong; the meeting was on the 7th. [Tr. 99, ln. 1-6] No one will ever know who is right, because there is nothing else to prove it ever happened. Mr. Price then testified when he returned from the August 7th meeting, he did not talk to Mr. Schram because he did not see him in the small facility. [Tr. 98] However, his credibility is further undermined because time records establish that Mr. Schram was at the facility from 7:48 a.m. to 5:05 p.m. [Respondent 10] So once again Mr. Price’s credibility does not stand up to the facts on these alleged meetings on the clock and his interaction with Mr. Schram.

The issue with Mr. Price's lack of credibility doesn't stop there. Mr. Price conceded that he never asked anyone if he could punch in nearly 7 hours before his shift on September 27, 2017 or clock in. But what makes his lack of credibility more remarkable, is his unshakeable position on why he clocked in and wrote that he was going to a union meeting in the log book on September 27, 2017. It is uncontested that Mr. Schram had requested Mr. Price to attend a very important hearing in Bay County during Mr. Schram's September 27, 2017 shift. Mr. Schram testified and Mr. Price's secret September 28, 2017 audio recording of Mr. Schram, show that this was always the case and that despite Mr. Price's bizarre position that he had announced he had other important things to attend to by going to the hearing, in fact, Mr. Price expected Mr. Price to be at the hearing and had no idea Mr. Price would be going to the hearing before September 27, 2017 [GC 10], "We were going to Bay County yesterday and when you didn't come in at 12:30..." [In. 6-7]

But the testimony of all parties finally confirmed that no one told him he could clock in early and leave on September 27, 2017. Nonetheless, Mr. Price testified, "I thought that was the norm" [Tr. 129] yet, that was the opposite of the norm. Mr. Price's position is not only illogical, it runs contrary to his own testimony, that he never put that he was going to a union meeting in the log book and never punched out to go to any previous meeting. He never punched in before a shift for a union meeting, he never left work for 9 hours without performing work, and in fact, he never left a trace in any Bannum document or time recording that he was at a union meeting before September 27, 2017. So the norm according to Mr. Price's allegations prior to September 27, 2017 was NOT clocking in and letting anyone know he was going to a union meeting, not writing it in a log book, not clocking in and doing no work for an entire shift, not eating lunch with a union rep for a few hours during his shift and not clocking out and leaving in the middle of his scheduled shift.

Even more, Mr. Price has no text or emails confirming he told Mr. Schram he went to a meeting at any time prior to September 27, 2017. For these reasons, Mr. Price is not credible.

Mr. Schram on the other hand testified he simply told Mr. Price when learning that Mr. Price was interested in a union, that he should do what he had to do, but did not want to know anything about it:

JUDGE SANDRON: Well, did he mention anything about meetings? I thought you had said --

THE WITNESS: What I told had them is if, you know -- what they had to do they had to do. I didn't want to know nothing about it. So the less I knew about it the better it was for me.

BY MS. NIXON: Did Mr. Price tell you that he was going to union meetings on the -- during the day?

A. During the day, no. I didn't know he was going during the day.

Q. He never told you that he was going to union meetings during the day?

A. **I believe I just said he never told me.**

Q. Okay. [Tr. 515-516, emphasis added]

And that is borne out by the fact; there is absolutely no written record of Mr. Price going to the meetings on any of the days in question. Mr. Price clearly did not go to the meeting and speak to Mr. Schram on August 21st **AND** Mr. Price was not even working on August 31st, another date he alleged he went to a meeting. [Respondent 4, p. 5] He most likely did not go on August 7th as he testified, because Mr. Schram was at the facility after 4:00, but Mr. Price says he was not, just as Mr. Price has argued with Ms. Novak over dates.

Did Mr. Price sneak out during his lunches, as Mr. Schram indicated would have been the smart move, most likely. But no one knows when or if he went and what days. Moreover, Mr. Schram testified that he only overheard one specific conversation about going to union meetings. Mr. Schram knew that Mr. Price was involved with the union, but not that he was going to the meetings during the work day, testifying that Mr. Price did not tell him he was going to the union

meetings during the day: “Not that he was going. I know he was part of the organizing that wanted to get it in there.” [Tr. 515, ln. 6-7] Mr. Schram reiterated that he did not want to know anything about it, “so the less I knew about it the better it was for me.” [Tr. 515]

Mr. Schram is running a serious federally regulated inmate re-entry facility, which was under significant government restrictions and oversight. He was not going to the meetings, he wasn't part of the union drive, he did not negotiate for the contract with the Bureau of Prisons and the decision about wages and hours were not his. His position that he did not want to know about the details of union meetings is significantly more believable than Mr. Price's position that Mr. Schram told employees to make sure they went to random union meetings and report back to him so he can have all the information that he could do absolutely nothing with. That's not credible.

Making Mr. Price's position even more incredulous is his position as to why he clocked out in the middle of his shift on September 27, 2017 after being on the clock for 9 hours and performing no work. And make no mistake, this is an incredible position. The Representation hearing ended at 11:03 a.m. in Detroit. It was stipulated it is an hour and half from Detroit to Saginaw. Yet, rather than return to the facility and work and attend the previously scheduled hearing, Mr. Price, testified, “Sir, as I stated, I drove with Grant Hemenway, the Teamster rep. We drove and had lunch and talked and then he drove me back to Saginaw.” [Tr. 210, ln. 11-14] He also explained that he is usually scheduled 9 hours and clocked out an hour for lunch [Tr. 130] but amazingly, Plaintiff testified:

BY MS. NIXON: So why did you leave at 2:30?

A. Because Bannum was cutting down on hours and overtime, and at that time, I already had my hours for the day in.

JUDGE SANDRON: Nine hours?

A. Yes, sir.[Tr. 130, ln. 13-17]

Incredible! So according to Mr. Price, Bannum is worried about hours and overtime, so Mr. Price decided to not only clock in nearly 7 hours early, do no work, but also grab lunch for a few hours on the clock, before heading back to clock back out during the middle of his scheduled shift, while also making sure he had **an hour more of regular paid time** than usual – all because ... **Bannum was cutting down on hours and overtime.** Essentially, he was doing Bannum a favor. Simply put, Mr. Price has no credibility.

Conversely, Mr. Schram testified that he found out Mr. Price was at the hearing because he was told it was in the log book in the morning, but his shift did not start until noon and he and Mr. Price only needed to be back so they could attend the hearing by 3:00. [Tr. 521] The time punches are not available to Mr. Schram. So he reasonably assumed Price would show to work at noon. [Tr. 519-520; 524] Mr. Schram certainly can't tell Mr. Price not to go to a hearing before he was scheduled to work and he can't physically make him come to work from Detroit, as Mr. Schram is actually working in the office, attending to real work related duties.

Ms. Teel called Mr. Schram in the morning before Mr. Price was scheduled to even report and then called again to ask what happened. [Tr. 524] The secret recording Mr. Price made of Mr. Schram on September 28th confirms Mr. Schram's testimony, that Mr. Schram did not know Mr. Price was going to the hearing on September 27th, and that Ms. Teel called him twice, first from the airport and then later in the day on the 27th. In the later call, Ms. Teel called back and Mr. Schram informed Teel that Mr. Price had inexplicably showed up at 2:30 and punched out and that he didn't hear from Mr. Price all day. [General Counsel 10, p. 4, ln 6-8; 520-524]

This is consistent with Mr. Schram's testimony -- testimony of a witness who has no vested interest in the outcome of the case; that was taken 3 years after the event, and after sequestration, unlike Mr. Price who was personally vested in the case and could not provide

logical and factually consistent statements. He tried to ambush Mr. Schram with the recorded telephone call, but Mr. Schram was truthful and remains consistent. Mr. Schram's consistent testimony comes from an employee who is no longer employed by Bannum, has nothing to gain, and was secretly taped contemporaneous to the events of September 27, 2017.

The credibility gap continues, as Mr. Price testified that all of his discussions about the union with Mr. Schram were allegedly in Mr. Schram's office with no one around. [Tr. 101, ln. 4-11], except one conversation he alleges he had with Tracey Douglas and Mr. Schram on August 21st:

JUDGE SANDRON: I'll clarify my question. Were all your conversations with him about the Union in his office or not?

THE WITNESS: Yeah.

JUDGE SANDRON: They were in his office?

THE WITNESS: Yeah.

JUDGE SANDRON: All of them. Okay. So we'll assume any subsequent conversations that he relates with Schram, that they were in Mr. Schram's office.

...

JUDGE SANDRON: And maybe just one other follow-up question. In any of these conversations, was anybody else present but you and Mr. Schram, in any of those, about the Union? You know, you talked to Mr. Schram a number of times. In any of those conversations, was anybody else besides you and he present?

THE WITNESS: Yes. On the 21st --

JUDGE SANDRON: Okay.

THE WITNESS: -- August, when he hired Tracey Douglas, that was in the conference room. [Tr. 101, ln. 4-22]

Mr. Price then immediately contradicted that direct statement to the ALJ, testifying that in fact, **another employee** Melanie Turner and Ms. Douglas were **both** actually present, in a meeting in August. Stating that when Ms. Douglas was hired, for reasons unknown, Mr. Schram called Mr. Price in to a conference room to tell Mr. Price he just hired another pro-union employee that wants to become part of the union. [Tr. 104, 1-6] That sequence of events does not make sense on its face, but more importantly demonstrates again, how Mr. Price's testimony

under oath contradicts itself time and time again. Further, Ms. Douglas and Ms. Turner were never even called to verify these allegations.

Even more troubling, on the second day of his testimony, Mr. Price again changed not only the location of the alleged meetings with Mr. Schram about the union, but who was at the meetings. At the very end of his direct examination, Mr. Price contradicted his testimony to allege, that in August of 2017, he, Ms. Turner and Mr. Ahmad met in the Bannum conference room in August with Mr. Schram and talked about the union; so another location other than Mr. Schram's office, and with witnesses. In that meeting, Mr. Price testified that Mr. Schram stated he supported the union, things are going well and asked that they all just remind him of future meetings, and of course that they would all be allowed to go. Ms. Turner never testified at hearing. Mr. Ahmad was in the hearing room at trial, not sequestered like Mr. Schram at that time. But the testimony of Mr. Price showed a consistent inconsistency. Contradiction after embellishment. It is not a believable event on its face, but when viewed in light of Mr. Price's earlier position that no such meeting occurred, it completely undermined. Neither Ms. Turner nor Ms. Douglas, or anyone was called to confirm these secret meetings that did not have a stake in the outcome of the hearing.

It's hard to believe, but Mr. Price's credibility was further damaged when he testified that Mr. Schram gave him the BOP contract with Bannum and financial documents to demonstrate that Mr. Schram to demonstrate Mr. Schram was sympathetic to his cause. However, Mr. Schram who had been sequestered, testified he may have provided such documents, but that it wasn't because he supported the union or Mr. Price's efforts, instead this was information that Mr. Schram regularly and openly shared with employees, not just Mr. Price. [Tr. 505-506]

The totality of Mr. Price's testimony is that is cannot be given any weight.

Ernie Ahmad

Ernie Ahmad was a part-time employee who worked just over a year for Bannum. He was a party and not sequestered and listened to Mr. Price and Ms. Nash's testimony before testifying. Mr. Ahmad is a disgruntled former employee seeking back pay and reinstatement. He testified he is not bound by his own word, testifying adamantly under oath that when he applied to work at Bannum, he made it clear that he had another job and *could only work part-time*. But when confronted with his application (Respondent Exhibit 8), he was forced to concede that he actually stated in his application that he was available to work full-time, part-time or shift work. [Tr. 318, ln. 5-14]. Later, when pressed, Mr. Ahmad was shown that his signature on his application

Q. BY MR. HAMMOND: Look at page 5 of that document. The applicant's statement where you have your signature. Do you see that?

A. Yeah, I see that.

Q. It says, I certify that the answers given herein are true and complete to the best of my knowledge. So are you testifying that this isn't true and complete?

A. **That's what I was told to do on my application, when I got the interview and I did what I was instructed to do.**

Q. So when you're told to do something, you don't necessarily tell the truth? [Tr. 320, ln. 16- 22, emphasis added]

Mr. Ahmad not only admitted that he either falsified his application to better his chances at getting a job, or he falsified his testimony at hearing to help him strengthen his claim to a monetary award in this matter. He was also combative at hearing, demonstrating the type of repetitive defiance that led to his back to back refusal to work after being denied his request for time off that led to his discharge. Mr. Ahmad was terminated after asking for time off, and received one of three days he requested after the schedule had already been posted. Mr. Schram testified that he recommended Mr. Ahmad be terminated because of his 2 absences in 2 weeks, for a part-time employee who only works 3 days a week, after being denied his time off. Mr.

Schram testified that he questioned the veracity of this pattern of behavior. [553; 568] On the stand, Mr. Ahmad confirmed Mr. Schram's concerns and position, when Mr. Ahmad flatly refused to answer why he did not come to work the second day of his absence.

Q. Okay. So the schedule, was it posted already for those days when you put them in, when you put in for these days off, was the schedule posted already for --

A. I can't remember if it was posted already.

Q. Okay. All right. So why did you need these 3 days off?

A. Why did I need them off?

Q. Yeah. What were they requested off for?

A. To my knowledge, we don't have to --

Q. No, I'm just asking you.

A. -- give a reason.

Q. Why did you want those days off?

A. Personal.

Q. For what?

A. Personal.

Q. No given reason, just wanted some days off?

A. No, I'm not going to go into detail why I took those days off. Your Honor, that's my personal life, and I don't want to go into detail with my personal life. I put in for them, he did what he did. I do not want to go there with this. I'm not trying to be argumentative, but from what I understand, if you call in or take a day off, you don't have to explain to the Employer why you need the time off.

Q. My question still remains, and I think it's germane to the issue here.[Tr. 308, ln. 10 to 25, Tr. 309, 1-8; see also Tr. 311, ln. 2-4]

Not only did he refuse to answer a simple question, he said he simply did not care how his actions of not showing up to work twice in two weeks impacted everyone else. He was asked if he knew who had to work in his place when he called off, he said, "Again, that's not my concern. That's not my job." [Tr. 312, ln. 312] In addition, Mr. Schram testified that Mr. Ahmad initially asked for the days off to attend a conference for his day job. Then turned around when no replacement could be found for two of the three days and conveniently missed the days anyway. Questioning why he did not come to work after saying he was going to a work

conference right after being denied is logical. Mysteriously returning to work without going to the doctor and being combative is not logical or credible.

Mr. Ahmad also undermined his credibility testifying he never saw a vacation form and was never asked to fill it out before [Tr. 278], and that Mr. Schram made him fill out a vacation request, but had not made him do it before. [Tr. 304] Yet, Mr. Schram testified the form was actually at the facility when he arrived and the record shows they have been used for years [General Counsel 12] and that he did not ask Mr. Ahmad to fill out the slip, Mr. Ahmad simply brought the belated request to Mr. Schram. [Tr. 550-551] Furthermore, his testimony is contradicted by documentary evidence that these slips were routinely handed in. More importantly, the truth is you are not entitled to vacation at Bannum until after you have complete a full year and Mr. Ahmad's 1 year anniversary was October 20th. [Tr. 239, n. 13]

Mr. Ahmad testified that he had always verbally asked for time off, and just got it. He really did not care who had to work for him. That position is inconsistent with how a federally regulated federal contractor who has specific personnel requirements under a contract with the BOP, specifically stating that it important to have staffing at nights, when most inmates are back in the facility. [See Statement of Work, Respondent 3, Tr. 490-491; 496-498], Mr. Schram testified if a person asked for time off he would try to arrange a switch. [Tr. 489, 490] More importantly, Mr. Schram testified how CA's and relief CAs such as Mr. Ahmad have always had their schedules subject to change – the schedules have always *literally* said they are subject to change. [Tr. 503-504; 497, ln. 15-23; 313-314; General Counsel 12]

Further, Mr. Ahmad's testimony that he was in a meeting with Ms. Nash in Late October/early November, in which Mr. Schram stated if the Union was unionized, that the facility would shut down, is inconsistent with common sense and the facts. As testified by Mr. Schram and Mr. Rich, the facility is governed by a contract with the BOP for a period of time. The BOP awards

the contract, Bannum does not shut it down. Mr. Schram repeatedly explained that he had always let employees know that there is a contract, that it had an expiration date, but that was a fact, not that Bannum was going to not apply or that it would shut down due to some union matter. [Tr. 493; 529] However, other than Shandra Nash, no other employee who was part of the bargaining unit covered by the unit was called to corroborate this allegation. The reality is the Union won the election, had Mr. Schram been telling employees and holding meetings to state it was futile to have the union and the employer would simply not renew the contract or close the place down, it is more likely than not that this would have been shared to more than just Mr. Ahmad and Ms. Nash. Yet, where are the other witnesses? It is not credible.

Shandra Nash

Another short term, former disgruntled employee, Ms. Nash testified she quit working for Bannum in January of 2018. [Tr. 49, ln. 22] Ms. Nash was issued a discipline by Mr. Schram in November of 2017 for tardiness. [General Counsel 3] Her testimony was that Mr. Schram met with her and Mr. Ahmad and asked how they were going to vote in the election. [Tr. 53-54]. However, Mr. Ahmad did not testify to this. Ms. Nash testified that Mr. Schram said they should vote against the Union because we would close down, “they” would close or probably pull the contract and close the facility down. Again, that is inconsistent with Mr. Schram’s testimony and the fact this Bannum does not simply close it has a federally awarded contract. Interestingly, Mr. Schram left a voice mail for Ms. Nash before the election that does not say anything to support her position that Mr. Schram threatened a wage cut, that he would be tougher on them, or that wages would drop. It is a very straight forward message to invite her to a meeting about the vote. [General Counsel 8] Further, undermining her credibility is that she testified that she had to fill out a vacation slip to have time off changing the prior practice of requests only needing to be provided verbally. [Tr. 63, ln. 22] However, she later conceded that the reason why she actually

started submitting the form in writing wasn't because Mr. Schram changed any policy, she did it, "just to make sure that I had something down in writing from a previous incident that had taken place." [Tr. 64, ln. 19-22] She harbored animus toward Mr. Schram and her testimony reflected that animus. She didn't even know when she was first made aware there was a form, Tr. 65, and that she was never actually denied a time off request [Tr. 67], and that ongoing practice she was aware of was that if a person wanted time off their was a need to find a replacement to switch with their shift. [Tr. 63] She confirmed that switching positions was always necessary, but that she herself decided to change her actions, not the facility by filling out a request in writing well in advance, showing a lack of neutrality toward Bannum. [Tr. 64]

Marianne Novak

Ms. Novak had limited knowledge of the interworkings of Bannum. Her credibility was undermined by Mr. Price who stated that Ms. Novak's statement that a meeting occurred on August 1, 2018, at the Union hall with Mr. Price and other Bannum employees present, did not happen. Instead, stating that the meeting took place that day. [Tr. 99, ln. 1-6] There are no records or notes to confirm when or if any of these meetings actually occurred during the on the clock time of any Bannum, let alone if Mr. Schram specifically knew and approved.

Matthew Call

Matt Call testified via phone. He had plenty of time to prepare and had his own counsel. Yet, he had no idea when the alleged discussion he testified about with Mr. Schram occurred. [Tr. P. 585, ln. 17-20] He did not even remember if it was summer, winter or fall. [Tr. 586, ln. 16-19]. His testimony does not add up and there is no one who corroborated his position. In fact, he is at complete odds with Mr. Price's testimony.

Mr. Price testified Mr. Call was at Bannum performing an audit on September 20, 2017. [Tr. 115] During that meeting on the 20th, Mr. Price alleges he asked Mr. Schram for a copy of

the contract and Mr. Schram immediately ran to get it [Tr. 116-17] and, “he asked me how much [Mr. Price] loved [Mr. Price]” [Tr. 117, ln. 15-16] While Mr. Call testified that in the meeting before the election, Mr. Schram told him Mr. Rich would not negotiate with the union if they won an election or not, there is no allegation in the Complaint that after the election this refusal to bargain occurred. In fact, we are sitting nearly three years away and that simply did not occur. It is not a credible statement. Further, Mr. Call testified that Mr. Schram said that if the union won, Bannum was not going to bid on the upcoming contract, yet, they did and were awarded the contract.

Mr. Call is a federal contract compliance officer who testified he reviewed personnel matters and compliance issues of, “every aspect of the operation.” [Tr. 585], but he has no notes, no corroboration of an allegation that Bannum allegedly told him they were going to break federal law with regard to employees if the union won the election! It is inconceivable that the federal government has an employee whose primary duty as a compliance officer is ensuring Bannum is complying with its personnel requirements, but has no notes of Bannum ignoring a duty to bargain with a union in total disregard of the law. It is not credible.

Mr. Call further confirms he did not speak with Mr. Rich or Ms. Teel regarding these serious allegations. [Tr. 609, ln. 19-25] Mr. Call’s testimony could not possibly have occurred as he states. It is not congruent with Mr. Price’s description nor is it consistent with Mr. Schram’s denial that he ever told employees or Mr. Call that having a union would be futile. [Tr. 532-533] It is illogical that a compliance officer would do nothing in light of this allegation than listen, and take no further steps as part of his audit. He did not recall when this happened, had no contemporaneous notes of this alleged statement, and was generally an unreliable witness who’s position does not agree with either Mr. Price’s testimony or the testimony of Mr. Schram who denied making any such statements to Mr. Call.

III. Statement of Facts

a. Bannum Place of Saginaw

Bannum is a Residential Re-Entry Center for male and female offenders, located in Saginaw, MI. Bannum contracts with the Federal Bureau of Prisons (“BOP”) for the services and Bannum’s operations are governed by federal requirements and covenants placed upon it by the Federal government. Due to the security concerns related to the federal inmates housed in Bannum’s facility, the employees and/or their actions are regulated in part by the contract between Bannum and the BOP and the Statement of Work.

b. Charging Party Greg Price

Greg Price (“Price”) was a short term employee who only worked at Bannum for eight (8) months prior to abandoning his job on September 27, 2017. Price was hired as a Case Manager on or about February 1, 2017. During his few months of employment, he demonstrated difficulty performing his duties as required, despite the highly regulated and formal position in a Residential Re-entry Program for federal prisoners. Not only was

Price’s job was to interact with and assist in the re-entry program for prisoners. However, despite Bannum’s repeated attempts to instruct him to fill out paperwork and to properly monitor inmate movements, on March 19, 2017, Bannum was forced to discipline Price when it was reported and discovered that Price had unilaterally signed and authorized thirteen passes for inmates, which were not properly approved by the facility’s Director. Price’s repeated failure to follow this significant administrative function of his job reflected a failure or lack of willingness to understand the seriousness of following protocol for inmates in a highly regulated environment.

On September 27, 2017, Price was scheduled to work from 12 p.m. to 9 p.m. (Exhibit A, Hearing Transcript, p. 129). This was the standard schedule for Price throughout his employment. (Id. at p. 82). Prior to September 27, 2017, the Director had instructed Price that on September 27, 2017, Price he was required to accompany his supervisor, Mr. Schram, to a prison to first seek a waiver from a prisoner and then attend a hearing at the prison, known as a “CDC.” (Id. at p. 484-485). The hearing was related to a potential violation made by the prisoner, which could affect the prisoner’s status in the re-entry program. (Id.) Failure to secure the waiver and/or appear at the hearing could result in the charges related to the incident being dismissed. (Id. at p. 486). This would reflect a failure of meeting Bannum’s requirements to properly supervise and implement the re-entry program.

Prior to September 27, 2017 Mr. Schram notified Price that he would need to accompany him, and Price agreed. Despite the foregoing, on the date in question, Price arrived to work almost seven hours early, clocked in at 5:27 a.m., and wrote “Mr. Price clocked in Going to Union meeting vs Bannum ---Mr. Price” in the facility’s log book. Price returned to Bannum at 2:37 p.m. to clock out. He wrote “Mr. Price back from Detroit Hearing---GP” in the facility log book. Price did not Mr. Schram – again, his direct supervisor - that he would not be coming to work on September 27th, nor did he advise Mr. Schram that he would be leaving upon returning from the Detroit meeting. Instead, Mr. Schram was forced to find someone else to assist him.

Mr. Schram attempted to contact Price later on September 27th by telephone. When Price called Mr. Schram back, he informed Mr. Schram that going to the NLRB hearing in Detroit was his work schedule and he already had his 9 hours in for the day. Therefore, he had no reason or obligation to come to back to work. This was despite the fact Price had not notified anyone that he was going to the hearing, that he would not be to work that day, that he intended to be paid for going to the hearing, or that he would not assist in the hearing as Mr. Schram had previously

requested. Mr. Schram had no notice that Price was not coming to work, was not going to meet with the prisoner or attend the hearing with the prisoner, let alone that Price was going to a hearing. There was no subpoena or request made to attend the hearing. Price simply abandoned his job.

Price admitted that on September 27, 2019 he clocked in at 5:30 a.m., despite the fact he was scheduled to work from 12:00 p.m. to 9:00 p.m. (Id. at p. 129). Price drove to the union meeting and did not return to Bannum until 2:30 p.m. (Id.) Despite the fact his shift did not end until 9:00 p.m., Price walked into the building, clocked out, and left without speaking to Mr. Schram. (Id. at p. 130).

Price testified at trial that on August 21, 2017 he had a conversation with Mr. Schram following his attendance at a union meeting. (Id. at pp. 190-193). Price testified that he returned to work at 4:00 p.m. that day. Mr. Schram allegedly made threatening statements advising that Bannum Place would be forced to shut down in the event the union succeeded. (Id.) Price's testimony is in direct conflict with the Bannum logbook records, which reflects Mr. Schram left for the day on August 21, 2017 at 2:33 p.m. – one and a half hours before the purported discussion took place. (Id.)

Price admitted in his testimony that at no point prior to September 27, 2017 had he ever clocked into work prior to his scheduled shift for the purpose of going to a union meeting on the clock. (Id. at p. 206). While Price had admittedly attended union meetings while on the clock previously, he himself testified that September 27, 2017 was different in that he performed no work at all for Bannum, clocked in outside of his scheduled shift, and left without speaking to Mr. Schram. (Id. at pp. 206, 212-213). Neither Mr. Schram nor Mr. Rich had ever seen an example of an employee doing what Mr. Price did.

Mr. Price acknowledged receiving the receiving the Bannum handbook. [Tr. 157-158, 60] The handbook expressly provides at page 40, that Job Abandonment is grounds for termination. [Joint Exhibit 1]

Price was ultimately discharged by Bannum's owner, John Rich. (Id. at p 330). According to Mr. Rich, the termination had nothing to do with Price's appearance at a union meeting and everything to do with the fact he abandoned his job. (Id. at 334). This is corroborated by phone call between Mr. Schram and Price on September 28, 2017 (recorded by Price without the knowledge, much less permission of, Mr. Schram). (Id. at 478). In the call, Mr. Schram confirms that Price was terminated as a result of a decision made by "central office" and not by Mr. Schram himself. (Id.)

c. Charging Party Ahmad

Ernie Ahmad ("Ahmad") was employed as a Counselor Aide with Bannum until his termination on November 21, 2017. Generally, employees are required to request time off 30 days in advance to ensure continuity of staffing and coverage. On November 3, 2017, Ahmad requested vacation time for November 11 and 12, 2017 for a conference for his other job. [Tr. 498, ln. 5-8] Ahmad stated the reason he needed the two days off was to permit him to attend a conference for another job he worked. Although the request was not provided 30 days in advance, Bannum's Director, Kenneth Schram reviewed the request and attempted to accommodate Ahmad's belated vacation request.

Bannum is mandated to have 24/7 staff coverage under its contract with the BOP and the SOW which is thoroughly vetted by the BOP in audits. [SOW, Page 10]

Mr. Schram was able to secure coverage for Ahmad's request for time off on November 11, 2017. However, despite Mr. Schram's attempt to find another Counselor Aide to fill Ahmad's shift on November 12th, he was unable to do so. [Tr. 496]. As a result, Ahmad's request for

November 11th was approved but his request for the 12th was denied. Despite being denied vacation on November 12th, Mr. Ahmad took the day off anyway. Instead of reporting to work, Ahmad called in for his shift on the 12th, stating he was calling in sick.

In light of the fact Ahmad had been denied the vacation for the day he called off, Mr. Schram called Ahmad and requested a doctor's note for his absence on November 12th. Ahmad was upset that Mr. Schram requested the doctor's note and Mr. Schram explained that the reason he was requesting was due to the fact he was just denied the vacation day and he called in for the same day, stating he was sick and that he questioned if it was legitimate, and he would have questioned anyone who would have requested time off and was denied and they called off. [Tr. 568] This was Bannum's policy according to Mr. Rich [Tr. 406, ln. 5-13]

Separately, Ahmad had also belatedly submitted a vacation request on November 3, 2017 for November 18th. Once again, Mr. Schram attempted to find coverage to accommodate Ahmad's last minute request, as he would customarily do. Unfortunately, despite Mr. Schram's attempts, he was unable to secure coverage. Therefore, the request was denied. Mr. Schram had to cover both shifts. [Tr. 552, ln. 6-7]

Nonetheless, once again, Ahmad took his vacation day anyway. This time Ahmad called in stating he had a family emergency. As a result, Mr. Schram had to cover Ahmad's shift. This was a clear pattern of abuse of attendance by Ahmad. Instead of providing notice in sufficient time to permit Bannum the ability to accommodate and schedule around Ahmad's request, Ahmad requested time off and then even though he knew there was no coverage, he refused to come to work anyway. [Tr. 552, ln. 6-7] Ahmad was ultimately terminated by Bannum's owner John Rich. (Hearing Transcript at p. 368).

d. Non-Discharge Allegations

The Complaint alleges that Mr. Schram made several threats as outlined in Paragraph 10 of the Complaint on August 21, 2017. However, as described above, that simply did not and could not have occurred because of the schedule of the employees. Mr. Schram has denied that he ever told employees it would allow the contract with the Federal Bureau of Prisons to lapse, shut down the facility, or stop taking in resident because of the union, that it will be virtually impossible to form a union at its Saginaw facility, and that it would be futile, to select Local 406, told employees they were supposed to communicate with him and tell him what is going on regarding the union organizing campaign, and in fact it did not, he would act like a boss and strictly enforce policies s and/or rule if the union was selected, sate he would no longer assist employees with their work or allow an administrative assistant help with work, tell employees they would strictly enforce rules because they selected the union.

Moreover the record is clear that employees were not paid to go to meetings, and the Charging Party has failed to show any record that employees went to meetings while on the clock. Bannum did not change its vacation policy or its scheduling policy with respect to Mr. Ahmad, or its sick policy by requiring Mr. Ahmad to provide a doctor's slip.

IV. Argument

Union activism is a protected right, and an employer cannot discharge an employee for exercising rights guaranteed by the Act. However, union activism is not an impenetrable shield against discharge, and the Act "does not give union adherents job tenure." *Chicago Tribune Co. v. NLRB*, 962 F.2d 712, 716 (7th Cir. 1992) (quoting *NLRB v. Loy Food Stores, Inc.*, 697 F.2d

798, 801 (7th Cir. 1983)). A company is free to discharge its employees "for good, bad, or no reasons, so long as its purpose is not to interfere with union activity." *Loy Food*, 697 F.2d at 801. [*Carry Cos. v. NLRB*, 30 F.3d 922, 926, 1994 U.S. App. LEXIS 19597, *8, (1994)].

Under *Wright Line, a Div. of Wright Line, Inc.*, 251 N.L.R.B. 1083 (1980), *enf'd*, 662 F.2d 899 (1st Cir. 1981), *cert. denied*, 455 U.S. 989 (1982) the General Counsel carries the burden of showing that the Company's actions were motivated by a desire to impede protected activity. *NLRB v. Transportation Mgt. Corp.*, 462 U.S. 393, 399, 76 L. Ed. 2d 667, 103 S. Ct. 2469 (1983); *Missouri Portland Cement*, 965 F.2d at 219. To this end, the General Counsel must establish by a preponderance of evidence that: (1) the employee engaged in union or other protected activities; (2) the employer knew of the employee's involvement in protected activities; (3) the employer harbored animus towards those activities; and (4) there was a causal connection between the employer's animus and its discharge decision. *NLRB v. Advance Transp. Co.*, 965 F.2d 186, 191 (7th Cir. 1992). If the General Counsel succeeds, the burden shifts to the employer to demonstrate by a preponderance of evidence that it based its discharge decision on unprotected conduct and that it would have fired the employee anyway. *Transportation Mgt.*, 462 U.S. at 400; *Advance Transp.*, 965 F.2d at 190.

Here, the Union cannot show that there was any animus towards union activities and therefore no causal connection between any animus towards union activities and the decisions to terminate the Charging Parties. Price testified that Mr. Schram was actually in favor of the union. (*Id.* at p. 91). The only times Mr. Price could point to, in order to demonstrate that Mr. Schram had any animus towards the union was the alleged conversation on August 21, 2017 when Price returned to Bannum after his attendance at a union meeting – however, that meeting has now been thoroughly discredited as not having happened and when he apologized for placing Schram's name on the petition. After that time, Mr. Price testified Mr. Schram provided

documents to him and no negative action occurred. Price testified that he returned to work that day around 4:00 p.m. and had a conversation with Mr. Schram in which Schram made threatening comments about the union. Unfortunately for Price, this conversation never took place as evidenced by the Bannum logbook which makes it clear the Mr. Schram left for the day on August 21, 2017 at 2:30 p.m. and Mr. Price left at 3:48. Clearly Mr. Schram could not have made anti-union comments, in person at Bannum if he was not even there.

Even if Price were able to establish some union animus by Schram, his claim would still fail because Schram testified that he did not terminate or even recommend his termination. That was done by Mr. Rich. Price admitted he did not know Mr. Rich. Mr. Rich testified without rebuttal that his decision was based solely on the job abandonment he saw and the outrageous acts of Mr. Price on that day. Thankfully, there is no other example of similar conduct from any other employee. This was not a case of an employee missing work or skipping a shift with or without notice. This was a deliberate and pre-meditated effort to not just skip work, ignore his duties and get paid in an outrageous manner. Mr. Price clocked in nearly 7 hours early, skipped all of his work shift, while on the clock, missed an important hearing, played around for a few hours for lunch on the Company's dime and then had the nerve to clock out in the middle of his shift and go home. If you cannot fire an employee for this, you can't fire an employee. There is no anti-union animus. As Mr. Rich stated, it did not matter where Price went, he deliberately decided to clock in and engage in this behavior and abandon his job. There has to be a nexus between the termination and protected activity. Here there is none. Mr. Price's actions merited his termination, not going to a hearing 100 miles away.

Citing *Tschiggfrie Properties, Ltd.*, 368 NLRB No. 120, slip op. at 5-8 (2019), the Board recently confirmed in *Mondelez Global, LLC*, 369 NLRB No. 46 (2019), its position that the General Counsel "does not *invariably* sustain his burden of proof under *Wright Line* whenever,

in addition to protected activity and knowledge thereof, the record contains *any* evidence of the employer's animus or hostility toward union or other protected activity." *Id.*, slip op. at 7 (emphasis in original). "Instead, the evidence must be sufficient to establish that a causal relationship exists between the employee's protected activity and the employer's adverse action against the employee." *Id.*, slip op. at 8. In *Tschiggfrie*, the appellate court returned the decision to the Board, because the appropriate analysis requires the Board to determine if the protected conduct was a substantial or motivating factor. [*Tschiggfrie*, *Supra* at 11-12] *Even hostility toward a union* is not sufficient to prove discriminatory motivation. [*Id.*]

There can be no inference from these facts that Mr. Rich did anything other than what should be expected in response to Price's outrageous conduct. The General Counsel has to show that any animus against Mr. Price by Bannum or Mr. Rich was a "substantial or motivating factor" and there is no reasonable basis for drawing that conclusion. Mr. Price's actions were unique and clearly inappropriate. He took it upon himself to clock in for 7 hours before his shift. There is not testimony anyone ever did that. Then took his time coming in, skipped an important hearing and clocked out in the middle of his shift, demanding to be paid for a full day. That is outrageous behavior and job abandonment under the handbook.

Even if General Counsel could somehow show animus, Price would have been terminated anyway. This is a case in which an employee who was scheduled to work, was provided specific advance notice by his supervisor, of Price's need to accompany his supervisor to the important prisoner hearing at the jail during his scheduled work day on September 27, 2017. Whatever the reason or purpose behind Price's belief that he could abandon his job, he was wrong. Price failed to report to work, failed to attend the hearing, and failed to provide notice to his supervisor. He never had approval to be absent, let alone clock in and abandon his job. But that was not the end, Price then essentially showed up in the middle of the night to

punch into work before leaving for approximately 9 hours. He never came back to work, never even had the professional courtesy to notify his supervisor he could not attend the important meeting regarding a violation by a prisoner at any time.

This is a serious facility, with federal prisoners it is not a joke and it is not a place for this type of behavior. The BOP contracts with Bannum to specifically provide Case Managers. They are required, key personnel under the BOP contract and SOW and failure to provide those services is a violation of Bannum's contract to monitor and serve federal inmates. Price was in a position of authority and responsibility as a Case Managers and his unilateral action to come to work, punch in and leave for 9 hours, without notice, when he was well aware of the important hearing he was to attend was grounds for termination. No one has ever engaged in the behavior that Price engaged in on September 27th. Thankfully, there are no similar incidents remotely approaching this bizarre dereliction of duty and abandonment. If there had been, the employee would have also been deemed to have abandoned their job and dismissed.

Any employee, anywhere would be deemed to have abandoned their job under these circumstances. But here, in this BOP contracted facility, the simple fact is you cannot run a Residential Re-entry Program with employees who simply leave their job without advance notice when the facility, the BOP, and the inmates rely upon you, especially when you have already been scheduled, instructed regarding attending a specific important hearing you were to attend, do not show up.

Price knew he was scheduled and had sensitive and important work duties to perform on September 27th. He just failed to come to work and perform them. He did not notify his employer he would be absent and even took express efforts to avoid coming back to work to perform his job on September 27th. He could have come back to work hours before he quietly came back and clocked out without speaking to his supervisor. He chose not to. He could have

stayed until his scheduled work time of 9 p.m., to help the facility and Mr. Schram. He chose not to. He could have alerted the facility that they needed to have contingency plans in place because he did not intend come to work. He chose not to.

Instead, he clocked in to work in the middle of the night trying to get paid a full day for working, while doing everything in his power to avoid working. He abandoned his job and engaged in gross misconduct. You simply cannot engage in this level of bizarre behavior and job abandonment in a BOP Residential Re-entry Program and continue to work. Therefore, because of the overwhelming facts in this matter, the Charge must be dismissed.

Similarly, Charging Party Ahmad was terminated as a result of his violation of company policy and failure to report for work on multiple occasions. Ahmad was employed as Counselor Aide, which is a very important role. Bannum is a highly regulated facility housing federal inmates. There has to be a certain number of staff available to provide the services those residents need to help them integrate back into society. Ahmad's failure to respect the nature of his position, the responsibility he had to the operation was so lacking, that he repeatedly ignored the fact that Mr. Schram was trying to work with Ahmad's belated requests for time off, but informed Ahmad that he was needed at the facility to provide services to the residents. Ahmad simply did not care. He dictated when or if he would come to work without regard to the residents and operational needs. As a result of the pattern of Ahmad's actions, he was discharged.

There is simply no reasonable nexus between his alleged union activities or support of the union and discipline. This is not even a close call. Ahmad repeatedly ignored the denial of his vacation requests. Meaning there was no coverage to monitor federal prisoner and he didn't care. There is no dispute that Mr. Schram attempted to work with Ahmad, consistent with past practice to find coverage. He did not want to deny Ahmad's time off; he had no intention of

disciplining or adversely effecting Ahmad. If he had union animus, or wanted to adversely affect Ahmad, why would he search for a replacement to accommodate his request? He would have just denied the request. That is not what occurred, he tried to help, he tried to accommodate and he just couldn't on such short notice. Ahmad's position lacks a necessary logical consistency to even be taken at face value. There is no union animus or retaliation where the Director of the facility repeatedly attempts to work with Ahmad to accommodate his day job schedule.

Now on the other hand, it was Ahmad who waited until the last minute to try to get time off for his day job's conference. That was not Mr. Schram or Bannum's fault. Bannum worked to find coverage and a replacement and approved one day of vacation, where coverage could be found, but reasonably denied the other days where Bannum could not find coverage for Ahmad's scheduled shift. The idea that key employees who monitor federal prisoners can just pick and choose when they come to work due to their day job is ludicrous and not supported by any facts.

In accordance with *Raytheon Network Centric Systems*, 365 NLRB No. 161 (2017), as well as *Bath Iron Works Corp.*, 302 NLRB 898 (1991), an application of policy that is consistent with Respondent's past practice, and that any change that is minor and not material substantial or sufficiently significant does not trigger an obligation to bargain.

When Ahmad called in sick, days after being denied his vacation request for November 12th, he admitted he had no proof he was sick at that time and even admitted he did not go to the doctor or emergency room. Mr. Schram testified that he simply did not believe that Ahmad was telling the truth because he had just asked for the day off for a different reason. Mr. Rich testified, that there is a policy for bringing in a doctor's note, stating, "If they call in sick then you should have a doctor's note that shows that you were sick." [Tr. 406, ln. 406] Mr. Schram testified, that, "If anybody would request the time off, and was denied, and that day come and they called in sick, I would have questioned anybody on that." [Tr. 569, ln. 14-16] The record is

uncontested that employees who request time off are required to switch if there are needs for leave. [489, ln. 8-22] The pages 63 and 68 of the handbook expressly states that attendance is essential and may lead to discharge. In fact, a cursory review of General Counsel 3 demonstrates that employees who punch in so much as 16, 22, 38 and 40 minutes late could subject an employee to discipline, let alone an absence. [General Counsel 3] No other employee has been denied a leave and failed to come to work two times in a two week period, but discipline for poor attendance and the ability to request a doctor's note was Bannum's policy. There was no unilateral change in policy; in fact, Mr. Schram confirmed that within Bannum, his mentor in Bannum of Wilmington confirmed requesting the doctor's note as he did was appropriate.

Ahmad even failed to provide a doctor's note for that date. The bottom line is, Ahmad ignored the denial of his vacation time and failed to report to work days after telling Bannum he needed to go to a work conference for another employer and being denied. This was despite Ahmad knowing there was no coverage for his shift. General Counsel has the burden to demonstrate the changes regarding the discipline were material and substantial and they were not. (See *McClatchy Newspapers, Inc.*, 339 NLRB 1214 (2003) *Rhino Northwest, LLC* 2019 NLRB 630 (2019))

It's outrageous and it placed an unnecessary burden on the facility and the rest of the staff. But this was not even an isolated event, because Ahmad turned around and did the same thing again days later. Mr. Schram had to cover Ahmad's shift two times in two weeks, for an employee that only works 3 shifts a week, after he was denied. The handbook specifically states at page 68, unplanned absence can be disruptive to work; a poor attendance record or excessive lateness may lead to disciplinary action, up to and including termination of employment. And it did.

Even if General Counsel could establish that there was union animus, *Wright Line* requires more. There has to be some nexus and here there is no nexus. Mr. Schram tried to accommodate Mr. Ahmad's last minute request. He was able to assist with one but not the other two it was clear that the pattern of absence following the denial of his request and lack of coverage were not because Mr. Schram tried to stop Mr. Ahmad from having leave or retaliate against him. Mr. Schram did try to assist Mr. Ahmad. But he schedule was out, staffing was required, it was a third shift and it was not easy to replace. After two consecutive failures to report to work, he was recommended for discharge and Mr. Rich made the call. His decision was clearly removed from any union animus. He looked at the information and agreed a pattern had been established and terminated Ahmad's employment.

No reasonable person could expect to keep their job once they have established a pattern of such behavior. No union activities or sympathies have any relationship to Ahmad's clear and unmistakable pattern of behavior. Ahmad was terminated for his choices, nothing else.

With respect to the allegations against Mr. Schram, the issues are fairly clear. The record demonstrates Mr. Price to be wholly uncredited. His allegations against Mr. Schram show an individual who harbored ill will toward Mr. Schram and Bannum when he was "over looked" for the Director position. Mr. Price went after the union and told Mr. Schram. Mr. Schram did everything in his power to politely tell Mr. Price that he did not want to know about it and not to tell him. It was clearly Price that had the union cards prominently on his desk [Tr. 514, ln. 12-20] and was actively seeking a union.

The record evidence is clear; Mr. Schram did not support the union or pay employees to go to union meetings. He told Mr. Price to do what he had to do, but not to go to a union meeting during the work day. He understood that there was a union drive, that does not make him complicit. The August 21st allegations against Mr. Schram never happened, the alleged August

7, 2020 meeting did not happen with knowledge of Mr. Schram as evidenced by the fact that Mr. Price alleges Mr. Schram was not at the building when he returned at 4:00, but yet the record showed Schram was there. The allegation that Mr. Schram was giddy about the meetings and pressuring employees to give him information is simply illogical.

Mr. Price's position that he had repeated secret meetings with Mr. Schram, but no record exists in texts, emails, voicemails or notes, but he has had an app on his phone to record every phone call since before 2017, is illogical. The reality is the record shows that Mr. Schram knew there was a union campaign headed by Mr. Price from June of 2017 however; he did not encourage or interrogate employees. There is no credible record of that. The only corroborating testimony from an employee is a disgruntled former employee Ms. Nash, who was disciplined by Mr. Schram and later quit her job and Mr. Ahmed, a disgruntled former employee seeking money through this charge.

It is important to remember, that Mr. Ahmed and Ms. Nash's testimony are not consistent and Mr. Price's last minute statement that he had a meeting with Ms. Turner and Ms. Price where Mr. Schram told them it was ok to go to meetings on the clock. That testimony contradicted Mr. Price's original testimony to the ALJ that all of the union meetings with Mr. Price were in Mr. Schram's office alone, except one, and that *was not* with Mr. Ahmed or Ms. Turner.

The allegations that Mr. Schram threatened to close the facility, that bargaining was futile, and Bannum would not renew the contract if the union were voted in are simply not based on reality or the facts. Bannum did seek and was awarded the extended contract. The idea that employees would be told that the contract was ending is a fact that was a pretty harrowing indeed, because the BOP makes the decision to grant an extension. This is not a debatable issue. Mr. Schram's position that he did not threaten any employee with any of these allegations is

consistent with the fact that the contract was extended and after the vote, no charges of failure to bargain have ever been filed by the Union.

The allegations of futility go to the same issue. In general, the test for evaluating whether an employer's conduct or statements violate Section 8(a)(1) of the Act is whether the statements or conduct have a reasonable tendency to interfere with, restrain, or coerce protected activities. *Station Casinos, LLC*, 358 NLRB 1556, 1573-1574 (2012); *Yoshi's Japanese Restaurant & Jazz House*, 330 NLRB 1339, 1339 fn. 3 (2000); *Farm Fresh Company, Target One, LLC*, 361 NLRB No. 83, slip op. at 14 (2014). Apart from a few narrow exceptions, an employer's subjective motivation for its conduct or statements is irrelevant to the question of whether those actions violate Section 8(a)(1) of the Act. See *Station Casinos, LLC*, supra. The Board considers the totality of the circumstances in assessing the reasonable tendency of an ambiguous statement or a veiled threat to coerce. *KSM Industries*, 336 NLRB 133, 133 (2001). Bannum is a company with a contract. If you look at the allegations by Ms. Nash, Mr. Ahmad and Mr. Price do not rise to the level of a veiled or actual threat under the totality of the circumstances. The Union won the election, the contract was renewed as a result of Bannum applying to renew with the BOP and there have been no charges of either failure to bargain or reduction in wages. The allegations are inconsistent with the facts.

The Allegations of interrogation cannot be sustained as a matter of law and fact. To establish unlawful interrogation, the ALJ must be decided on a case-by-case basis whether Mr. Schram's questioning of employees, under all the circumstances, would reasonably tend to interfere with, restrain, or coerce employees in the exercise of their statutory rights. *Stabilus, Inc.*, 355 NLRB 836, 850 (2010). To make that assessment, the Board considers such factors as whether proper assurances were given concerning the questioning, the background and timing of the interrogation, the nature of the information sought, the identity of the questioner, the place and

method of the interrogation, and the truthfulness of the reply. *Metro One Loss Prevention Services*, 356 NLRB No. 20, slip op. at 13-14 (2010); *Stabilus, Inc.*, 355 NLRB at 850; *Westwood Health Care Center*, 330 NLRB 935, 939 (2000). Under this test, either the words themselves, or the context within which they are used, must suggest an element of interference or coercion. *Stabilus, Inc., supra at 850.*

Accordingly, it is clear that if Mr. Price's position were taken in a light most favorable, then at no time did Mr. Schram engage in interference. There is no credible testimony that even if it was assumed to be true that Mr. Schram's statements and conduct led to interference or coercion of any employee. Price's testimony clearly demonstrates that if it were true his comments had no impact on the union campaign. The Board recognizes the venerable legal maxim that, *de minimus non curat lex*. *Yellow Ambulance Service*, 342 NLRB 804, 810 (2004) (even assuming unlawful motivation, "a Board remedy for de minimus misconduct is unwarranted" *Yellow Ambulance Service*, 342 NLRB 804, 810 (2004)). Ms. Nash and Mr. Ahmed's testimony contradict each other of their limited discussions and the voice message with Ms. Nash in the record demonstrates there was coercive interference. Mr. Schram did not engage in surveillance or coercive activities.

As far as the allegations that Mr. Schram would change their terms and conditions of employment, assist them with their work, and follow the rules more strictly, the record does not support these allegations. Mr. Schram denies them other than conceding he stated he could not perform union work. That is not a threat or change, it is a fact, if a duty is union only, then a supervisor cannot begin performing that work absent negotiation with the union. While Respondent denies the allegations, even true, Mr. Price testified that he specifically told Mr. Schram he needed to refrain from doing employee's jobs and picking up shifts, to avoid a

grievance. [Tr. 108] Even to the extent that Charging Party supports its allegation, any such statement under the circumstances were *de minimis*. *Yellow Ambulance Service*, Supra.

No other allegations against Mr. Schram or Bannum rise to the level of an unfair labor practice nor are their sufficient factual and legal grounds to support the allegations and as a result, the General Counsel has failed to meet its burden. The *de minimis* doctrine of *Yellow Ambulance* is appropriately applied to all of the allegations alleged in this case. The limited conversations alleged regarding the union did not interfere with the union winning the election, no changes in pay were enacted, the contract continued, and the handbook continues to be in full force and effect.

V. Joint Employer

Bannum renews its position that the case must be dismissed as it is a joint employer with the BOP. Bannum relies on its position in its Motion to Dismiss, but further supplements its position with testimony of Mr. Call. Mr. Call is a representative of the BOP and testified in this hearing that he reviews personnel matters and compliance issues of, “every aspect of the [Bannum's] operation.” [Tr. 585] This underscores the fact that the BOP is not some arms length contracting agency, they literally concede that they are responsible for all facets of Bannum's operations. This is not Bannum's position it is the BOP's position that they draft the SOW, they award the contract and detail exactly what the schedules, staffing, pay, benefits and other terms and conditions of Bannum's employees are and then jointly oversee all *facets* of personnel matters. There is not further doubt that the BOP is a joint employer with Bannum and as a result, as discussed in Bannum's motion, the case must be dismissed for lack of jurisdiction.

VI. Conclusion

The charges brought forth have no merit. Both Price and Ahmad committed serious violations of company policy for which they were terminated, as would any other employee who committed similar conduct. Simply put, the Charging Parties cannot, and did not, meet their burden and prove a connection between purported union animus on the part of Bannum and their terminations from employment. Bannum respectfully requests this Honorable Court dismiss all charges filed against it.

Respectfully submitted,
FOSTER SWIFT COLLINS & SMITH PC

By: /s/ Clifford L. Hammond
Clifford L. Hammond (P62164)
Foster, Swift, Collins & Smith, P.C.
Attorneys for Respondent
28411 Northwestern Hwy., Ste. 500
(248) 538-6324
chammond@fosterswift.com

DATED: May 13, 2020

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION SEVEN

BANNUM PLACE OF SAGINAW, LLC,

Case No. 07-CA-207685 et al.

Respondent,

and

CERTIFICATE OF SERVICE

LOCAL 406, INTERNATIONAL
BROTHERHOOD OF TEAMSTERS (IBT)

Charging Party Local 406,

and

ERNIE AHMAD, an Individual

Charging Party Ahmad.

Clifford L. Hammond (P62164)
Foster, Swift, Collins & Smith, P.C.
Attorneys for Respondent
28411 Northwestern Highway
Suite 500
Southfield, MI 48034
(248) 539-9900
chammond@fosterswift.com

CERTIFICATE OF SERVICE

I hereby certify that, on May 13, 2020, I electronically filed the foregoing Respondent Bannum Place of Saginaw's Post Trial Brief using the NLRB's Electronic filing system, and provided email service on Respondents IBT Local 406 and Ernie Ahmad as follows:

Donna.Nixon@nlrb.gov
mfayette@psfklaw.com
eahmad4318@gmail.com

By: /s/ Gayle Rossi

DATED: May 13, 2020