

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

PENNSYLVANIA SOCIAL SERVICES UNION :
LOCAL 668 :
SERVICE EMPLOYEES INTERNATIONAL UNION :
 :
v. : CASE NO. PERA-C-11-392-E
 :
COMMONWEALTH OF PENNSYLVANIA :
DEPARTMENT OF LABOR AND INDUSTRY :
CHESTER CAREER LINK :

PROPOSED DECISION AND ORDER

On November 7, 2011, the Pennsylvania Social Services Union, Local 668 (Union) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) alleging that the Commonwealth of Pennsylvania, Department of Labor and Industry (Commonwealth) violated Section 1201(a)(1) and (3) of the Public Employee Relations Act (PERA). The Union specifically alleged that the Commonwealth discriminatorily retaliated against Donald Finch, the chief shop steward, for engaging in protected Union business, when it issued two three-day suspensions to him, dated October 6, 2011.

On November 22, 2011, the Secretary of the Board issued a complaint and notice of hearing directing that a hearing be held on May 21, 2012, in Harrisburg. During the hearing on that day, both parties in interest were afforded a full and fair opportunity to present evidence and cross-examine witnesses. Both parties timely filed post-hearing briefs.

The examiner, based upon all matters of record, makes the following findings of fact.

FINDINGS OF FACT

1. The Commonwealth is a public employer within the meaning of Section 301(1) of PERA. (N.T. 7).

2. The Union is an employe organization within the meaning of Section 301(3) of PERA. (N.T. 7).

3. The Delaware County Career Link in Chester City (Career Link) is a one-stop center bringing together job seekers and employers for the mutual benefit of both. There are eight onsite partners at the Career Link, who are not Commonwealth employes. (N.T. 63).

4. Donald Finch worked for the Commonwealth at the Career Link from 2006 to 2012. His work day started at 8:00 a.m. (N.T. 15, 44).

5. Marie Direso is a Career Link Specialist who links people looking for work with employers looking for workers. She was a coworker of Mr. Finch's. (N.T. 42-43).

6. Beverly Gaines was a Career Link Specialist, who was a coworker of Mr. Finch's in August 2011. (N.T. 52-53).

7. Sarah Twomey was a coworker of Mr. Finch's at the Career Link. She is not a Commonwealth employe; The Commonwealth contracts for her services through Pathways PA, a nonprofit. (N.T. 58-59, 63-64).

8. Margaret Mirarchi is the Site Administrator for the Career Link. Ms. Mirarchi is responsible for the overall operation of the Career Link, and she is two levels above Mr. Finch. (N.T. 63-65).

9. John Brunken was Mr. Finch's supervisor at the Career Link during August 2011. (N.T. 79-81).

10. On July 20, 2011, Ms. Mirarchi observed that Mr. Finch arrived eight-to-ten minutes late for work. She asked Mr. Finch how he wanted to charge his late time. Mr. Finch replied that he was actually on Commonwealth time because he was approached by customers outside. She again asked him how he was charging his late time. Mr. Finch refused to charge his time and claimed that he was not late. Customers and staff heard Mr. Finch become loud. (N.T. 17-19, 65-66).

11. On August 10, 2011, Ms. Twomey was helping a veteran apply for a job on the website on a computer terminal next to Mr. Finch, who was also working with a client. Mr. Finch approached Ms. Twomey and asked her what she was doing. Ms. Twomey responded that she was helping someone apply for work on the Career Link website. Mr. Finch asked: "what job?" Ms. Twomey responded: "the job that I posted," to which Mr. Finch repeated: "what job?" At this point, Ms. Twomey responded: "an aircraft refueler." Mr. Finch then told Ms. Twomey that she had to give him a direct answer when he asks her a question. He further stated: "You're taking work away from the rank and file." At this point, Ms. Twomey asked Ms. Direso to get Mr. Brunken. Ms. Twomey was visibly upset. Ms. Twomey felt belittled and intimidated. (N.T. 47-48, 59-61, 66).

12. On August 11, 2011, Jill Seaton asked Ms. Gaines whether she wrote a statement about sending complaints to a senator's office. Ms. Mirarchi had informed Ms. Seaton that she received three written statements about complaining to the senator's office. Mr. Finch entered Ms. Gaines's cubicle in a loud manner stating: "she didn't say yes or no!" Ms. Gaines felt under attack and reported the incident to Site Administrator Mirarchi. Ms. Gaines stated: "I will not be attacked at work!" (N.T. 54-57, 60-61, 66).

13. On August 11, 2011, Ms. Mirarchi participated in a fact finding to ascertain whether Ms. Seaton failed to follow a Career Link policy requiring employes to bring customer complaints to management and not report them to elected officials. Mr. Finch was present at the fact finding on behalf of Ms. Seaton as the shop steward. (N.T. 66-67).

14. At the fact finding, Ms. Mirarchi let Ms. Seaton know that she had a written statement that was contrary to what she was saying and asked her if she wanted to change her response. Mr. Finch then asked who wrote the statements. Ms. Mirarchi refused to provide the names of witnesses who provided statements. (N.T. 67-68).

15. Mr. Finch was also scheduled to be the subject of a fact finding on August 11, 2011, but that fact finding did not occur because Mr. Young, the Union business agent, was unavailable for the meeting. (N.T. 68).

16. At some time prior to August 15, 2011, the Union filed a sexual harassment grievance on behalf of a coworker. When asked if he filed the grievance as the shop steward, Mr. Finch emphasized that it was filed by the Union. (N.T. 22).

17. At 8:30 a.m. on August 15, 2011, Mr. Finch approached Ms. Direso and asked her if she submitted any written statements about him regarding his alleged telling a client to contact his state representative, which was against Career Link rules. Mr. Finch told Ms. Direso that someone saw her writing a statement to which she responded that she did not want to be involved. She then twice asked: "what are you going to do about it?" Mr. Finch did not respond to the first question, but in response to the second question he stated: "whatever is legal." (N.T. 45, 50, 53-54, 68-69, 81-82).

18. Mr. Finch walked away when Mr. Brunken and Ms. Mirarchi approached. Ms. Direso began to cry and walked away from her desk. She sobbed in a conference room for at least twenty minutes. (N.T. 45-46, 49, 68-69).

19. After leaving Ms. Direso's cubicle, Mr. Finch approached the front desk greeter, Lashonda McDaniel. Ms. McDaniel is a partner employe who works for the EARN Program, which is a training program sponsored by the Department of Public Welfare. Mr.

Brunken followed Mr. Finch to the front desk. Mr. Finch said to Brunken: "You don't need to follow me ... this is none of your business." Mr. Finch then asked Ms. McDaniel if she submitted a statement regarding Mr. Finch, and Mr. Brunken ordered Mr. Finch to return to his work station. (N.T. 72-73, 82-83).

20. After the August 11, 2011, incident with Ms. Gaines and the August 15, 2011, incident with Ms. Direso, Ms. Mirarchi filed a workplace violence report, with attached statements, and sent it to labor relations. On August 15, 2011, at the direction of labor relations, Mr. Brunken issued a verbal and written cease-and-desist order directing Mr. Finch to stop confronting coworkers. (N.T. 69-71, 83-84; Union Exhibit 2).

21. After the cease-and-desist order, Ms. McDaniel informed Ms. Mirarchi and Mr. Brunken that she was approached by Mr. Finch again regarding a witness statement about him. (N.T. 84).

22. Mr. Finch did not at anytime request time off to conduct Union business. Article 40 of the collective bargaining agreement provides, in relevant part, as follows:

Union representatives shall be permitted to investigate and discuss grievances during working hours on the Employer's premises if notification is given to the human resource officer or designated representative. If the Union representative is an employee of the Employer, he/she shall request from his/her supervisor reasonable time off from his/her regular duties to process such grievances. The Employer will provide a reasonable number of employees with time off, if required, to attend negotiating meetings.

(N.T. 85; Commonwealth Exhibit 1).

23. On August 30, 2011, Ms. Mirarchi participated in a fact finding involving Mr. Finch, during which eight issues were addressed. After the fact finding, Mr. Finch was disciplined for the incidents of July 20, 2011, August 10, 2011 and August 15, 2011. (N.T. 71-72).

24. On September 23, 2011, Ms. Mirarchi participated in a fact finding involving Mr. Finch for his failure to follow a direct order, i.e., Mr. Brunken's cease-and-desist order. (N.T. 72-73).

25. Neither Ms. Mirarchi nor Mr. Brunken determined or recommended the level of discipline. (N.T. 72, 85, 90-95).

26. On December 1, 2009, the Department issued a suspension notice to Mr. Finch informing him of a one-day suspension. The reasons for the suspension were provided, in relevant part, as follows:

Specifically, your comments in a September 24, 2009 email to your supervisor criticized decisions he has made and his management style. In addition, your conduct on September 25, 2009 during a counseling session with your supervisor and manager was also improper. During the meeting which was scheduled to convey expectations regarding your work performance, you responded by raising your voice, making inappropriate comments regarding the abilities of your superiors, and you waved your pen in your manager's face. It is appropriate to receive guidance from superiors, and to allege in response that the actions constitute harassment is misguided. Your attitude demonstrates a disregard for instruction from your supervisor and manager.

... Further, during the fact-finding meeting [of October 7, 2009] you continued to behave in a disrespectful and inappropriate manner when you alleged that race or gender is the basis for instruction you are given rather than operational reasons.

Responding to your superiors' communication and direction in this manner is both improper and unprofessional. You engaged in this behavior despite receiving a written reprimand on December 20, 2007 for inappropriate conduct with a client as well as a written reprimand on January 8, 2008 for falsification of information in the CWDS system.

(Commonwealth Exhibit 3).

27. On January 26, 2010, the Department of Labor and Industry (Department) issued a suspension notice to Mr. Finch informing him that he was suspended for one day from the Career Link. The reason provided in the suspension letter was as follows:

Specifically, you did not advise your supervisor of your whereabouts when you were away from your workstation for nearly an hour on October 30, 2009. This occurred after you were specifically made aware of the expectation to inform your supervisor when it is necessary to leave the premises, as documented by the PA Career Link Delaware County at Chester City Policies and Procedures, which you signed in acknowledgment on October 27, 2009, just three days prior to this incident.

In addition, your conduct on December 1, 2009, during a fact-finding meeting with your supervisor and two managers was improper When asked questions about your failure to follow policies, you responded in a challenging tone and avoided answering some questions directly. Your words and actions were disrespectful and demonstrate a disregard for you supervisor and manager, as well as policies which apply to all employes, including you

Your disciplinary history includes a 1-day suspension on December 1, 2009 for inappropriate conduct when you criticized your supervisor and treated your superiors in a disrespectful manner. You have also received a written reprimand on December 20, 2007 for inappropriate conduct with a client as well as a written reprimand on January 8, 2008 for falsification of information in the CWDS system. The Department cannot and will not tolerate continued misconduct. Future violations of a same or similar nature may result in further disciplinary action, up to and including termination.

(Commonwealth Exhibit 2).

28. On October 6, 2011, the Department issued two separate disciplinary letters to Mr. Finch. In the first letter, the Department suspended Mr. Finch for three days from October 12, 2011 through and including October 14, 2011. The reason for the suspension was provided, in relevant part, as follows:

Specifically, on July 20, 2011, you behaved in a disrespectful manner towards the Site Administrator when she approached you regarding your tardiness. You responded by raising your voice and challenging her authority in the presence of co-workers and clients. Additionally, on August 10, 2011, you behaved inappropriately towards a co-worker when you questioned her actions in a demeaning manner while she worked with a client. Finally, on August 11, 2011, and on August 15, 2011, you acted inappropriately when you attempted to intimidate co-workers when you believed witness statements were provided regarding a situation in which you were involved.

During a fact-finding meeting on August 30, 2011, you did not take responsibility for your actions and responded in a confrontational manner. Failure to conduct yourself appropriately when communicating

with management, your peers, and in the presence of our clients is both improper and unprofessional.

You continue to illustrate inappropriate conduct in the workplace despite receiving previous discipline for similar infractions, including a one (1) day suspension on January 26, 2010, a one (1) day suspension on December 1, 2009, and a written reprimand on December 20, 2007.

(Union Exhibit 1).

29. The second letter dated October 6, 2011, informed Mr. Finch that he was suspended for another three days from October 18, 2011 through and including October 20, 2011. The reason for the second three-day suspension was provided, in relevant part, as follows:

Specifically, on August 31, 2011, you approached a co-worker and behaved in such a manner as to intimidate her. You behaved in this manner despite being given a direct order on August 15, 2011, to cease and desist from such actions. This is the third incident in which your actions intimidated a witness; on August 11, 2011 and on August 15, 2011, you acted inappropriately when you intimidated co-workers regarding their witness statements. You were recently issued a three (3) day suspension on October 6, 2011, for similar misconduct.

During a fact-finding meeting on September 23, 2011, you did not take responsibility for your actions. Failure to conduct yourself appropriately when communicating with management, your peers, and in the presence of our clients is both improper and unprofessional. You continue to illustrate inappropriate conduct in the workplace despite receiving previous discipline for similar infractions.

(Union Exhibit 2).

30. Cara Krchnar is the Human Resource Analyst in the labor relations division of the Department who investigated and analyzed Mr. Finch's behavior and recommended the type and level of discipline that he received in both October 6, 2011 suspension letters. (N.T. 86-91).

31. Ms. Krchnar's recommendations were submitted to the chief of the labor relations division. He agreed with her recommendation and submitted the proposed discipline for review to the Director of Human Resources. Amanda Lawrence is the Director of Human Resources, and she has final authority, as delegated to her by the Secretary of Labor and Industry, Julia K. Hearthway, to issue discipline. Director Lawrence adopted Ms. Krchnar's analysis and recommendations for both three-day suspensions in October, 2011. (N.T. 91-92).

32. Ms. Krchnar recommended the first three-day suspension dated October 6, 2011, based on the separate incidents dated July 20, 2011, August 10, 2011 and August 11 and 15, 2011. Factors Ms. Krchnar considered were the following: the inappropriate behavior towards coworkers and the Site Administrator; the public display of inappropriate behavior in front of clients; the previous discipline for inappropriate behavior; and the effect on the work environment and morale. She also considered that Mr. Finch was aware that there was a reasonable work rule prohibiting such conduct and that he violated that rule. (N.T. 89-91; Union Exhibit 1).

33. Ms. Krchnar recommended the second three-day suspension for intimidating Ms. McDaniel on August 31, 2011, after having been issued a cease-and-desist order specifically directing him not to confront coworkers. Ms. Krchnar based her recommendation on reasons similar to those that supported the first October 6, 2011 suspension, i.e., the inappropriateness and intimidating nature of the behavior, the

effect on workplace morale, the disciplinary history and progressive discipline. (N.T. 92; Union Exhibit 2).

DISCUSSION

The Union maintains that the Commonwealth independently violated clauses (1) and (3) of Section 1201(a) of PERA when it issued two three-day suspensions on October 6, 2011, to Mr. Finch. The record, however, does not support that conclusion.

1. Discrimination

In a discrimination claim, the complainant has the burden of establishing the following three-part conjunctive standard: (1) that the employee engaged in activity protected by PERA; (2) that the employer knew that the employee engaged in protected activity; and (3) the employer engaged in conduct that was motivated by the employee's involvement in protected activity. **St. Joseph's Hospital v. PLRB**, 473 Pa. 101, 373 A.2d 1069 (1977). Motive creates the offense. **PLRB v. Stairways, Inc.**, 425 A.2d 1172 (Pa. Cmwlth. 1981). The Board will give weight to several factors upon which an inference of unlawful motive may be drawn. In **PLRB v. Child Development Council of Centre County**, 9 PPER ¶ 9188 (Nisi Decision and Order, 1978), the Board opined that "[t]here are a number of factors the Board considers in determining whether anti-union animus was a factor in the [adverse action against] the Complainant." **Id.** at 380. These factors include the entire background of the case, including any anti-union activities or statements by the employer that tend to demonstrate the employer's state of mind, the failure of the employer to adequately explain its action against the adversely affected employee, the effect of the employer's adverse action on other employees and protected activities, and whether the action complained of was "inherently destructive" of important employee rights. **Centre County**, 9 PPER at 380.

The close timing of an employer's adverse action alone is not enough to infer animus, but when combined with other factors can give rise to the inference of anti-union animus. **Teamsters Local No. 764 v. Montour County**, 35 PPER 12 (Final Order, 2004); **AFSCME, AFL-CIO, Council 13 v. Commonwealth, Department of Labor and Industry**, 16 PPER ¶ 16020 (Final Order, 1984). Adverse employer action closely following an employer display of union animus, further combined with an employer's failure to adequately explain its adverse actions or its shifting reasons for an adverse action, can support an inference of anti-union animus and may be part of the union's **prima facie** case. **Stairways, supra**; **Teamsters Local 312 v. Upland Borough**, 25 PPER ¶ 25195 (Final Order, 1994). Mere suspicion or conjecture is insufficient to sustain a discrimination charge. **Shive v. Bellefonte Area Board of School Directors**, 317 A.2d 311, 314 (Pa. Cmwlth. 1974).

In **Teamsters, Local 776 v. Perry County**, 23 PPER ¶ 23201 (Final Order 1992), the Board stated that, under **Wright Line**, "once a **prima facie** showing is established that the protected activity was a motivating factor in the employer's decision, the burden shifts to the employer to demonstrate that the action would have occurred even in the absence of that protected activity." **Perry County**, 23 PPER at 514. Upon the employer's offering of such evidence, "the burden shifts back to the complainant to prove, on rebuttal, that the reasons proffered by the employer were pretextual." **Teamsters Local #429 v. Lebanon County**, 32 PPER ¶ 32006 at 23 (Final Order, 2000). "The employer need only show by a preponderance of the evidence that it would have taken the same actions sans the protected conduct." **Pennsylvania Federation of Teachers v. Temple University**, 23 PPER ¶ 23033 at 64 (Final Order, 1992).

In this case, the Union did not establish that Mr. Finch was engaged in protected activity when he confronted his coworkers and his Site Administrator. The July 20, 2011 incident regarding his behavior towards Ms. Mirarchi did not involve any Union activity. The August 10, 2011 and August 11, 2011 incidents involving Ms. Twomey and Ms. Gaines also did not involve any Union activity. Although Mr. Finch claims that he approached Ms. Direso on August 15, 2011, to conduct Union business and speak with her about a sexual harassment claim filed on behalf of another coworker, Ms. Direso credibly testified that Mr. Finch made no mention of any sexual harassment matter. Ms. Direso testified that he

confronted her about her submitting written statements about **him**, and that he did not mention sexual harassment or the other employee. Moreover, Mr. Finch did not request permission from his supervisor to take time to conduct Union business, as required by the collective bargaining agreement, to demonstrate his intent to conduct Union business regarding the sexual harassment claim.¹ Although Mr. Finch claimed that he was already on break, the record shows that he confronted Ms. Direso at 8:30 a.m., which is not a recognized break time and is only one-half hour after his start time.

Further, although the Union filed a sexual harassment grievance at some point prior to August 15, 2011, the record does not establish that Mr. Finch was at all involved in the filing of the grievance. Indeed, at the hearing he seemed to disavow any involvement in the filing of the grievance. Although Mr. Finch participated in the August 11, 2011 fact-finding meeting on behalf of Ms. Seaton, there is no evidence to suggest that management would have developed unlawful animus as a result of that meeting. There is no evidence, for example, that Mr. Finch's participation at that meeting was unwelcomed or that he was hostile, obstructive or confrontational such as to generate animus or retaliatory motive for that Union activity. Therefore, the record does not contain substantial, competent evidence sufficient to establish a nexus between Mr. Finch's protected activity at the Seaton fact finding and any of his discipline. There is no hint of unlawful motive or a desire to retaliate against Mr. Finch for his Union activities as a shop steward. There are no unlawful statements from supervisors or managers. The timing between the Seaton fact finding meeting and Mr. Finch's discipline alone is insufficient to support an inference of unlawful motive. **Teamsters, supra**. And, there are no inadequate or pretextual employer explanations, as I have credited the employer's witnesses. Accordingly, the Union did not establish a **prima facie** case of discrimination and the burden did not shift to the employer to rebut the Union's case and establish legitimate business reasons.

For purposes of Board review, however, I also conclude that the Commonwealth established legitimate business reasons as the proximate cause of the discipline complained of in this case. Prior to the beginning of the spate of incidents in July and August of 2011, Mr. Finch was previously disciplined on several occasions for his inappropriate and angry behavior in the workplace. On December 1, 2009, Mr. Finch received a one-day suspension. In the suspension letter, the Commonwealth documents that, in addition to criticizing his supervisor, Mr. Finch raised his voice during a meeting, made inappropriate comments concerning his supervisor's abilities and waved his pen in his manager's face. This letter also indicates that an investigation was conducted concerning Mr. Finch's conduct and that during a fact finding meeting, he became disrespectful and inappropriate and alleged that his race and his gender were the motivation for his discipline rather than his conduct. Similarly here, Mr. Finch now alleges that management is disciplining him for his Union activities, none of which exist on this record, instead of his conduct. This letter further notes that Mr. Finch engaged in disrespectful behavior "despite receiving a written reprimand on December 20, 2007 for inappropriate conduct with a client as well as a written reprimand on January 8, 2008 for falsification of information." (F.F. 26).

As of December 1, 2009, Mr. Finch had already accumulated three disciplinary actions against him for angry, disrespectful and confrontational behavior toward his superiors, inappropriate conduct with a client and falsifying records. Not two months later, on January 26, 2010, the Commonwealth issued another one-day suspension notice to Mr. Finch. That letter documents that Mr. Finch was not at his workstation for over an hour without notifying his supervisor of his whereabouts after specifically being made aware of the expectation to inform his supervisor when it becomes necessary for him to leave the premises during work time. More significant to this discussion, however, that letter also notes, consistent with the letter of December 1, 2009, that Mr. Finch became disrespectful and inappropriately angry during the investigatory fact-finding meeting concerning his unauthorized leave.

¹ Mr. Finch's immediate supervisor is purportedly the subject of the sexual harassment claim. However, Mr. Finch could also request time to conduct Union business from the Site Administrator.

Then July 20, 2011, begins a new series of disrespectful, angry and confrontational behavior from Mr. Finch directed toward Ms. Mirarchi, his Site Director, and several coworkers, who expressed their fear of working with him. Ms. Direso spent about twenty minutes of her workday sobbing in the conference room after her confrontation with Mr. Finch. Mr. Finch's behavior has affected morale and the effective operation of the Career Link. He has been investigated, spoken to and disciplined multiple times regarding his conduct. In fact, after specifically being told not to confront any more coworkers about statements they may have given about him, Mr. Finch violated that directive and approached Ms. McDaniel. It is clear from this record that Mr. Finch has problems following directions, controlling his temper and respecting his superiors, all of which interferes with the effective operation of the employer's enterprise. It is also clear that the Commonwealth's two October 6, 2011, three-day suspensions were motivated by its responsibility to ensure the well-being of its personnel and the effectiveness of its operation. The Commonwealth was also motivated by its interest in correcting errant behavior through discipline and in rehabilitating Mr. Finch's disruptive conduct, which has remained unchanged for over four years, despite prior discipline.

Moreover, no one who worked at the Career Link determined whether to impose discipline or what level of discipline should be imposed. That was determined in a separate office in Harrisburg where no one was affected by Mr. Finch's Union activities and where the investigation of his behavior and the analysis of his discipline depended on documentation that is devoid of evidence of Union activity. In this regard, Ms. Krchnar credibly testified that the first three-day suspension of October 6, 2011, was based on Mr. Finch's inappropriate and confrontational behavior towards coworkers and the Site Administrator, which was publicly displayed in the presence of clients. Significantly, the decision to suspend Mr. Finch was predicated on a previous history of discipline for inappropriate and disrespectful behavior and the constant negative effect this behavior had on the work environment and morale.

The second three-day suspension of October 6, 2011, should have been greater in the progression of discipline, but Ms. Krchnar credibly testified that increasing the discipline before Mr. Finch was notified of the first three-day suspension would have been improper. And for similar reasons, i.e., intimidating behavior, effect on workplace morale and the extensive history of prior discipline for the same behavior, the Commonwealth properly issued the second suspension. I have no authority to determine just cause for discipline or to question the appropriateness of the discipline imposed. My authority is limited to determining whether the discipline at issue was unlawfully motivated under PERA. Accordingly, I conclude that there is certainly no evidence of unlawful, anti-union animus here, and the Commonwealth unequivocally demonstrated legitimate business reasons to issue the two three-day suspensions of October 6, 2011.

2. Independent 1201(a)(1)

The Union also maintains that the Commonwealth's two three-day suspensions of Mr. Finch independently violated Section 1201(a)(1) of PERA by intimidating and coercing employees. An independent violation of Section 1201(a)(1) occurs, "where in light of the totality of the circumstances, the employer's actions has a tendency to coerce a reasonable employee in the exercise of protected rights." **Fink v. Clarion County**, 32 PPER ¶ 32165 at 404 (Final Order, 2001); **Northwest Area Educ. Ass'n v. Northwest Area Sch. Dist.**, 38 PPER 147 (Final Order, 2007). Under this standard, the complainant does not have a burden to show improper motive or that any employees have in fact been coerced. **Pennsylvania State Corrections Officers Ass'n v. Commonwealth of Pennsylvania, Department of Corrections, Pittsburgh SCI**, 35 PPER 97 (Final Order, 2004). However, an employer does not violate Section 1201(a)(1) where, on balance, its legitimate reasons justifiably outweigh concerns over the interference with employee rights. **Ringgold Educ. Ass'n v. Ringgold Sch. Dist.**, 26 PPER 26155 (Final Order, 1995).

Under the totality of the circumstances in this case, the Commonwealth's disciplinary actions do not have any tendency to coerce a reasonable employee in the exercise of his/her protected rights for two reasons. First, Mr. Finch was disciplined for violating known and acceptable boundaries of behavior towards superiors and

coworkers, the employer's written rules of conduct, a cease and desist order directed to him and the directives provided in numerous, previous disciplinary notices; he was not engaged in any protected activities, on this record, at any time associated with the events upon which the discipline is predicated. Second, the Commonwealth acted out of legitimate concerns over the effectiveness of its operation, morale and correcting consistently inappropriate conduct, which on balance, outweighs any concerns over interference with employe rights.

CONCLUSIONS

The hearing examiner, therefore, after due consideration of the foregoing and the record as a whole, concludes and finds as follows:

1. The Commonwealth is a public employer under PERA.
2. The Union is an employe organization under PERA.
3. The Board has jurisdiction over the parties hereto.
4. The Commonwealth has **not** committed unfair practices within the meaning of Section 1201(a)(1) or (3).

ORDER

In view of the foregoing and in order to effectuate the policies of PERA, the hearing examiner

HEREBY ORDERS AND DIRECTS

That the charge is dismissed and the complaint is rescinded.

IT IS HEREBY FURTHER ORDERED AND DIRECTED

that in the absence of any exceptions filed with the Board pursuant to 34 Pa. Code § 95.98(a) within twenty days of the date hereof, this order shall be final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this twentieth day of September, 2012.

PENNSYLVANIA LABOR RELATIONS BOARD

Jack E. Marino, Hearing Examiner