

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

PENNSYLVANIA ASSOCIATION OF STAFF :
NURSES AND ALLIED PROFESSIONALS :
 : Case No. PERA-C-14-259-E
v. :
 :
 :
 :
TEMPLE UNIVERSITY HEALTH SYSTEM :

PROPOSED DECISION AND ORDER

On August 11, 2014, the Pennsylvania Association of Staff Nurses and Allied Professionals (Union or Association) filed with the Pennsylvania Labor Relations Board (Board) a charge of unfair practices alleging that the Temple University Hospital (Temple) violated Section 1201(a)(1) of the Public Employe Relations Act (PERA or Act).¹ The charge specifically alleged that Temple interfered with the rights of Michael Kidd to organize coworkers to join the Union when it terminated him for allegedly violating Temple's computer use and social media policies and for sending a certain email. On August 21, 2014, the Secretary of the Board issued a complaint and notice of hearing directing that a hearing be held on Thursday, October 9, 2014, in Harrisburg. I granted a mutual continuance request and rescheduled the hearing for October 30, 2014. During the hearing on that date, both parties were afforded a full and fair opportunity to present evidence and cross-examine witnesses. On February 3, 2015, the Union filed its post-hearing brief with the Board. On March 3, 2015, Temple filed its post-hearing brief with the Board.

The hearing examiner, on the basis of the evidence presented at the hearing and from all other matters of record, makes the following:

FINDINGS OF FACT

1. Temple is a public employer within the meaning of Section 301(1) of PERA. (N.T. 5)
2. The Union is an employe organization within the meaning of Section 301(3) of PERA. (N.T. 5)
3. Dr. Susan L. Freeman is the Chief Medical Officer at Temple. There are only two people higher in the chain of command at Temple. (N.T. 183, 244)
4. Maryteresa Mintz is the Director of the Clinical Resource Management Department. Ms. Mintz's Department includes Discharge Planning Coordinators, Case Management employes, an Administrative Assistant and other Resource Center staff. Ms. Mintz reports directly to Dr. Freeman. (N.T. 19, 152-153, 177, 179, 216, 245-246)
5. Mary Kay Zimmerman is the Assistant Director of the Department. She directly supervises Case Management. (N.T. 132, 178-179)
6. Ellen Jahn is the Director of Employee Labor Relations at Temple. (N.T. 259)
7. Mitchell Parker is the Chief Information Security Officer at Temple (N.T. 224)
8. Mr. Kidd had worked in an office called the Resource Center on the first floor of the Boyer Building. Mr. Kidd reported directly to Ms. Mintz as do the other Discharge Planning Coordinators. Mr. Kidd had an adversarial relationship with Ms. Mintz. (N.T. 140, 151-155, 216)
9. Before he was discharged, Mr. Kidd had been one of four Discharge Planning Coordinators at Temple. He was hired in January 2009. His primary responsibility was to

¹ The Secretary of the Board designated the Respondent in the caption as the Temple University Health System.

find placement and transportation for patients referred to him by the Case Management team and to obtain insurance authorization for placement. He facilitated the plan developed by the social worker or case manager and interfaced with Health Partners. Discharge Planning Coordinators and other staff in Ms. Mintz's Department were unrepresented by the Union before August 2014. (N.T. 16, 21, 117, 149, 179; PERA-U-14-173-E)

10. William Zoda is a full-time staff representative for the Union. (N.T. 15)

11. On June 28, 2013, Mr. Kidd received his evaluation wherein Ms. Mintz expressed concerns that Mr. Kidd was covertly allowing vendors to enter his office, which was an activity that he was directed to stop. Mr. Kidd was directed to stop meeting with vendors completely rather than changing his meeting site. Mr. Kidd was directed to stop accepting lunches and other gifts from vendors. Ms. Mintz expressed her concerns over Mr. Kidd's conflict of interest with vendors before Mr. Kidd contacted Mr. Zoda. (N.T. 153-155)

12. On October 25, 2013, Tina Trantas, issued a Corrective Action/Discipline Report to Mr. Kidd memorializing an initial counseling. (N.T. 68, 181; Employer Exhibit 2)

13. The October 25, 2013 Disciplinary Report stated, in relevant part, as follows:

Michael, you were advised by a social worker to cancel a bed reservation with a skilled facility because the patient was actually being transferred to an acute care facility out-of-area. You did not appropriately follow through with this because you wanted to keep this option open as a back-up.

A call was received by the case manager inquiring if the patient was going to 'pocono.' The case manager replied affirmatively, not realizing that the call was from a skilled facility in the Poconos, and not an acute care facility. Subsequently, the patient was transferred to the incorrect level of care resulting in a sentinel event.²

It was also reinforced with you in our discussion that when patients are to be evaluated for an acute rehabilitation level of care that we make the referrals to our own internal acute rehabilitation unit first. Only if they are unable to accommodate a patient would we refer to a free-standing acute rehabilitation facility.

(Employer Exhibit 2)

14. As a result of the October 25, 2013 Discipline, Mr. Kidd was placed on a performance improvement plan. Discipline remains active for one year. (N.T. 181; Employer Exhibit 2)

15. Beginning in January 2014, Mr. Kidd spoke to Frances Bosack, a Temple employee and Union Board Member, about the benefits of being unionized. She met regularly in the cafeteria with Mr. Kidd and directed him to contact Mr. Zoda. Mr. Kidd began speaking to coworkers about joining the Union at this time. (N.T. 109, 111-113, 118-119, 122)

16. Mr. Zoda spent time interacting with Mr. Kidd regarding the recruitment of unrepresented employees in Mr. Kidd's Department. Mr. Kidd communicated with coworkers to join the bargaining unit already represented by the Association. On March 20, 2014, Mr. Kidd and two or three coworkers met with Mr. Zoda at the Union office near Temple and signed Union dues check off cards used as authorization cards. (N.T. 16, 18, 42, 53, 122-123; Union Exhibit 1)

17. In late April or early May 2014, Mr. Zoda attended a labor-management meeting with Ms. Mintz and two social workers. Mr. Zoda does not accurately recall who else attended the meeting. Mr. Zoda did not speak with Ms. Mintz about the unit clarification

² A sentinel event is a patient safety event that results in death, permanent harm or severe temporary harm and intervention is required to sustain life. Accredited organizations are strongly encouraged to report sentinel events.

to accrete employes into the bargaining unit. The unit clarification petition had not yet been filed with the Board as of this meeting.³ (N.T. 45, 48-49, 50, 53, 198, 213)

18. Health Partners is a health maintenance organization and one of the largest payers to Temple. Temple has a 40% ownership interest in Health Partners. Temple works closely with Health Partners. Mr. Kidd interacted with Health Partners on a daily basis. (N.T. 123, 179, 257)

19. Discharge Planners follow designated protocols. Mr. Kidd received a Health Partners patient on his referral list and found placement for the patient. He sent his case management contact at Health Partners patients' information, condition and therapies, and the Health Partners contact determined authorization for placement. When a Discharge Planner has difficulty moving a patient, the Planner is supposed to contact his/her supervisor by 3:30 p.m. (N.T. 123, 180)

20. In late May 2014, Mr. Kidd was assigned to place a patient through Health Partners, a process which usually takes one or two hours. Mr. Kidd forwarded the patient's information to Health Partners via fax and followed up with phone calls, but he received no response. During a two-day period, Mr. Kidd made several phone calls to different numbers at Health Partners. His calls went to answering machines and were not returned. (N.T. 124-125, 135-136)

21. During the two-day period, Mr. Kidd notified Ms. Mintz that he was unable to make contact with Health Partners to place the patient. (N.T. 128)

22. On May 29, 2014, at 10:38 a.m., Mr. Kidd sent an email to William George, the CEO of Health Partners. (N.T. 97, 127; Union Exhibit 9)

23. In the email, Mr. Kidd stated the following:

Been trying to get thru to your authorization dept for over two days. It seems you let go the only person (C Thomas) at Health Partners who felt customer service was a priority and when she left she took with her the 'secret' to getting in touch with your company. I have left several messages and none have been returned and have been hung up on, transferred to the wrong dept or just plain disconnected. Any change of getting anyone who still works there to interface with a real live functioning hospital? My understanding is if we can actually move them from an acute care setting you guys save money. Just an FYI

(Union Exhibit 9)

24. The same day, Andrea D'Angelo, the Vice President of Medical Management at Health Partners, emailed Joseph P. Kosich, the Assistant Vice President of Health Information Management at Temple informing him of Mr. Kidd's email to Mr. George. (N.T. 182-183, 247; Employer Exhibit 3)

25. Ms. D'Angelo's email stated, in relevant part, as follows:

Please review the attached email sent directly to our CEO, Bill George, today from a discharge planner at TUH. We request that in the future your discharge planner use the channels already available to him or have your management team contact Paula Tomczuk, manager of IP services or Joe Sinni, our director. This is the second time where Mr. Kidd was[sic] worked outside the proper channels. The first time, last winter he provided Bill George's direct phone number to an LTACH provider for contract negotiations. If you have any follow [sic] questions please do not hesitate to contact me.

³ Based on the demeanor, conduct on the stand, manner of testifying, general bearing and appearance, I credit the testimony of Ms. Mintz over the conflicting testimony of Mr. Zoda and conclude that Ms. Mintz did not make any statements to encourage Union employes to disassociate from, leave or decertify the Union. (N.T. 213). Ms. Mintz credibly, categorically and unequivocally denied making any such statements at the labor-management meeting while Mr. Zoda's recollection of the meeting was uncertain and equivocal. (N.T. 213).

(Employer Exhibit 3)

26. On May 30, 2014, Mr. Kosich forwarded the email to Dr. Freeman who, in turn forwarded it to Ms. Zimmerman to investigate in Ms. Mintz' s absence. Dr. Freeman does not receive or handle disciplinary matters. Dr. Freeman took Mr. Kosich's email seriously because he works with the financial arm of Temple which has a significant business relationship with Health Partners. Dr. Freeman identified Mr. Kidd's email as a leap frog over his boss, over Dr. Freeman and over Dr. Freeman's bosses to the CEO of Health Partners, which alarmed Temple's financial personnel. (N.T. 216, 247-248; Employer Exhibit 7)

27. Ms. Zimmerman met with Mr. Kidd in her office. For **Weingarten** purposes only, Ms. Zimmerman asked Mr. Kidd if he was in the Union and wanted representation. Mr. Kidd denied Union membership. During the meeting, he admitted to sending the email to Bill George out of frustration with Health Partners. She reviewed the appropriate chain of command for Discharge Planning Coordinators. Mr. Kidd did not mention his efforts to join the Union, organizing others to join the Union or meeting with the Union and/or signing cards. (N.T. 217-218)

28. Ms. Zimmerman responded to Dr. Freeman in a May 30, 2014 email as follows:

I read this letter and yes, it is unbelievable. So I called Michael Kidd into my office and asked him for an explanation. He said he knows it was totally inappropriate but he was so frustrated at not getting a response from Health Partners that he thought he would try this route. I reviewed the chain of command with him and he acknowledges he was wrong. I reinforced what should have happened and he is aware of the process. I explained to him that I will be writing him up and putting it in his file. We will also meet with him again when MaryTeresa gets back from vacation.

(Employer Exhibit 7)

29. On May 30, 2014, Ms. Mintz was traveling to Texas on vacation when she learned of Mr. Kidd's May 29, 2014 email. In her absence, Ms. Zimmerman contacted Mr. Kidd. She indicated that Dr. Freeman received a copy of the email and that the email to Mr. George was not a good idea and that there would be repercussions. (N.T. 132, 182-186)

30. Also on May 30, 2014, Ms. Mintz, sent an email to Mr. Kidd from her iPhone, at 1:11 p.m. (N.T. 155-166, 184-187; Union Exhibit 10; Employer Exhibit 4)

31. Ms. Mintz's May 30, 2014 email provided as follows:

Michael I received a copy of the ema[sic] you sent to CEO at the above. To say it was inappropriate and unprofessional is only the minimum of my concerns. This is behavior I cannot tolerate. You represent TUH, the department and me in all work related communications. I can assure you I would never have approved such a diatribe. You are to escalate all issues to management. Me or MK in my absence. This should not be news to you. Why didn't I know you were having trouble getting thru to HP? Your defense of the emoter who left HP is out of line. I want you to call me at 5 pm today.

(Union Exhibit 10)

32. Mr. Kidd approached Dr. Freeman in the common area of the first floor of the Boyer Pavilion Building. She escorted Mr. Kidd to her office upstairs where Mr. Kidd apologized for the email to Mr. George and explained that he wrote the email out of frustration and an attempt to take initiative to get his job done. (N.T. 133, 251)

33. At 1:22 p.m., on May 30, 2014, Mr. Kidd emailed Ms. Mintz a response which provided: "Understood. I have spoken with both Mary Kay and Dr. Freeman about this issue. I understand that this was not ok. I will call you at 5pm" (Union Exhibit 10)

34. Then at 1:43, Mr. Kidd again wrote to Ms. Mintz as follows:

Just got your VM asking to explain. No excuse MT. It was a combination of frustration and poorly thought out initiative. I understand that. Was having issues for two days with an auth when normally it takes about two hours. Wasn't thinking to escalate because at the time the sw/cm wasn't pushing either. All the contact numbers I had weren't responding and when I went to the website and started using the outside numbers they weren't working either. I was on the website, the guys name was there, it had worked for me in my personal life so I sent an email. I was just trying to shake a branch. It was wrong and as I explained to Mary Kay and Dr. Freeman it was borne out of frustration trying to do the right thing the wrong way.

(Union Exhibit 10)

35. During the phone conversation with Ms. Mintz, Mr. Kidd told Ms. Mintz that he spoke to Dr. Freeman in her office where he apologized and which she accepted. Mr. Kidd then told Ms. Mintz that Dr. Freeman stated: "No one needed to talk to him about this any further." Dr. Freeman credibly denied ever stating that to Mr. Kidd and credibly denied that she was satisfied that the matter was ended. (N.T. 187, 190, 252)

36. On or about June 3, 2014, Ms. Mintz returned from vacation and, after reviewing Mr. Kidd's May 29, 2014 email to Bill George, believed that terminating Mr. Kidd was appropriate. Ms. Mintz met with Dr. Freeman approximately one week after returning from vacation. Also on June 3, 2014, the Union filed a petition for unit clarification with the Board seeking to include the following positions: Patient Navigator, Discharge Planning Coordinator, Transplant Data Coordinator, Oncology Precertification Coordinator and Transplant Data Support Specialist. These positions are in Ms. Mintz's Department. Temple agreed to the inclusion of all positions except for Patient Navigator. A Nisi Order of Unit Clarification was issued on August 7, 2014. (N.T. 188, 190, 193, 196; Employer Exhibits 20 & 21)

37. On June 10, 2014, another incident occurred that involved Mr. Kidd. Mr. Kidd was assigned an Emergency Department patient matter which he escalated to Ms. Mintz and she informed Mr. Kidd that she would handle the matter with Health Partners. Health Partners contacted Ms. Mintz and informed her that someone from Health Partners would return contact. Later, a Health Partners representative contacted Ms. Mintz and informed her that Mr. Kidd called one of their staff asking them what was taking so long. (N.T. 190-191; Union Exhibit 11)

38. The same day, Ms. Mintz then emailed Mr. Kidd and stated: "MICHAEL, THINK CHAIN OF COMMAND, PLEASE! WHY CAN YOU NOT UNDERSTAND AND COMPLY WITH THIS?" Mr. Kidd responded one minute later as follows: "What are you talking about? I didn't take it past Rhonda. I only asked for clarification as I assumed they[sic] must be a better way and she directed me to Paula and I passed it along to you" (N.T. Union Exhibit 11)

39. On June 13, 2014, Dr. Freeman and Ms. Mintz met with Ms. Jahn from Human Relations seeking the termination of Mr. Kidd. Both Dr. Freeman and Ms. Mintz agreed that Mr. Kidd should be terminated as a result of the September 2013 incident, the May 29, 2014 incident and the June 10, 2014 incident. Ms. Jahn recommended a computer audit because one of the bases for his termination involved his computer use. (N.T. 194, 253-254, 262-263)

40. Ms. Jahn directed Mr. Parker to conduct a computer audit of Mr. Kidd's computer usage. Mr. Parker shared the results of his audit with Ms. Mintz in the form of an email with an attached spreadsheet document listing Mr. Kidd's computer usage for a one-month period, from May 16, 2014 to June 16, 2014. (N.T. 195, 230, 235-236)

41. Mr. Parker has completed approximately 20 or so computer audits during his tenure at Temple, and he is never told why he is to conduct an audit. The requests are generated from Human Resources or the Office of Counsel (N.T. 229)

42. Temple has implemented a Computer Usage Policy and a Social Media Policy both with disciplinary provisions for non-compliance. Under the Social Media Policy, employees are prohibited from signing on to Facebook or other social media websites during work hours. (N.T. 225-226; Employer Exhibits 8 & 9)

43. Mr. Kidd completed training for "mandatory competencies" demonstrating he completed computer and information security tutorials. (N.T. 228; Employer Exhibit 11)

44. The computer audit revealed that Mr. Kidd was signed on to Facebook from morning until 5 p.m. every day and interacted with Facebook throughout the day as evidenced by his pressing the "Like" function, demonstrating affirmative interaction with the site. Mr. Kidd used the "Like" function approximately 178 times during the period. (N.T. 231-233)

45. Mr. Parker's spreadsheet consisted of 132 pages of websites that Mr. Kidd accessed during the one-month period, with approximately 28-30 websites listed on each page. Approximately 20 sites of approximately 3,600 sites were work related. All the sites required an affirmative action by Mr. Kidd to log on or call up the site. Mr. Kidd's social media use was significantly greater than that of any other employee that he had audited in the past. (N.T. 235-237, 241, 263-265)

46. On June 20, 2014, Maryteresa Mintz issued a Corrective Action/Discipline Report terminating Mr. Kidd. (N.T. 137, 180; Union Exhibit 4; Employer Exhibit 1)

47. The June 20, 2014 termination report stated, in relevant part, as follows:

On May 29, 2014, you sent an inappropriate email to the CEO of Health Partners, regarding their lack of response to your inquiries about providing services to one of Health Partners' customers, who was also a patient of TUH.

Your email was critical of the fact that authorization had been delayed two days and you complained that the "only person at Health Partners" who provided what you considered to be appropriate customer service, was an employee they "let go". Your email sarcastically asked if there was "any chance of getting anyone who still works there to interface with a real live functioning hospital?"

Your email created business relationship issues between TUH and Health Partners. This also caused valuable administrative time to be diverted to address what was needlessly caused by your acting outside your role and level of authority. On June 10th, an issue presented with a Health Partners' customer who was in the TUH ED. The issue was escalated to me and I told you I would handle it. Despite this, you acted contrary to our discussion and my statements to you by continuing to contact Health Partners on the issue I was already addressing. This led to confusion and inefficiency, in addition to your insubordination in continuing to handle the matter I had taken from you. When I emailed you to "think of the chain of command", you, among other things, responded inappropriately: "what are you talking about?"

Your objectionable use of the TUH email systems led to an audit of your computer usage. The results evidence your routine violation of TUHS policy (TUHS-IS-400.00-Computer Usage Policy by, among other things, being logged into and/or viewing or using Facebook, AOL and other inappropriate sites for a large portion of the work day. You also viewed websites for which there is no business purpose.

This latest conduct alone justifies your termination. However, additional misconduct earlier this fiscal year of not appropriately cancelling a patient's

skilled facility bed when his situation changed, is additional evidence supporting this action.

Your employment by TUH is terminated, effective immediately.

(Union Exhibit 4; Employer Exhibit 1)

48. At the time that Ms. Mintz decided to terminate Mr. Kidd, Ms. Mintz was generally aware that the Union was seeking to include certain positions in her Department, as a result of the April 25, 2014 Union Newsletter. At no time before Mr. Kidd's termination did Ms. Mintz observe any activities of any employee in her Department related to the organizing effort to join the Union. Mr. Kidd at no time informed Ms. Mintz that he wanted to be in the Union or that he was leading the Union's efforts to include certain positions in the unit. Ms. Mintz did not know that Mr. Kidd was engaged in any Union related activities. Ms. Mintz did not learn of Mr. Kidd's Union activities until the unemployment compensation process after his termination. (N.T. 196-198, 210)

49. At no time before Mr. Kidd's termination did Ms. Zimmerman know whether Mr. Kidd was leading a Union effort to include certain positions in the bargaining unit. Mr. Kidd never said anything related to his Union efforts to Ms. Zimmerman. One time, after Mr. Kidd was terminated, Ms. Zimmerman had seen Mr. Kidd in the cafeteria talking with Ms. Bosack and a group of people, but she did not know what they were discussing. Ms. Zimmerman learned of Mr. Kidd's Union activities after his termination, as a result of the unemployment compensation process. (N.T. 221-222)

50. Dr. Freeman was unaware of the Union efforts to include positions in Ms. Mintz's Department prior to Mr. Kidd's termination, and she was unaware of any of Mr. Kidd's Union activities. Mr. Kidd never told Dr. Freeman about his Union efforts or activities. (N.T. 255)

51. At the time that Ms. Jahn recommended a computer audit of Mr. Kidd's computer usage, she did not know about Mr. Kidd's involvement in leading Union efforts to include certain positions in the bargaining unit. Mr. Kidd never communicated to Ms. Jahn that he was involved in Union efforts to include certain positions in the bargaining unit. She only learned of Mr. Kidd's Union activities when Mr. Zoda referred to those efforts in a post-termination, June 26, 2014 email. Ms. Jahn was unaware of any Union activities by anyone in Case Management, Social Work or the Resource Center when the decision to terminate Mr. Kidd was made. (N.T. 265, 267-268, 270-271; Union Exhibit 5)

DISCUSSION

The Union argues that Michael Kidd was wrongfully terminated as a result of his Union activity in violation of Section 1201(a)(1) of the Act. (Union's Post-hearing Brief at 1). The Union claims that Ms. Mintz, Mr. Kidd's supervisor, was generally hostile to the Union and to the extension of Union representation to the Discharge Planning Coordinators. (Union's Post-hearing Brief at 1). The Union further contends that Ms. Mintz retaliated against Mr. Kidd with pretextual and unjustified discipline, despite Temple's decision not to contest the unit clarification petition. (Union's Post-hearing Brief at 2). The Union claims that Ms. Mintz's testimony that she was unaware of Mr. Kidd's Union activities is not credible because he reported directly to her, the Discharge Planning Coordinators were the only group under her supervision not already represented and she was antagonistic towards the Union at labor-management meetings. (Union's Post-hearing Brief at 3). The Union claims that Mr. Kidd "made no effort to hide his activity from his direct manager, Ms. Mintz." (Union's Post-hearing Brief at 2). The Union further contends that the reasons supporting Ms. Mintz's decision to terminate Mr. Kidd "would clearly fail any test of just cause, based on the lack of precedent for such severe punishment and the huge discord between any demonstrated harm to the Hospital and its impact on Mr. Kidd. If the termination were not pretextual, why go to such great lengths to reinforce the grounds?" (Union's Post-hearing Brief at 4). The Union maintains that Ms. Mintz believed that she was in a position to make Mr. Kidd "pay" for his organizing efforts and initiative having already been "exasperated" at having to deal

with existing Unionized employees. (Union's Post-hearing Brief at 4). "It is the responsibility of this process [before the Board] to reject her retaliation and restore Mr. Kidd to his position." (Union's Post-hearing Brief at 4).

An independent violation of Section 1201(a)(1) occurs, "where in light of the totality of the circumstances, the employer's actions have a tendency to coerce a reasonable employe 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 employes 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 employe rights. **Ringgold Educ. Ass'n v. Ringgold Sch. Dist.**, 26 PPER 26155 (Final Order, 1995).

Under the totality of the circumstances, Ms. Mintz's termination of Michael Kidd did not have a tendency to coerce a reasonable employe in the exercise of protected rights. Although the Union did not bring a discrimination cause of action under Section 1201(a)(3) and it is not required to establish that Temple discharged Mr. Kidd with improper motive, the clear weight of credible evidence demonstrates that not one single person involved in the decision to terminate Mr. Kidd possessed any knowledge of his Union activities at any time prior to his termination. Dr. Freeman, Ms. Mintz, Ms. Jahn and Mr. Parker all credibly testified that they had no knowledge of Mr. Kidd's Union activities prior to the decision to terminate him and prior to the computer audit. Contrary to the Union's argument, therefore, Ms. Mintz and Dr. Freeman could not have retaliated against Mr. Kidd for engaging in such activities as a matter of law. Absent some inferential or perceived nexus between Mr. Kidd's Union activities and his discipline, a reasonable employe would not be influenced or coerced regarding the pursuit or exercise of statutory rights.

Moreover, contrary to the Union's claims, the record does not support the Union's argument that Ms. Mintz was generally hostile to the Union. The record also fails to support the Union's argument that Ms. Mintz's testimony, that she was unaware of Mr. Kidd's Union activities, was not credible. The Union specifically asserts that Mr. Kidd reported directly to Ms. Mintz, the Discharge Coordinators were the only unrepresented employes in her Department, Mr. Kidd made no effort to hide his involvement in organizing employes to join the Union and the April 25, 2014 Union Newsletter (Union Exhibit 2), which criticized management, caused a harsh response to the Union President from Chief Human Resources Officer, John Lasky (Union Exhibit 3). However, the Union's bald assertions are all suppositions, not evidence of Ms. Mintz's knowledge of Mr. Kidd's Union activities.

I have rejected the April 25, 2014 Newsletter as evidence of anything because it contains multiple layers of uncorroborated hearsay, conjecture and opinion. It does not contain veritable facts pertaining to circumstances at Temple, Temple management or any individual in Temple management. Also, Mr. Lasky's response to the Newsletter did not manifest Union animus but expressed a frustration with the accusatory tone of the Newsletter as being "debilitating to our relationship." (Union Exhibit 3). Mr. Lasky's response also cannot be attributed to anyone involved in deciding to terminate Mr. Kidd. In this regard, there is no record support for the Union's allegation that Ms. Mintz was generally hostile to the Union.

Ms. Mintz credibly testified that she did not know of Mr. Kidd's involvement with the Union. The Union's argument, that the Discharge Planners were the only unrepresented employes in her Department, is also unsupported by the record. The Union's unit clarification petition shows that employes other than the Discharge Planning Coordinators were involved in the accretion process and Ms. Mintz's Department contained non-unionized personnel in addition to the Discharge Planning Coordinators. Even if the Discharge Planning Coordinators were the only personnel in her Department, there is no evidence that Ms. Mintz should have known that Mr. Kidd was organizing support for unrepresented

employees to join the Union. Also, although Mr. Kidd reported directly to Ms. Mintz, he never told her that he was involved in organizing coworkers to join the Union. Contrary to the Union's assertion, Mr. Kidd did make an effort to conceal his Union involvement from Ms. Mintz.

The Union also argues that the reasons set forth by Ms. Mintz to support Mr. Kidd's termination lack just cause and precedent for his discharge. The Union claims that there is an extreme imbalance between the harm to Temple, resulting from his repeated refusal to follow chain of command and protocol and his email to Bill George, as compared to the impact on Mr. Kidd, resulting from his discharge. However, my jurisdiction in this case is limited to determining whether Ms. Mintz's termination of Mr. Kidd was retaliatory or coercive. My jurisdiction does not extend to determining whether Ms. Mintz's reasons for terminating Mr. Kidd satisfy a standard of just cause or whether an arbitrator would conclude that Ms. Mintz's decision lacked just cause.

Regarding the claim that there is no precedent for such a severe punishment, the Union failed to establish disparate treatment of Mr. Kidd as compared to similarly situated employees. Mr. Zoda testified that, in his seven years as Union Staff Representative, he has not seen a similar situation where a Temple employee directly contacted the CEO of a Temple business partner to complain of his company's dealings with Temple. (N.T. 77-80). Mr. Zoda also testified that he has not seen any Temple employee disciplined for using Facebook, AOL and other inappropriate sites for a large portion of the work day as was Mr. Kidd. Indeed, the record shows that Mr. Kidd's personal computer use and social media use was "off the charts," (N.T. 265), as compared to any other employee. Moreover, Mr. Kidd's offenses must be placed in the context that Ms. Mintz believed that he was insubordinate to her and hostile to coworkers and, as a result, there was admittedly palpable personal animus between Mr. Kidd and Ms. Mintz.

Further, there is nothing in the record to support the Union's claim that Ms. Mintz was already "exasperated" at having to deal with Unionized employees or that she wanted to make Mr. Kidd "pay" for his organizing efforts when she had no knowledge of his involvement in Union organizing activities. The Union rhetorically asks why Ms. Mintz went to "great lengths" to reinforce the grounds for Mr. Kidd's dismissal if those reasons were not pretextual. However, Ms. Mintz did not fabricate the multiple disciplinary events in which Mr. Kidd engaged. It was Mr. Kidd who went to "great lengths" to supply Ms. Mintz with the reasons for his termination. Mr. Kidd on multiple occasions failed to follow orders and chain of command. By his own admission, he had an adversarial relationship with Ms. Mintz which had no relationship to Union activities. He repeatedly circumvented his superiors and established protocol, and he was rude to Bill George and Ms. Mintz. The record is simply devoid of any evidence that even suggests that Ms. Mintz retaliated in any way against Mr. Kidd for his Union activity. A reasonable employee in the bargaining unit would not be coerced into refraining from engaging in Union activities, efforts or support under Ms. Mintz knowing that her disciplinary action against Mr. Kidd was completely unrelated to his Union activity. Mr. Kidd's discharge was the result of insubordination, violation of the computer use and social media policies and multiple refusals to follow the protocols and chain of command as well as an egregious email to Mr. George, which reflected poorly on Temple.

Even if Ms. Mintz's termination of Mr. Kidd, under the totality of the circumstances, had a tendency to coerce a reasonable employee in Mr. Kidd's position, I conclude that, on balance, Temple's legitimate business reasons for terminating Mr. Kidd outweigh concerns over the possible interference with employee rights. Mr. Kidd was a difficult employee who accumulated multiple counselings and disciplinary actions. He had to be repeatedly counseled to stop accepting gifts and lunches from vendors. When directed to stop, he defied the order and simply changed the meeting place. He was repeatedly counseled about not following protocols and chain of command for placing patients. Mr. Kidd's email to Bill George was sarcastic, caustic, acerbic, unprofessional and rude. The email embarrassed Mr. Kidd's superiors causing a cascade of executive communications and calls for an investigation.

Also, Mr. Kidd attempted to prevent his discipline by lying to Ms. Mintz and telling her that Dr. Freeman said that no one needed to talk to Mr. Kidd about the incident any further. Dr. Freeman unequivocally denied ever stating anything like that to Mr. Kidd. Then, after the Bill George email, Mr. Kidd again violated chain of command, on June 10, 2014. Ms. Mintz expressly told Mr. Kidd that she would handle a patient placement matter, and Mr. Kidd went around Ms. Mintz, contacted Health Partners and demanded to know what was taking so long. Mr. Kidd has a pattern of not being able to follow protocols or directives. When Ms. Mintz questioned his actions, Mr. Kidd disrespectfully responded: "What are you talking about?" Although Dr. Freeman and Ms. Mintz decided to terminate Mr. Kidd as of June 13, 2014, before the computer audit, evidence of his extensive violations of the computer use and social media policies further, on balance, legitimized his termination when considered with his other offenses and his disrespectful attitude toward his superiors.

Accordingly, Temple did not violate Section 1201(a)(1) of PERA when it terminated Mr. Kidd.

CONCLUSIONS

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

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

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 thirtieth day of November, 2016.

PENNSYLVANIA LABOR RELATIONS BOARD

Jack E. Marino, Hearing Examiner