

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

AMALGAMATED TRANSIT UNION, :
LOCAL 1279 :
 :
v. : CASE NO. PERA-C-15-85-W
 :
INDIANA COUNTY TRANSIT AUTHORITY :

PROPOSED DECISION AND ORDER

On April 6, 2015, the Amalgamated Transit Union, Local 1279 (Union or ATU) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) alleging that the Indiana County Transit Authority (IndiGO or Authority) violated Section 1201(a)(1) and (3) of the Public Employee Relations Act (PERA or Act). The Union specifically alleged that the Authority terminated Eric Edmiston in retaliation for his leadership role in organizing employees to seek representation by the Union.

On April 21, 2015, the Secretary of the Board issued a complaint and notice of hearing directing that a hearing be held on May 13, 2015, in Pittsburgh. After several granted continuance requests and one hearing cancellation due to a winter storm, the hearing was held on Friday, February 12, 2016, in Harrisburg. During the hearing on that date, both parties were afforded a full and fair opportunity to present evidence and cross-examine witnesses. After the Union rested, the Authority moved for dismissal. The Authority posited that the Union did not establish a prima facie case of discrimination because it did not offer substantial, competent evidence of employer knowledge or unlawful motive. I agree.

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

FINDINGS OF FACT

1. The Authority 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. Eric Edmiston began employment at Indigo as an operator/driver on March 5, 2013. On May 9, 2013, Mr. Edmiston signed a document acknowledging that he received copies of the Authority's employment policies. (N.T. 86, 158; Employer Exhibit 5)
4. The Authority follows an employe manual which contains a performance code for operators. There are four separate sections listing various offenses and the levels of progressive discipline. (Union Exhibit 8, at pgs. 12-16)
5. Section I provides, in relevant part, as follows:

The following acts are considered sufficient cause for a written warning and retraining. A second violation of this section is considered sufficient cause for discipline of a final written warning and a three-day suspension. A third violation of this section is considered sufficient cause for employe discharge.

(Union Exhibit 8, § I, pg. 12)

6. Section II provides, in relevant part, as follows: "The following acts which shall not be considered all inclusive are considered sufficient cause for immediate discharge. (Union Exhibit 8, § II, pg. 13)

7. On February 21, 2014, Mr. Edmiston received and signed a written warning for violating the Authority's rules against deviating from a scheduled bus route while operating Bus No. 950 on Route No. 21. This was a violation of Paragraph N. of Section I of the performance code. A second violation of this Section is sufficient cause for a final written warning and a three-day suspension (N.T. 165-167; Union Exhibit 8; Employer Exhibit 6)
8. On April 7, 2014, Mr. Edmiston received a written warning for a second violation under Section I, Paragraph E of the performance code, for involvement in a preventable, at-fault accident in which he hit a parked vehicle with his bus on April 6, 2014. Paragraph E further provides that a violation of that provision "[m]ay result in a final written warning or discharge, depending upon the severity or circumstances of the accident." On April 30, 2014, Mr. Edmiston received an employe retraining notice for his April 6, 2014 at-fault accident. He was not discharged or suspended as a result of this second violation of Section I or the at-fault accident. (N.T. 166-169; Union Exhibits 8, 13 & 15; Employer Exhibit 6)
9. On August 25, 2014, Mr. Edmiston received a written final warning with a three-day suspension for yelling at the driver of another vehicle and making a hand or finger gesture out of his bus window, on August 13, 2014. This was the third discipline that Mr. Edmiston received, specifically Paragraph J "Discourtesy to patrons or the general public." A third violation of Section I is cause for immediate discharge. The written warning cautioned that "[t]his kind of act again will result in immediate discharge." (N.T. 167-169; Union Exhibits 8, 13 & 15; Employer Exhibit 6)
10. On September 17, 2014, Mr. Edmiston received a written warning for failing to report to work on time for a driver change on September 10, 2014, and he was cited for "[f]ailure to be in an assigned work area when scheduled," a Section I, paragraph L violation. (N.T. 167-169; Union Exhibits 8, 13 & 15; Employer Exhibit 6)
11. Michael Detweiler is the safety coordinator and trainer. He was the Operations Manager and Mr. Edmiston's immediate supervisor at the time of his termination. His wife, Nancy Detweiler, is a bus operator in the bargaining unit. His brother-in-law, Dave Phillips, is a bus operator in the unit. Mr. Detweiler was in favor of organizing a union under AFSCME. As Operations Manager, Mr. Detweiler could determine certain levels of discipline, ensured that drivers arrived on time for their shift and were properly running their routes; he also did the scheduling. (N.T. 64-65, 100-102, 183-184)
12. Connie Jones was the Assistant Operations Manager at the time of Mr. Edmiston's termination. She is currently the Operations Manager. Her duties were similar to those of Mr. Detweiler. She followed buses to check routes and timing, and she did the scheduling when Mr. Detweiler did not. She was in charge of operations in the evenings and on weekends, when drivers reported to her. Mr. Edmiston did not inform any management employes of his Union support. (N.T. 106-107, 184-185)¹
13. Carl Trabert has been a bus operator for the Authority for 23 years. He was the former AFSCME local president at IndiGO when AFSCME was the certified exclusive bargaining representative for the IndiGO employes several years ago. (N.T. 19-20, 50-51)
14. After Mr. Trabert and Mr. Edmiston had telephone conversations with ATU representatives, Mr. Trabert hosted a Union meeting at his home on October 26,

¹ Based on his demeanor and manner of testifying, I do not credit Mr. Edmiston's self-serving testimony that he told Ms. Jones of his support for the Union. Also, the testimony is in conflict with Mr. Trabert's credible testimony that the organizing team was trying to keep their organizing activities a secret from management.

2014, with Dan Sundquist, who is an ATU representative from Colorado. (N.T. 17-18, 38, 66, 87-88; Union Exhibit 1)

15. Present at the meeting were: Tracy Grindle, Carl Trabert, Eric Edmiston, Gary Peterson, Mr. Sundquist and Michael Walters, who is the president of ATU, Local 1279. No management employees of Indigo were at this meeting. (N.T. 17-18, 38-40, 66-68, 77-78, 89; Union Exhibit 1)
16. Sometime thereafter, there was another organizing meeting among employees at the Indiana Mall. Mr. Edmiston spoke at that meeting to employees in attendance. Mr. Sundquist spoke via speaker phone. Mr. Edmiston notified employees of that meeting via telephone and conversations at work. There is no indication that any employees who attended any Union meetings told management. Only Union-friendly employees were invited to this meeting because the organizers were trying to keep the campaign from management. (N.T. 20-21, 70-71, 82-83, 108)
17. During this time, Mr. Edmiston was involved with procuring signed cards from employees. He spoke to employees in the lunch room and the mechanics' room and went to their homes. There were arguments about Unionizing in the lunch room. No managers or supervisors ever visited the lunch room during discussions about unionizing. (N.T. 27-28, 92-93, 98, 105)
18. At some point during the organizing campaign, two employees, Vicki Gressley and Sarah Schafer, approached Mr. Trabert and Mr. Edmiston in the lunchroom, raised their voices and spoke negatively about organizing. Ms. Schafer is currently serving as one of the Union Stewards for the ATU. Supervisors and managers could not know who was speaking, if they were heard. There are dispatchers and some supervisors' offices across from the lunch room. Tim Stewart, manager of the mechanics, indicated that he did not support the Union and attempted to prevent Mr. Edmiston from talking to his mechanics about it. (N.T. 60, 74-77, 94-100, 160)
19. On November 18, 2014, the employees filed showing-of-interest cards and a petition for representation with the Board. On December 8, 2014, the Secretary of the Board issued a letter refusing to direct a hearing on the petition because the petitioned-for unit was inappropriate. The Union filed a second petition for representation on December 22, 2014. Mr. Edmiston did not sign any petitions or documents filed with the Board. (N.T. 20-23, 35, 38-40; Employer Exhibits 1 & 2)
20. During this time, the Authority communicated with Mr. Walters from Local 1279 who was the Authority's contact person for Union and representation matters. (N.T. 39-40; Employer Exhibit 1)
21. On December 30, 2014, Mr. Edmiston signed a "PERSONNEL POLICY MANUAL ACKNOWLEDGEMENT RECEIPT." (N.T. 158; Employer Exhibit 5)
22. IndiGO has a uniform policy. Employees must wear black shoes issued by IndiGO or other approved footwear, uniform pants and a uniform shirt. Hats are optional. On Mondays and Fridays only, employees were permitted to wear jeans if they donated \$2 to a charity and they could wear a team jersey if they contributed an additional \$2 to the charity. (N.T. 31, 110-111; Union Exhibits 4 & 8)
23. On Saturday, January 31, 2015, Mr. Edmiston was observed presenting for his shift with jeans and white tennis shoes, without having obtained prior permission. On February 3, 2015, Supervisor Connie Jones issued an employee reminder in which she stated "[p]roper shoes are provided by IndiGO and must be worn on duty unless a driver has purchased their own acceptable footwear." Ms. Jones also noted that "[w]earing of jeans/jerseys is a privilege only on Fridays and Mondays, continued abuse of this privilege will be cause for IndiGO to no longer allow wearing jeans and or jerseys on the designated days. (N.T. 112-114; Union Exhibits 4 & 5).

24. Brenda Hill is the Human Resources Manager. On February 5, 2015, Ms. Hill and Ms. Jones jointly issued a letter informing Mr. Edmiston that his uniform violation was his third violation of Section I of the performance code. The letter further stated: "Due to the above dress code violation and the below written and final warnings, we are ending your employment with IndiGO." The letter further cites Mr. Edmiston's February 21, 2014 written warning for the Section I violation of unauthorized deviation from his scheduled bus route and his August 2014 final written warning with three-day suspension for his violation of Section I by giving a finger gesture out of his bus window. (N.T. 45-46, 118-123, 177; Union Exhibit 5)
25. Section 107 of the Authority's Employee Manual contains a grievance procedure. This Section provides, in relevant part, as follows:

Step 1-Human Resource Manager: An employee shall present his/her grievance in writing to the HR Manager who shall attempt to resolve the grievance to the mutual satisfaction of both parties. The HR Manager will make their best attempt within five (5) business days after receiving the grievance to report his/her decision in writing to the employee.

Step 2-Executive Director: I[f] the employee is not satisfied with the disposition of his/her grievance at the first step, he/she may submit a written appeal to the Executive Director within ten (10[]) business days after receiving a decision at the first step. An employee shall present his/her grievance in writing to the Executive Director who shall attempt to resolve the grievance to the mutual satisfaction of both parties. The Director will make their best attempt within five (5) business days after receiving the grievance to report his/her decision in writing to the employee.

Step 3-Personnel Committee: If the employee is not satisfied with the disposition of his/her grievance at the second step, he/she may submit a written appeal to the Board of Directors within ten (10) business days after receiving a decision at the second step. The Personnel Committee will make their best attempt within ten (10) business days after receiving the appeal to meet with the employee and/or his/her representative, in an attempt to resolve the grievance. The executive director shall be in attendance to represent management.

The Personnel Committee shall give the employee a written decision within ten (10) business days following said meeting.

(N.T. 28-29; Union Exhibit 8 at 23-24).

26. On February 8, 2015, Mr. Edmiston sent a letter to the IndiGO Board apologizing for violating the dress code policy and explaining that his pants and shoes got wet because he fell while shoveling snow. He explained that he enjoyed working for IndiGO. (N.T. 128; Union Exhibit 9)
27. Also on February 8, 2015, Mr. Edmiston sent a letter to Mr. Kanyan apologizing for the dress code violation and explaining that he wet his uniform shoveling snow and that he did not have a backup uniform. (Employer Exhibit 4)
28. On February 13, 2015, Mr. Edmiston filed a step 1 grievance with the HR Manager seeking her investigation into his termination. As a result of the grievance, Ms. Hill examined Mr. Edmiston's personnel file and disciplinary record. Mr. Sundquist helped Mr. Edmiston write his grievance. (N.T. 28-29, 125-126, 169-170; Union Exhibit 2)

29. On February 12, 2015, John Kanyan, the IndiGO Executive Director, wrote to Mr. Edmiston as follows:

This is a reply to the letter you addressed to me dated 2-8-15.
I wasn't sure if this was an appeal so I have responded as if it was.
I have reviewed your Personnel files and agreed that the termination of your employment as an employee from IndiGO stands.
I wish you the very best in your future endeavors.

(Union Exhibit 11)

30. Also on February 12, 2015, David Williams, the Chairperson of the IndiGO Board of Directors, responded to Mr. Edmiston's February 8, 2015 letter directed to the Board of Directors. Mr. Williams stated, in relevant part, as follows:

At a scheduled IndiGO Board meeting held February 12, 2015, the IndiGO Board of Directors reviewed the letter you addressed to the Board. Unsure of whether this letter was an appeal, the board has treated this as an appeal to your recent termination.

After deliberation and review of your personnel files the Board has agreed that the termination of your employment as an employee from IndiGO stands.

(Union Exhibit 12)

31. Also on February 12, 2015, the Executive Director of IndiGO signed a Memorandum of Agreement, agreeing to the composition of the bargaining unit and an election date of March 10, 2015. The Board certified the ATU as the exclusive bargaining representative of the Authority employees on March 18, 2015. (N.T. 20-23, 35, 38-40, 176; Employer Exhibit 3)
32. On February 19, 2015, Ms. Hill issued an appeal denial letter stating to Mr. Edmiston as follows: "Your appeal is denied based upon review of your file, hour [sic] history of rules infractions and the timeframe for such infractions." The letter further listed five infractions in violation of Section 1 within an eleven-month period. Three infractions are sufficient for immediate discharge. (Union Exhibits 8 & 13)
33. On February 24, 2015, Mr. Edmiston filed a step-two grievance with the Executive Director. Repeating his step 1 complaints. Mr. Edmiston complained that he believed that his termination was too harsh a punishment for a dress code violation, that the dress code is not being evenly enforced and that it is unclear. He claimed to have been denied due process and that his termination was the result of his Union activities. (Union Exhibit 16)
34. On February 27, 2016, Mr. Kanyan responded to the step-two grievance in a letter that stated that Mr. Edmiston's termination was based on five violations of Section I of the Performance Code. The letter also provided that, on the day of Mr. Edmiston's termination, he was observed violating the IndiGO tobacco use policy which is an additional violation of Section I of the Performance Code. (Union Exhibit 15)
35. Mr. Kanyan's letter further stated, in relevant part, as follows:

Your letter and appeal notes that you feel that termination due to violation of the dress code policy is too harsh, however IndiGO considered your disciplinary history in the last year, in addition to present violations when reaching the decision to deny your appeal. IndiGO takes all of its rules seriously and continuous rules violations are not acceptable.

IndiGO has not considered any other reason other than the history of rules violation in consideration of any and all employment actions/decisions concerning discipline.

(Union Exhibit 15)

36. On March 5, 2015, Mr. Edmiston filed a step-three grievance with the IndiGO Board of Directors which reiterated the complaints contained in both his step-one and step-two grievances. Mr. Edmiston met with the members of the Board of Directors who listened to his position and reviewed his personnel file and disciplinary record. (N.T. 171-172; Union Exhibit 16)
37. On March 20, 2015, Verna Bruner, on behalf of the Personnel Committee, and David Williams, on behalf of the full Board of Directors, issued a letter to Mr. Edmiston denying his appeal to the Board of Directors. The letter stated, in relevant part, as follows:

The Personnel Committee has considered various items in deliberating on your appeal including but not limited to: your history of policy violations, your statements before the Committee, IndiGO's policies and policy infractions after your dress code violation.

IndiGO considers all of its employees ambassadors of the Authority and your history of violations as well as ongoing violations and have determined that your termination was proper.

(N.T. 34; Union Exhibit 17)

DISCUSSION

In a discrimination claim, the complainant has the burden of establishing that the employer knew that the employee engaged in protected activity and that the employer implemented adverse employment action that was motivated by the employee's 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). Because direct evidence of anti-union animus is rarely presented or admitted by the employer, the Board and its examiners may infer animus from the evidence of record. **Borough of Geistown v. PLRB**, 679 A.2d 1330 (Pa. Cmwlth. 1996); **York City Employes Union v. City of York**, 29 PPER ¶ 29235 (Final order, 1998). An employer's lack of adequate reason for the adverse action taken may be part of the employee's prima facie case. **Stairways, supra; Teamsters Local 312 v. Upland Borough**, 25 PPER ¶ 25195 (Final Order, 1994).

The Board will give weight to several factors upon which an inference of unlawful motive may be drawn. **PLRB v. Child Development Council of Centre County**, 9 PPER ¶ 9188 (Nisi Decision and Order, 1978). 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.

On this record, it is undisputed that Mr. Edmiston engaged in protected, concerted activities by actively pursuing Union representation and organizing his coworkers with Mr. Sundquist and Mr. Trabert. The Authority disputes that the management employees who disciplined and terminated Mr. Edmiston knew of his protected activities. An inference that the Managers in the chain of discipline in this case knew of Mr. Edmiston's organizing efforts is tenuous, and the element of knowledge has not been established by a preponderance of the evidence. In this regard, all that remains is speculation that bargaining unit employees or Mr. Stewart might have told Mr. Kanyan or Ms. Hill that Mr. Edmiston supported the Union. However, such speculation is not substantial, competent evidence establishing knowledge by a preponderance of the evidence.

The evidence yields an inference that Mr. Detweiler probably knew of Mr. Edmiston's Union support because Mr. Detweiler's wife is an operator in the unit. However, there is no evidence that Nancy Detweiler actually knew and assigning knowledge to Mr. Detweiler would be based merely on assumptions about husbands and wives. The evidence also shows that Mechanics' Manager Stewart knew of Mr. Edmiston's support and did not approve. Although there are offices and dispatchers in proximity to the lunch room, there is no evidence that any of the managers heard any Union discussions in the lunch room or, if they had, that they could identify who the Union supporters were. Also, the **credible** evidence demonstrates that Ms. Jones did not know of Mr. Edmiston's Union support and, even if Mr. Detweiler knew, there is no evidence, beyond mere speculation, that he told Ms. Jones or Ms. Hill. Moreover, Ms. Jones was prepared to settle for a reminder about Mr. Edmiston's January 31, 2015 uniform violation without formal discipline. The Union constructed a case for knowledge on a foundation of speculation, supposition and assumptions, not substantial evidence.

Only when Human Resources Manager, Brenda Hill, became aware of the uniform violation and she examined Mr. Edmiston's personnel file, discovering several Section I violations within the past eleven months, did Ms. Hill decide that termination was appropriate. Ms. Hill's decision was affirmed by Executive Director Kanyan and the Board of Directors. However, there is no evidence that Ms. Hill, Ms. Jones, Mr. Kanyan or the members of the Board of Directors had any direct or inferential knowledge of Mr. Edmiston's Union involvement or that Ms. Jones initiated the disciplinary action against Mr. Edmiston. Indeed, Union organizers made an effort to keep the organizing campaign from management, and Mr. Edmiston's name was not on any of the petitions, the Memorandum of Agreement or other filings. He was not a Union contact person, and he did not participate in the conference call with Mr. Kanyan to discuss the terms of the Memorandum of Agreement or the election. Mr. Walters was the Union contact person with whom Mr. Kanyan dealt. Mr. Stewart and Mr. Detweiler were not in the chain of discipline with respect to Mr. Edmiston's termination, and Mr. Detweiler was an AFSCME supporter.²

Moreover, there is no substantial, competent evidence on this record that could reasonably support an inference of unlawful motive or Union animus. There are no anti-union statements made from any management employe in the chain of discipline. Indeed, the record shows that Mr. Kanyan cooperated with the Union by communicating with Mr. Walters and by agreeing to times, a date and a place for the election. In the grievances and at the hearing, both Mr. Edmiston and the Union tried to characterize Mr. Edmiston's termination as a harsh punishment for a mere uniform violation, shortly after the filing of the petition for representation, demonstrating that he was terminated for his Union activities. However, that characterization is belied by the record; it paints over the informative, colorful depths of the record's mural of Mr. Edmiston's work history at IndiGO.

Mr. Edmiston was terminated for a series of violations of the performance code in only eleven months' time. Mr. Edmiston was not terminated for his Union activity or for a single uniform violation. He was constantly in trouble, and he was arguably a problem employe. As such, Mr. Edmiston sought Union protection only after multiple disciplinary actions against him placed his position with the Authority in jeopardy. He was not a solid IndiGO employe turned Union organizer who was discriminatorily discharged. His status as an employe was already jeopardized because of his errant behavior long before he became involved in seeking to Unionize the Authority.

The Union presented no evidence of disparate treatment. Although Mr. Edmiston claims that the uniform policy is unclear and not equally applied, the record evidence belies those bald allegations. The uniform policy is clear. Both Mr. Edmiston and his fellow Union organizer corroborated the fact that the Authority requires operators to wear black shoes issued by the Authority or approved footwear purchased by the employe. Operators must wear uniform shirts and uniform pants. A hat is optional. Employes may wear jeans and/or a team jersey if they pay money into a charity fund. Employes may only wear jeans and a jersey on

² Although Mr. Detweiler was Mr. Edmiston's immediate supervisor at the time, Connie Jones was in charge of operations on the Saturday of his uniform violation. Ms. Hill, along with Ms. Jones signed Mr. Edmiston's termination letter, not Mr. Detweiler.

Fridays or Mondays. They may not deviate from the established dress code on Saturdays, Sundays, Tuesdays, Wednesdays or Thursdays. Moreover, although Mr. Edmiston claims in his grievance that the policy was not evenly applied, the Union did not establish such disparate treatment. The Union did not establish that any other specific employe violated the uniform policy on a day other than Friday or Monday. The Union also did not proffer any evidence an employe violated the dress code and was not disciplined.

Mr. Trabert has been a more visible union leader and organizer, while working for the Authority, than Mr. Edmiston. He was president of the AFSCME local. He filed grievances, and he was involved in labor-management meetings with the Authority over the years. Mr. Trabert has not been discriminated against, and he has not suffered adverse employment action. Additionally, even though the Union was unable to establish a prima facie case of discrimination, the record shows that the Authority was motivated by legitimate business reasons for terminating Mr. Edmiston.

On February 21, 2014, Mr. Edmiston was disciplined under Section I for the unauthorized deviation from his bus route. Less than two months later, on April 7, 2014, Mr. Edmiston was again disciplined for striking a parked car with his bus. Four months after that, on August 25, 2014, Mr. Edmiston was again disciplined, with a written final warning and a three-day suspension, for yelling at the driver of another vehicle and making the finger gesture at him. Less than one month after that, on September 17, 2014, Mr. Edmiston was again disciplined for failing to report to work on time for a bus exchange. The Authority imposed this series of disciplinary measures in 2014, for cause and before Mr. Edmiston was involved in any organizing activities. The 2014 discipline, therefore, could not have been unlawfully motivated as a matter of law. Again, four months later, Mr. Edmiston committed a uniform violation on January 31, 2015. Mr. Edmiston committed five infractions in less than one year. Under the terms of the Performance Code, termination was proper.

If the Authority exercises leniency and deviates from the performance code on a case-by-case basis, it could subject itself to allegations of disparate treatment, favoritism and arbitrary disciplinary practices. The only way to ensure fairness is to follow the terms of the code in every case. If the Authority is going to be fair and equitable to all its employes, it must, without exception, apply disciplinary provisions identically to all its employes. Indeed, the very reason for promulgating the Performance Code and ensuring that all employes receive copies is to ensure and maintain consistency, compliance and fairness in the application of the Authority's rules of employment and the imposition of discipline. What Mr. Edmiston is seeking is an exception for himself under the rules and the unfair application of those rules, which would not be equitable to his coworkers.

Accordingly, Mr. Edmiston was not terminated for a single violation of the dress code, as he claims. He was terminated for consistently violating the Authority's work rules. I credit Mr. Kanyan and his February 27, 2015 letter, which expressly stated as follows: "IndiGO considered your disciplinary history in the last year, in addition to present violations when reaching the decision to deny your appeal ... IndiGO has not considered any other reason other than the history of rules violation in consideration of any and all employment actions/decisions concerning discipline."

The Union did not establish on this record that the Authority had the requisite knowledge of Mr. Edmiston's Union activities or that the employer was unlawfully motivated by those activities when it terminated Mr. Edmiston on February 5, 2015. Therefore, the Union did not establish a prima facie case of discrimination, as a matter of law. Although the burden never shifted to the Authority to establish a legitimate business reason for its termination of Mr. Edmiston, the record abundantly shows the legitimacy of the Authority's termination of Mr. Edmiston. The Union did not allege an independent violation of Section 1201(a)(1) and, therefore, such a claim is not before me for consideration.

Accordingly, the Authority's motion for dismissal is granted, the charge of unfair practices is dismissed and the complaint is hereby rescinded.

CONCLUSIONS

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

1. The Authority 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 Authority 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 April, 2016.

PENNSYLVANIA LABOR RELATIONS BOARD

Jack E. Marino, Hearing Examiner