

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

TEAMSTERS LOCAL UNION NO. 773 :
 :
 :
 v. : CASE NO. PERA-C-20-136-E
 :
 :
 MOUNT POCONO BOROUGH :

PROPOSED DECISION AND ORDER

On June 25, 2020, the Teamsters Local Union No. 773 (Union) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) alleging that Mount Pocono Borough (Borough) violated Section 1201(a)(1), (3) and (5) of the Public Employe Relations Act (Act or PERA). The Union specifically alleged that the Borough discriminated against Dennis and Lori Noonan, husband and wife, for their Union support and organizing activities, when it terminated Dennis Noonan, reprimanded Lori Noonan and increased Lori Noonan's workload.

On July 22, 2020, the Secretary of the Board issued a Complaint and Notice of Hearing designating a hearing date of August 26, 2020, in Harrisburg. On or about August 7, 2020, as a result of scheduling conflicts with Borough's Counsel and the fact that she had not received copies of the charge, I continued the August 26, 2020 hearing to Tuesday, October 27, 2020. During the hearing on that date in the Board's hearing room, both parties were afforded a full and fair opportunity to present testimony and documents and to cross examine witnesses. A different attorney from the same law firm representing the Borough entered his appearance and represented the Borough at the hearing. During the hearing, the Union withdrew its cause of action under Section 1201(a)(5). (N.T. 9). By letter dated January 6, 2021, the Union withdrew all allegations and requested remedies relating to Lori Noonan. (See also, Union's Post-hearing Brief at 2). On February 12, 2021, the Union and the Borough filed post-hearing briefs.

The examiner, based upon all matters of record, makes the following:

FINDINGS OF FACT

1. The Borough is a public employer within the meaning of Section 301(1) of PERA. (PERA-R-20-43-E; Nisi Order of Certification, October 2, 2020)

2. The Union is an employe organization within the meaning of Section 301(3) of PERA. (PERA-R-20-43-E; Nisi Order of Certification, October 2, 2020)

3. Dennis Noonan, at all times relevant hereto, was the Zoning and Code Enforcement Officer for the Borough. He started working for the Borough in March 2018, and he was terminated on March 2, 2020. He was hired as a full-time employe, but he worked only part time for the Borough, on Tuesdays, Thursdays and Fridays, for an average of approximately 27 hours per week.

After Dennis Noonan's probationary period expired, he shortened his hours from approximately 34 hours per week to approximately 18-20 hours per week. Lori Noonan has been the Secretary/Treasurer for the Borough for 30 years. The Zoning/Code Enforcement Officer and the Secretary/Treasurer positions are both excluded from the bargaining unit as certified by the Board, by agreement of the parties. (N.T. 17-18, 31-33, 56-57, 128-129, 203-206)

4. Michael Penn is the Mayor of the Borough. He was appointed on October 1, 2018, and then he was elected. Mayor Penn sits on the Borough's personnel committee. (N.T. 108-109, 145, 176)

5. Lori Noonan's office is downstairs in the Municipal Building. Also downstairs are the Zoning Office, the Office of the Administrative Assistant, Diane Jackowski, and the Municipal Authority. Council Chambers are upstairs on the second floor, and Mayor Penn has a desk on the second floor. (N.T. 65-66)

6. Before, during and after his employment with the Borough, Dennis Noonan worked for the Pocono Mountain Economic Development Corporation (PMEDC). Upon his hiring, Dennis Noonan agreed to leave the PMEDC within 2 weeks. He still had not done so two years after his hiring at the Borough, when he was terminated. (N.T. 33-34, 128-129, 218)

7. At the time that Dennis was hired in March 2018, the Borough expressed concerns over his employment with the PMEDC, which did projects within the Borough. The Borough presented Dennis with a Letter of Understanding/Engagement.¹ (N.T. 41-43, 52-53, 130-131; Borough Exhibit 2).

8. The Borough was concerned that, as Code Enforcement Officer, Dennis Noonan may not properly enforce violations on the PMEDC projects within the Borough while he worked at the PMEDC. Also, the Borough competes with the PMEDC for a pool of grant funds. When Dennis Noonan writes a grant for the Borough, it competes with PMEDC grant requests. If Dennis were to align more with the PMEDC, the Borough would suffer a loss of funds. (N.T. 131-132)

9. During one joint planning committee meeting between Coolbaugh Township, Mount Pocono Borough and the PMEDC regarding a development project sponsored by the PMEDC for a trucking warehouse overlapping the Borough and Coolbaugh Township, Dennis told Council members that he was representing the PMEDC that day, which many Council members objected to because of the conflict of interest. (N.T. 132)

10. The Letter of Understanding provides, in relevant part, as follows:

¹ The Letter of Understanding presented at the hearing is an unsigned copy, and there is a conflict in the testimony regarding whether Dennis Noonan actually signed the Letter of Understanding. However, I need not resolve that conflict because I am limiting my reliance on the Letter of Understanding to support the fact that the Borough had grave concerns over Dennis Noonan's dual employment with the Borough and the PMEDC and shared those concerns with Dennis Noonan.

By way of factual background, Noonan is currently employed by the [PMEDC]. Noonan had this position prior to accepting employment by Mount Pocono.

The Borough will engage Noonan as full time Zoning/Codes Officer provided that Noonan executes the within letter, and abides by the terms set forth herein.

. . . .

Mount Pocono and Noonan agree that Noonan shall not be involved with, work upon or represent PMEDC or any of its related entities, including the Pocono Mountain Industrial Park Authority, with respect to any projects, ongoing or new, within the geographic boundaries of the Borough of Mount Pocono with the exception of the LPC/Lot 28 project that was identified by Noonan as a conflict of interest at the first interview, and all subsequent interviews, for the position of Zoning/Code Enforcement Officer and which was acknowledged and agreed upon by the Council representatives present at those times and the SR611/Pine Hill Road signalization project to which Noonan is the sole contact with and between state agencies and other project participants. Additionally, Noonan shall not act as representative of PMEDC, or any of its related entities with respect to any matters within the jurisdiction of or before the Mount Pocono Municipal Authority (hereinafter "MPMA").

Mount Pocono and Noonan further agree that the determination of the conflict would be solely in the discretion of the Mount Pocono Borough Council.

Breach of this Letter of Understanding will be grounds for the termination of Noonan's employment as Mount Pocono Borough Zoning Officer.

(Borough Exhibit 2)

11. At a Borough Council meeting on December 9, 2019, Council members discussed changing employe health insurance and vacation time, while also proposing to give raises to Council members. During the meeting, Council members sit on a horseshoe shaped dais facing an audience, with Council President seated in the center, Lori Noonan to her right and Mayor Penn to Lori's right. Dennis Noonan was seated in the audience during the meeting. After the meeting, as the public was exiting and Council members were still present, Dennis walked up to Lori Noonan, who was still on the dais, when Lori Noonan stated: "I wonder if this would have happened had there been a union," or "I wonder if this would have happened if the employes had been unionized." Dennis Noonan nodded his head in agreement. (N.T. 43-47, 81-84)

12. No one acknowledged or responded to Lori's "union" comment, and no one has said anything to Dennis about the comment. The Mayor did not hear those comments. (N.T. 47, 61-62, 84, 175)

13. On January 6, 2020, the Borough reappointed Dennis Noonan to the position of Zoning/Code Enforcement Officer along with other reappointed Borough employes. Such reappointments are required by the Borough Code every two years. (N.T. 37-38, 143; Complainant Exhibit 6 at 2)

14. Dennis and Lori Noonan supported the Union's organizing efforts and signed authorization cards on or about January 21, 2020. None of the authorization cards were shown to the Borough. Rather, Lori Noonan collected the cards and gave them to another employe to give to the Union representative. (N.T. 18-19, 20-22, 25 34-36, 70-71; Complainant Exhibits 1 & 2)

15. On Friday, January 24, 2020, Dennis attended the Regional Economic Development Breakfast Conference in the morning. Dennis sat with representatives from the PMEDC. Mayor Penn and Borough Council President Claudette Williams attended on behalf of the Borough. When the Mayor said hello to Dennis, he just nodded and walked by and sat with the PMEDC table. Mayor Penn and Borough Council had no knowledge that Dennis Noonan would be at the Conference, when he was supposed to be working at the Borough that morning. He did not put in a request for leave for that time. (N.T. 57-59, 133-134)

16. On February 5, 2020, Counsel for the Union sent a letter to Mayor Penn at the Mount Pocono Municipal Building. In the letter, Union Counsel stated as follows:

The Union hereby notifies you that more than thirty percent (30%) of all regular full-time and part-time road maintenance, maintenance, administrative assistant, and zoning/code enforcement officer employees of Mount Pocono Borough, desire to be exclusively represented for collective bargaining purposes by Teamsters Local 773 and request that you consent to an election.

(Complainant Exhibit 3)

17. On February 7, 2020, Union Counsel filed with the Board a Petition for Representation, which the Board received on February 10, 2020. Mayor Penn is copied on the cover letter for the filing and the Petition contains the name and address of Mayor Penn at the Borough Municipal Building. (N.T. 24; Complainant Exhibit 4)

18. Counsel for the Union also sent the Petition for Representation to Mayor Penn at the Municipal Building, which Lori Noonan time stamped on February 10, 2020. (N.T. 77-79, 112; Complainant Exhibits 4 & 7)

19. The Board sent the "Acknowledgment and Notice of Filing of Petition" to Mayor Penn at the Municipal Building, which Lori Noonan time stamped as received on February 24, 2020. Lori Noonan placed the envelope containing the Board's Acknowledgement in Mayor Penn's mailbox at the Municipal Building. Because the Board's envelope was certified mail (with no signature required), Lori Noonan emailed Mayor Penn several times that he had the mail because he had not retrieved it. Lori Noonan often emails Council members when they have mail. She did not state in her emails to the Mayor what the mailing contained because she was unsure. (N.T. 78-80, 112, 157-161; Complainant Exhibits 8 & 9)

20. Matthew Weidman is the Union Business Agent responsible for organizing the employes of the Borough. At no time before the adverse employment action at issue in this case had Mr. Weidman had any conversations with any elected Borough officials about the representation petition or the Union's organizing efforts. Dennis and Lori Noonan did not communicate to the Borough their Union support. (N.T. 14-17, 30, 47)

21. On February 11, 2020, the personnel committee met with Dennis Noonan for a performance evaluation during which the committee addressed Dennis Noonan's failure to work full time hours. They also addressed seeing Dennis at the Breakfast Conference on January 24, 2020, and Dennis' response was that he was at the Conference representing both the Borough and the PMEDC. Borough Council President Williams was "shocked" to see Dennis Noonan at the Conference representing the PMEDC when he was supposed to be working for the Borough. The Mayor and Council felt that representing both entities was a conflict of interest. Throughout February 2020, Council members, at several meetings, discussed Dennis Noonan's conflict of interest and his working for both the Borough and the PMEDC. (N.T. 128-129, 133-137, 189-191, 200; Borough Exhibit 5)

22. Council Member Stacy Stewart-Keeler was concerned that the Borough was not getting full-time work from Dennis Noonan, that he was not behaving as if he were accountable to the Borough and that he was not doing what the Borough hired him to do. She believed that Dennis was not getting his work done on a part-time basis and residents complained that he was unavailable for queries and service. (N.T. 222-223)

23. On February 24, 2020, Claudette Williams, the Borough Council President, sent an email to the Mayor, the Solicitor and the other Council members. (N.T. 180-181, 194; Borough Exhibit 6)

24. The email stated, in relevant part, as follows:

Members of the personnel committee met last week to discuss staff work ethics, pay raise, [fraudulent] email address, and our Zoning Officer Dennis Noonan. Some of this discussion was included in the executive meeting held after our work session.

I would like to have an executive session to discuss personnel issues prior to our March 2nd meeting. The Executive meeting will start at 6 pm and should last an hour.

(Borough Exhibit 6)

25. At the Borough Council meeting on Monday, March 2, 2020, Mayor Penn requested that Council make a motion to terminate Dennis Noonan. Council Member Stacy Stewart-Keeler made the motion, and Council Member Tom Neville seconded the motion. The motion carried with a 5-1 vote in favor of termination.² (N.T. 39-40, 49, 222-223; Borough Exhibit 1 at 7)

26. When Dennis Noonan asked why he was terminated at the meeting, the Mayor responded: "conflict of interest." (N.T. 40; Borough Exhibit 1)

27. Also on March 2, 2020, the Borough issued an "Employee Disciplinary Action/Termination" to Dennis Noonan. The termination report generally cites disobedience/insubordination and conflict of interest as reasons for his termination. (Borough Exhibit 5)

² Although not material, I have relied on the Council Meeting Minutes and the testimony of Council Member Stewart-Keeler that she made the motion. Dennis Noonan, however, testified that Tom Neville initially made the motion.

28. The 17-paragraph termination report specifically enumerates the reasons for Dennis Noonan's discharge as follows: his dual employment with the Borough and the PMEDC and the conflict that poses; his presence at the January 24, 2020 conference on behalf of the PMEDC; his failure to request permission for time off from the Borough that day; his timecard submission for that day reflecting 7 hours of work for the Borough; his conflict with obtaining grants for the Borough, which competes for grants with the PMEDC, while writing grants for the PMEDC; Dennis Noonan's conflict of interest at the joint planning committee meeting, during which he announced that he represented the PMEDC and not the Borough; his alleged disrespectful intervention on behalf of his wife during a conversation between the Mayor and Lori Noonan, whereby Dennis allegedly told the Mayor that he was being untruthful and spreading untruthful rumors about Lori Noonan; Dennis Noonan's failure to abide by the Letter of Understanding in which he agreed to avoid conflicts of interest and agreed to the Borough's sole authority to determine such conflicts. (N.T. 202; Borough Exhibit 5)

29. Not included in the termination report was another instance in which the Borough felt that Dennis Noonan exhibited a conflict of interest by representing the PMEDC. An organization called Hoops International wanted to develop in an area of the Borough zoned residential. Hoops International, which was sponsored by the PMEDC, wanted a zoning map change. At the hearing before his own Borough Council, Dennis Noonan testified on behalf of the PMEDC and Hoops International, and not as the Borough's Zoning Officer. (N.T. 140-141, 191-192)

30. Mayor Penn believes that Dennis Noonan had a conflict of interest the entire time he was employed at the Borough as its Zoning/Code Enforcement Officer, as does Council Member Stacy Stewart-Keeler. (N.T. 162-163, 219-220)

31. During March 2020, Mayor Penn was not in the Borough Municipal Building much due to COVID and his brother's compromised physical health. He had to travel to NYU Hospital to talk to his brother's doctors, and he was otherwise at home caring for his brother while trying to remain free of COVID, which could further compromise his brother's health. Mayor Penn's brother suffered from Leptomenigeal Disease in his brain, causing the loss of the use of his legs and the loss of his ability to breath. The disease eventually stopped his heart. Although the Mayor did receive Lori Noonan's email informing him that he had mail, Lori never informed the Mayor of the source of the mail. Mayor Penn forgot about the email informing him about his mail because he was preoccupied with caring for his dying brother. (N.T. 157-161)

32. Mayor Penn first learned of the Union's organizing efforts on March 10, 2020, when he actually received and opened the Board's Acknowledgment. Mayor Penn time stamped the envelope on March 10, 2020, because he noticed the approximately two-week time delay from Lori Noonan's February 24, 2020 time stamp and the fact that it was certified mail. The Mayor did not see a copy of the Petition for Representation or Union Counsel's cover letter filing the Petition before March 10, 2020. The Mayor never saw a copy of Union Counsel's February 5, 2020 letter addressed directly to the Mayor. Council President Williams was also unaware of Dennis Noonan's Union support when she voted to terminate his employment with the Borough. Council Member Stacy Stewart-Keeler learned of the Union effort sometime in March 2020, when President Williams told her over the phone. At that time, however, she did not know that the Noonans supported the Union.

She did not learn about the Noonans until July 2020. (N.T. 112, 117-119, 141, 152-154, 203-206, 231-214)

33. Although Mayor Penn was at the Municipal Building for the Borough Council meeting on March 2, 2020, he did not retrieve his mail that day. The March 2, 2020, Council meeting was particularly busy. Mayor Penn prepared for two days before the meeting. The executive session prior to the public meeting took over an hour and delayed the public meeting, during which Mayor Penn presented the 17-paragraph termination report from the personnel committee to the full Council outlining Dennis Noonan's conflict of interest, his alleged insubordination, his alleged disobedience and the committee's recommendation to terminate Dennis Noonan. There was no discussion during executive session on March 2, 2020, about Union organizing. The Mayor and Council had no knowledge of any Union organizing effort at this time. (N.T. 113-115, 138, 141, 174, 220-221; Borough Exhibit 5)

34. In this context, Mayor Penn went directly into Council Chambers on March 2, 2020, for 3 hours of executive and public meetings, after which Dennis Noonan was terminated. Council asked a police officer to escort Dennis Noonan to retrieve his computer passcodes. Mayor Penn rushed out of the Municipal Building that night, at approximately 9:00 p.m., because he was responsible for the care of his brother who had one month to live. He did not check his mail. (N.T. 114-115)

35. There is no information contained in the Board's Acknowledgment, the Petition for Representation or Union Counsel's February 7, 2020 cover letter that indicates which employees were involved in supporting the Union. The Mayor did not learn about Dennis and Lori Noonan's support for the Union until April 8, 2020, after the Borough terminated Dennis Noonan, during a phone conversation with the Borough Solicitor who informed the Mayor that the instant charge of unfair practices was going to be filed on behalf of Dennis and Lori Noonan challenging their adverse employment action based upon their Union activities.³ (N.T. 115-119)

36. Borough Council President Williams first learned of the Union organizing effort on March 25th or 26th, 2020, when Mayor Penn called her and told her. She did not learn that Dennis and Lori Noonan were involved in Union organizing until April 2020. (N.T. 182)

DISCUSSION

The issue to be decided in this case is whether the Borough terminated the employment of Dennis Noonan in retaliation for his Union activities. For the reasons that follow, I conclude that the Borough did not

³ During rebuttal, Lori Noonan testified that she saw the Mayor take his mail out of his mailbox on February 11, 2020, which was the day of employee evaluations. (N.T. 230-231). That stack of mail, she claimed, contained Complainant Exhibits 4 & 7, which is Union Counsel's February 7, 2020 copy of the Petition and envelope time stamped February 10, 2020. Lori's testimony, however, does not contradict the Mayor's credible testimony that he did not read any Union related mail until March 10, 2020. Additionally, the Noonans were not identified in any of that mail, as the Union exhibits demonstrate. Accordingly, I credit Mayor Penn's testimony that he did not read any mail relating to Union organizing until March 10, 2020.

discriminate or in any way retaliate against Dennis Noonan for his protected activities.

To establish a claim for discrimination, the Union had the burden of establishing that the Borough knew that employees were engaged in protected activity and that it took adverse employment action against employees because of or in retaliation for those activities. 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 Employees Union v. City of York, 29 PPER ¶ 29235 (Final Order, 1998).

On this record, the Union has not met its burden of establishing a prima facie case of discrimination as a matter of law. The record lacks substantial, competent evidence that any elected officials involved in the decision to terminate Dennis Noonan had any knowledge of his Union support when they made the decision to terminate his employment. The Mayor, Council President Williams and Council Member Stewart-Keeler all consistently and credibly testified that they had no knowledge of any Union activity when they terminated Dennis Noonan. Moreover, the record contains no evidence from which to draw an inference of unlawful motive. Although the close timing between Dennis Noonan's Union support and his termination could be suspect, the Board has repeatedly held that timing alone, without corroborating evidence from which to yield an inference of animus, is insufficient to find discrimination.

Absent a prima facie case, the burden did not shift to the Borough to establish that legitimate business concerns motivated its decision to terminate Dennis Noonan. However, for purposes of potential Board review, under the totality of the record circumstances presented, I concluded that the Borough credibly established that it had legitimate business reasons, unrelated to protected activities, to terminate Dennis Noonan. Indeed, the record is clear that the Borough's Mayor and its Council Members had been concerned for two years about Dennis Noonan's dual employment with the PMEDC and the conflicts of interest that such dual employment presented. Dennis Noonan was supposed to sever his relationship with the PMEDC within two weeks of his hiring with the Borough. The Borough permitted him to continue his dual employment because Dennis represented that he had some projects he wanted to finish with the PMEDC. Two years later, he still worked for the PMEDC, had conflicts of interest, failed to represent the Borough's interests when the PMEDC was involved and could not work the full-time hours required of the Borough, which compromised public service to such an extent that the Borough received resident complaints.

The Union also argues that "it is clear that the timing of Dennis' discharge was because of the organizing drive and therefore inherently destructive of the rights of all employees to organize." (Union's Post-hearing Brief at 11). Even in the absence of evidence of anti-union motivation, an employer may be found to have violated Section 1201(a)(3) of PERA based on the analysis set forth in NLRB v. Great Dane Trailers, Inc., 388 U.S. 26 (1987). But even this analysis requires the employer to treat employees differently based on known protected activities. In Great Dane, the United States Supreme Court held that an employer violated Section 8(a)(3) of the NLRA, the federal counterpart to Section 1201(a)(3) of PERA, when it refused to pay accrued vacation benefits to striking employees but then paid

those benefits to non-striking employees. Although there was no proof of anti-union motivation, the Supreme Court determined that some employer conduct is so inherently destructive of employee interests that it may be deemed a violation of 8(a)(3). The employer, in Great Dane, knowingly treated the employees differently. Absent the requisite knowledge in this case, the Borough's decision to terminate Dennis Noonan cannot be discriminatory on its face, notwithstanding motive, because his protected activities were completely unknown to any officials in the Borough.

In Teamsters Local 229 v. Susquehanna County, 30 PPER 30060 (Final Order, 1999), the Board stated that "Inherently destructive conduct has been defined as conduct that has far reaching, debilitating effects with respect to employee bargaining or union organization." (citations omitted). The Susquehanna County Board further opined:

If the conduct is inherently destructive, the employer may defend its actions by producing evidence of legitimate business justification; this purported justification will then be weighed by the Board and even a legitimate justification may not outweigh the destructive impact of the conduct on employee statutory rights. Forward Township, 29 PPER ¶ 29112 (Proposed Decision and Order, 1998). On the other hand, conduct that has only a comparatively slight impact upon employee rights requires proof of anti-union animus, but only if the employer produces evidence of a legitimate business justification. Id.

Susquehanna County, supra. The Borough's overwhelming and legitimate business reasons for terminating Dennis Noonan in this case far outweighs the slight negative impact that his termination may have had on the exercise of employee's protected activities. Also, the act of terminating Dennis Noonan was not discriminatory in the absence of evidence of unlawful motive, because his Union support was hidden from the employer. Although the record shows that Dennis Noonan supported the Union, there is no evidence that he was a lead organizer or that he was outspoken to other employees or the employer in support of the Union. The record merely shows that Dennis Noonan was just one of the employees who signed a Union authorization card that no one else knew about other than Lori. In this regard, Dennis Noonan's termination was not inherently destructive of employee rights within the meaning of Great Dane.

Also, the Borough did not commit an independent violation of Section 1201(a)(1) of the Act. 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 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, a reasonable Borough employee would not have been coerced, intimidated, or restrained in exercising their rights to organize and vote for the Union when the Borough

terminated Dennis Noonan, who supported the Union, because there is no nexus between Noonan's Union support and his termination. Indeed, there can be no such nexus where none of the Borough officials possessed any knowledge of Dennis Noonan's Union support. Also, the Borough's legitimate business reasons far outweigh any employe concerns over interference with employe rights to organize. The Borough tolerated Dennis Noonan's performance failures and conflicts of interest for two years. Although the timing of his termination is unfortunate, the timing is more a function of the January 24, 2020 conference which served as the catalyst that finally exhausted the patience of the Borough Mayor and Council with Dennis Noonan.

In this regard, the Borough had the right as a public employer to remedy Dennis Noonan's inadequate job performance caused by his working part time instead of full time without accountability, his lack of service to the public in the face of residents' complaints, after multiple attempts by the Borough to correct those failures over a long period of time, as well as his constant conflict of interest with the PMEDC, for two years. Dennis Noonan was terminated because he did not show up for work when he was supposed to and because he did not sever his employment relationship with a competing entity, which compromised the Borough. From the Borough's perspective, he simply did not do his job of representing the Borough in zoning and code enforcement matters. His termination was simply unrelated in any way to his protected activities. Reasonable Borough employes would not be intimidated or coerced in the exercise of their rights under PERA as a result of Dennis Noonan's termination knowing that he abused the Borough's patience over a two-year period and that the Borough had no knowledge of Noonan's Union support when he was terminated.

Accordingly, the Borough has not engaged in unfair practices in violation of Section 1201(a)(1) or (3).

CONCLUSIONS

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

1. The Borough 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 Borough has not violated Section 1201(a)(1) or (3) of PERA.

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 and become final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this nineteenth day of February 2021.

PENNSYLVANIA LABOR RELATIONS BOARD

JACK E. MARINO/S

Jack E. Marino, Hearing Examiner