

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

MARGARITA PADIN :
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 :
 v. : CASE NO. PERA-C-24-110-E
 :
 PHILADELPHIA HOUSING AUTHORITY :

PROPOSED DECISION AND ORDER

On May 15, 2024, Margarita Padin (Padin) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) alleging that the Philadelphia Housing Authority (PHA or Authority) violated Section 1201(a)(1), (2), (3), and (4) of the Public Employee Relations Act (Act or PERA). Padin specifically alleges that, between September 8, 2023, and February 16, 2023, she had requested certain power tools from her General Foreman, Nicholas Cionci (Cionci), and complained that they were not made available as allegedly required by the collective bargaining agreement (CBA), culminating in her filing a complaint with the PHA on February 16, 2024. Padin further alleges that, after she filed her complaint, PHA issued retaliatory discipline against her for allegedly subpar work performance on January 9, 2024, and February 2, 2024, which she grieved on February 26, 2024.

On June 6, 2024, the Secretary of the Board issued a Complaint and Notice of Hearing designating a hearing date of August 9, 2024, in Harrisburg. On August 6, 2024, I cancelled the hearing based on the representation that that the parties reached a tentative settlement. On September 16, 2024, Padin filed a request to withdraw the charge. On September 18, 2024, the Secretary of the Board issued a Nisi Order of Withdrawal. On October 8, 2024, Padin filed exceptions to the Nisi Order of Withdrawal. On October 15, 2024, the Board issued an Order Directing Remand to the Hearing Examiner. On October 16, 2024, I scheduled the hearing for December 13, 2024. On December 9, 2024, the PHA filed a Motion to Dismiss in the nature of a request for deferral to grievance arbitration. On December 10, 2024, Padin responded to the Motion. Also on December 10, 2024, I denied the Authority's Motion to Dismiss in the nature of deferral.

During the hearing on December 13, 2024, both parties in interest were afforded a full and fair opportunity to present testimony, admit documents, and cross-examine witnesses. On March 7, 2025, both parties simultaneously filed post-hearing briefs in support of their respective positions.

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

FINDINGS OF FACT

Claimant's Case-in-Chief

1. The PHA is a public employer within the meaning of Section 301(1) of PERA. (N.T. 5)

2. Margarita Padin is a public employee within the meaning of Section 301(2) of PERA. (N.T. 5)

3. Padin is a member of the Building and Construction Trades Council of Philadelphia and Vicinity (Union). Padin was a provisional carpenter at the Authority in 1993 and again in 2010. The PHA hired Padin in May 2018. (N.T. 10-11; CX-1; EX-1)

4. The Authority owns and operates low-income housing for approximately 80,000 Philadelphia residents. The Authority's maintenance department is staffed with approximately 530 Union personnel of different trades who are essential for the maintenance of safe and suitable housing units. (CX-1)

5. Hagop ("Jack") Keshishian is the Executive Vice President of Operations at the Authority. Nicholas Cionci is Padin's General Foreman and supervisor. (N.T. 18, 34, 83, 87; CX-1)

6. On June 28, 2022, the Authority suspended Padin for 5 days and then issued a 10-day suspension followed by a termination effective July 1, 2022. On June 21, 2023, Arbitrator Joseph Licata, Esquire issued an award concluding that the "Authority sufficiently demonstrated good and sufficient cause to suspend [Padin] for five (5) days without pay." Arbitrator Licata further concluded that the Authority did not have good and sufficient cause to discharge Padin, which he modified to a 30-day suspension. (CX-1)

7. Arbitrator Licata found that Padin's employment history with the Authority "appear[ed] to be anything but smooth sailing for her and the Authority." He also listed a series of disciplinary actions against Padin for confrontations with former supervisors and an incident alleging a refusal to complete a job assignment and abandoning a work site. One of the reasons for Padin's June 2022 discipline was that she placed a bucket of live and dead roaches on her former supervisor's desk. (CX-1)

8. The Authority reinstated Padin pursuant to the Licata Award and, in August 2023, assigned Padin to a crew supervised by General Foreman Nicholas Cionci. The Authority assigned Padin to perform work that required power tools. There were not enough power tools for all the crew members who were assigned to perform the same work, such as hanging doors. Padin credibly testified that the carpenters know what power tools they need. At this time, Padin requested power tools from Cionci and claimed that she could not perform her work assignment without power tools. Cionci told Padin to use other employees' power tools. (N.T. 10-12, 34, 83, 104)

9. Padin testified that using other employees' power tools was not an option because they would have to agree to lend her the tools and she would have to wait until they were finished using them. In the presence of other employees, Padin told Cionci that the CBA provides that employees are not supposed to bring their own power tools from home and that she could not do her work. Also, in the presence of other employees, Cionci told Padin that he does not like people who are problems, that he is not going to allow dissension in his crew, and that he would get rid of her. (N.T. 12)

10. Another crew member brought power tools from home and those tools were stolen. Cionci said to that employee: "Didn't you know when you got hired you can't bring power tools from home, that we provide them?" (N.T. 14-16)

11. In January 2024, Padin filed 3 complaints with PHA Human Resources. One of those complaints had to do with Cionci. On January 11, 2024, Padin and her Union representative Cicero met with then Manager of

Labor and Employee Relations Stacey Collins. During that meeting, Padin and her Union rep told Collins that Padin had been assigned to hang doors since August 2023, and that Padin does not have a router, grinder, or hammer drill for the doors and other work assigned. Padin and Union Rep Cicero attended 3 meetings in January and February 2024 with management for her 3 complaints. In March 2024, Padin still had not received a router. (N.T. 16-22, 26-27)

12. On February 16, 2024, Padin submitted another complaint. She received a written reprimand on February 26, 2024. The discipline referred to alleged work-related deficiencies that occurred on January 9, 2024, and February 2, 2024, and it was signed by Cionci. (N.T. 21-22, 24-26, 34)

Authority's Case-in-Chief

13. The CBA addresses the supply of tools and provides, in relevant part, as follows:

23. Tools Machinery and Facilities

(a) The EMPLOYER shall furnish power tools and equipment necessary to perform job duties to all trades as described herein.

(b) The EMPLOYER shall provide to all job classifications in the UNION, with the exclusion of laborers and painters, a one-time allowance for non-power tools in the amount of Two Hundred (\$200.00). EMPLOYEE shall be responsible for the upkeep, maintenance and replacement of the tools provided. EMPLOYER will not replace any tools provided under this paragraph. Unless otherwise specified, all other employees shall provide their own non-power hand tools.

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(1) Employees are expected to secure all EMPLOYER equipment. If any EMPLOYER tool or equipment is lost, stolen, or damaged, the employee must report the incident to his/her supervisor immediately. Employees may be responsible for the cost of lost, stolen, or damaged equipment.

(EX-1) (emphasis original)

14. Rodney Williams worked with Padin on the job on February 2, 2024, and he also received discipline for poor work performance that day. (N.T. 65, 69; EX-4)

15. On February 26, 2024, PHA issued written reprimands to both Padin and Williams and both were signed by Nicholas Cionci. (N.T. 82-83; EX-3; EX-4)

16. Padin's reprimand provides a description of the incidents for which she was reprimanded for "poor work performance," as follows:

On January 9, 2024 you were given a drywall repair at 2423 N. 5th St. this repair consisted of patching a 24 SF [square foot] piece of drywall which should have taken no more than 3 hours to complete. According to your trip sheets this job took to [sic] you 18 hours

to complete and the work completed was not performed to our PHA standards. On Feb. 2, 2024 you started a subfloor job at 721 S. 16th St. [T]his job took you and your partner 24 hours to complete. This job was not extensive enough to take this amount of time. Your supervisor had another crew complete the same type of job in another unit and they completed their assignment in 8 hours.

(N.T. 81-82; EX-3)

17. Williams' reprimand provides a description of the incident for which he was reprimanded for "Poor work performance," as follows:

On Feb. 2, 2024 you started a subfloor job at 721 S. 16th St. this job took you and your partner 24 hours to complete. This job was not extensive enough to take this amount of time. Your supervisor had another crew complete the same type of job in another unit and they completed their assignment in 8 hours.

(EX-4)

18. Malary Wood is a Labor and Employee Specialist at the PHA. The PHA Employee Handbook contains the PHA Corrective Action Policy which lists rules and infractions for which employees could be disciplined. The CBA authorizes discipline for good and sufficient cause. Article 39 of the CBA provides that employees are subject to all rules and policies included in the Employee Handbook except where they specifically conflict with the CBA. (N.T. 74-77; EX-1; EX-2)

19. The PHA Corrective Action policy provides for classes of infractions, i.e., 1, 2, 3, or 4. Human Resources determines the class of infraction and the level of discipline and imposes progressive discipline for multiple offenses, starting with oral counseling or reprimand, written reprimand, and suspension. Egregious conduct could fall under Class 3 or Class 4 and start at a 5-day suspension. (N.T. 77-78; EX-2)

20. An employee's supervisor contacts Human Resources and provides a description of the conduct at issue to Human Resources, which then determines the level of discipline based on the employee's past disciplinary record and the class under which the conduct falls. The supervisor cannot issue a written reprimand without the approval from Human Resources. Human Resources has deviated from the progressive step system to lower discipline. Although Cionci is Padin's supervisor, he is also a member of the bargaining unit. (N.T. 79-83, 95-96)

21. Once approved by Human Resources, a foreman issues a written reprimand to the employee with a Union representative present. (N.T. 82-84)

22. Stacey Collins was the former Manager of Labor and Employee Relations. Since August 2024, she is no longer employed by PHA. Cionci requested discipline for the January 9, 2024 incident, and Collins reviewed the complaint. By the time Cionci requested discipline for the February 2, 2024 work conduct, Collins was on a leave of absence for a medical issue, which delayed processing of the January 9, 2024 incident and the February 2, 2024 incident. Wood did not receive the assignment to process both complaints until February 23, 2024, and the written reprimand was issued February 26, 2024. (N.T. 83-85, 98-100)

23. Human Resources decided to combine the January 9, 2024 incident and the February 2, 2024 incident into one incident to lower the level of discipline for Padin. Otherwise, the January 9, 2024 incident would have resulted in a written reprimand and then the February 2, 2024 incident would have resulted in a 1-day suspension. This resulted in PHA issuing 1 written reprimand to Padin for both incidents. (N.T. 85-86)

24. Padin and the Union grieved the written reprimand, and a Step-2 grievance hearing was held during which Padin was afforded an opportunity to explain why it took her 18 hours to complete the drywall repair job on January 9, 2024, instead of 3 hours. Executive Vice President of Operations Keshishian memorialized Padin's responses. During that hearing, Padin explained that the resident kept walking through the work unit and that she locked her keys in the van. She explained that she could not work on the unit while waiting for the locksmith because she needed materials out of the van. Keshishian did not find these explanations credible for why the job took 18 hours instead of 3 hours. (N.T. 87-90; EX-5)

25. At the grievance hearing, Padin was also asked why it took 24 hours to complete the subfloor repair on February 2, 2024, instead of the 8 hours that it took for another crew to complete the same type of job. Padin explained that there were 5 layers of subfloor, she had parking problems, she did 3 layers of tiles in the hallway, and she had to retrieve materials from Wilson Park. Keshishian did not find these reasons credible to explain why it took 16 additional hours to complete this work. Mr. Keshishian denied the grievance. (N.T. 87-90; EX-5)

26. At the Step-3 grievance hearing, Padin elaborated on her explanations. The January 9, 2024 work was apparently a ceiling repair. Padin explained that an incident at the shop delayed the start of her workday for the first day of the project which for some reason caused her to arrive at the job site at almost lunch time. Padin explained that she worked by herself the first day and that she did not have help until the third day. She also stated that she had to move items and cover the floors and furniture to protect them from paint and debris. Her work was also slowed because the tenant's caregiver kept walking through the dining room to get the tenant water and meals, and Padin had to stop work so that the caregiver was not harmed. She additionally explained that she had to drive around for a while to find parking and that she had to carry all the supplies for the job by herself. (N.T. 92-94; EX-6)

27. Padin also explained that the sub-flooring in the bathroom for the February 2, 2024 job was so severely damaged by water that she was required to perform substantial structural work and remove 3 layers of rotted tile. She further explained that, while she and her partner were working, water began flooding the space and her partner had to turn off the water from the basement. Padin and her partner had to dry out the floor before they could resume work. PHA Hearing Officer Nadine Stevenson, Esquire denied the grievance at Step 3. The grievance has been advanced to the arbitration stage. (N.T. 92-94; EX-6; EX-7)

DISCUSSION

Padin charged that she repeatedly requested power tools (router, hammer drill, and grinder) necessary to perform her job assignments between August 2023 and February 2024, that she told her supervisor that the CBA required PHA to make those tools available, and that employees were not permitted to

bring those tools from home. Padin also charged that, as a result, her General Foreman threatened to get rid of her for causing problems. She further charged that, after filing a formal complaint, PHA retaliated against her by disciplining her for alleged subpar work performance on January 9, 2024, and February 2, 2024. By alleging the threat of discharge or transfer and the imposition of retaliatory discipline, Padin properly alleged independent violations of Section 1201(a)(1) and Section 1201(a)(3) of the Act.

During the hearing, the Authority moved to dismiss the charge for Padin's failure to establish a prima facie case for any of her claims. (N.T. 46-50). At the time, I granted the motion to dismiss Padin's claims under Section 1201(a)(2) and Section 1201(a)(4). Padin's case-in-chief did not establish that her Union became a "company Union" or that the Authority provides such assistance to or is involved with the Union to the point where the Union is indistinguishable from the Authority, as required under Section 1201(a)(2). FOP, Pennsylvania Conservation Police Officers Lodge 114 v. Commonwealth of Pennsylvania, PGC, 39 PPER 87 (Proposed Decision and Order, 2008); Kennett Square Borough, 25 PPER ¶ 25179 (Proposed Decision and Order, 1994). Also, Padin's case-in-chief did not establish that the Authority discriminated against Padin because she has "signed or filed an affidavit, petition or complaint or given any information or testimony under this [A]ct." 43 P.S. § 1101.1201(a)(4). However, I deferred my ruling on the Authority's motion to dismiss Padin's claims under Section 1201(a)(1) independently and Section 1201(a)(3). In ruling on the motion to dismiss these claims, I am limited to evaluating whether the evidence presented during Padin's case-in-chief alone establishes a prima facie case under these causes of action. On pages 1 and 6 of its post-hearing brief, the Authority mistakenly argues that I dismissed claims under Section 1201(a)(3) of the Act leaving only Section 1201(a)(1) and (4) for consideration. However, Pages 47 through 52 of the transcript show that I dismissed the Section 1201(a)(2) and (4) claims and kept for consideration Ms. Padin's claims under Section 1201(a)(1) and (3).

Section 1201(a)(1) of the Act prohibits an employer, their agents, or their representatives from "Interfering, restraining or coercing employes in the exercise of the rights guaranteed in Article IV of [the] [A]ct." The Board has held that 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). The complainant does not have the 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 independently violate Section 1201(a)(1) where, on balance, its legitimate reasons justifiably outweigh concerns over the interference with employe rights. Ringgold Education Association v. Ringgold School District, 26 PPER 25155 (Final Order, 1995).

Padin engaged in protected activity when she invoked the CBA in requesting power tools from Cionci between August 2023, and February 2024. The Authority contends that the contract does not provide what Padin believes it requires and that only an arbitrator can determine the meaning of the CBA. First, Padin was engaged in protected activity simply by requesting the power tools that she needed to effectively perform her job assignments in the

presence of other employees. Also, the Board and its examiners routinely interpret contract provisions to determine if the assigned meaning by one party is a reasonable interpretation. Padin credibly testified that the CBA requires the Authority to provide power tools and that employees should not bring tools from home. This testimony was un rebutted during Padin's case-in-chief and her reliance on the CBA is protected activity.

The Authority also objected to the admission of Padin's testimony of statements made by Cionci as inadmissible hearsay. I provisionally admitted the statements and deferred my ruling. Rule 801 of the Pennsylvania Rules of Evidence defines hearsay. Under the comments to Rule 801(c), Cionci's statement, that he would get rid of Padin for causing dissension or problems, is a threat. A threat constitutes unlawful coercion under Section 1201(a)(1) of the Act and thus has legal significance. In this manner, the statement is not admitted for the truth, but rather goes to establish a significant legal element under Section 1201(a)(1). Also, the statement establishes Cionci's state of mind and his discriminatory intent regardless of the truth. The comments regarding Rule 801(c) provide as follows:

Sometimes a statement has direct legal significance, whether or not it is true. For example, one or more statements may constitute an offer, an acceptance, a promise, a guarantee, a notice, a representation, a misrepresentation, defamation, perjury, compliance with a contractual or statutory obligation, etc. More often, a statement, whether or not it is true, constitutes circumstantial evidence from which the trier of fact may infer, alone or in combination with other evidence, the existence or non-existence of a fact in issue. For example, a declarant's statement may imply his or her particular state of mind, or it may imply that a particular state of mind ensued in the recipient.

Rule No. 801(c) Pa. Rules of Evidence (comments). Under the rules of evidence, therefore, threats constituting a breach of an employer's statutory obligation to refrain from coercive, threatening conduct under 1201(a)(1) are admissible. Thus, I have admitted Cionci's statement to Padin that he made in the presence of other employees that he does not like people who are problems, that he is not going to allow dissension in his crew, and that he would get rid of Padin, after she invoked the CBA to request power tools.

The Authority also argued that Cionci was a supervisor in the bargaining unit and thus cannot bind the Authority with statements because he is not a manager. However, Cionci's threat of discharging or transferring Padin while she was engaged in protected activity does bind the PHA. The Authority emphasized that only Human Resources can impose discipline. However, Cionci is a General Foreman with the power and authority to request and seek discipline of an employee from Human Resources, which in fact occurred in this case. Human Resources does not know to get involved in discipline without the request or recommendation from the General Foreman. The General Foreman therefore has a lot of power to effectuate discipline. With the power to seek discipline for employees, Cionci's threats of discipline, transfer, or discharge are certainly admissible as against the Authority notwithstanding that Cionci is not a manager.

I find on this record that Cionci unlawfully threatened Padin with discharge or transfer, after she engaged in the protected activity of invoking the CBA to request necessary power tools for a period of 5

months in violation of Section 1201(a)(1) of the Act and that Padin established a prima facie case of unlawful coercion. Padin's case-in-chief does not contain any contrary evidence or any reason offered to outweigh the coercive effect on a reasonable employee in the bargaining unit. Accordingly, the Authority's motion to dismiss Padin's claim under Section 1201(a)(1) is denied.

Section 1201(a)(3) of the Act prohibits "discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any employee organization." 43 P.S. § 1101.1201(a)(3) (emphasis added). The Board and the courts have consistently held that a complainant alleging a violation of Section 1201(a)(3) has the burden of establishing that the employee(s) engaged in protected activity, that the employer knew of that activity and that the employer took adverse employment action that was motivated by the employee's involvement in protected activity. St. Joseph's Hospital v. PLRB, 473 Pa. 101, 373 A.2d 1069 (1977).

During the hearing, the Authority argued in support of dismissal that Padin cannot meet her burden to establish the elements of Section 1201(a)(3) because there was no evidence during Padin's case to suggest that any of the PHA's actions involving Padin were to "encourage or discourage membership in any employee organization," which are necessary elements of Section 1201(a)(3). However, the Board and the courts have only required an adverse employment action motivated by the employee's protected activity. There is no requirement that a complainant separately prove that the action had the specific effect "to encourage or discourage membership" in their union. Rather, discouraging union membership is assumed when the employer engages in unlawfully motivated adverse employment action.

As discussed above, Padin engaged in protected activity of which the Authority was aware. Cionci, her General Foreman, was aware that she requested power tools on many occasions under the CBA. He threatened her with discharge or transfer for her requests and complaints. The question becomes whether Cionci was unlawfully motivated under Section 1201(a)(3) when he requested that Human Resources discipline Padin for poor work performance.

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). Other factors include: 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 explain its action against the adversely affected employee(s), shifting reasons and/or pretext, and the effect of the employer's adverse action on other employees and their protected activities. PLRB v. Child Development Council of Centre County, 9 PPER ¶ 9188 (Nisi Decision and Order, 1978). Although close timing of an employer's adverse action alone is not enough to infer animus, when combined with other factors, close timing can give rise to the inference of anti-union animus. Teamsters Local No. 764 v. Montour County, 35 PPER 12 (Final Order, 2004); AFSCME, AFL-CIO, Council 13 v. Commonwealth, Department of Labor and Industry, 16 PPER ¶ 16020 (Final Order, 1984).

The threat to discharge or transfer Padin for requesting tools also demonstrates Cionci's state of mind for animus against Padin. Additionally, ever since Padin was reinstated and assigned to Cionci's team, Cionci has

ignored Padin's numerous requests for the power tools necessary to complete her job assignments. The Authority is in the business of completing housing unit repairs and owns a significant number of power tools for its 530 maintenance employees. The Authority failed to provide requested power tools to Padin for 6 months or more. Padin is an experienced carpenter who is qualified to know what tools she needs for her work of hanging doors, sheet rocking walls and ceilings, as well as repairing subflooring and tiles. This 6-month deprivation of requested power tools yields the inference that Cionci intentionally undermined Padin's work performance and further supports an inference of unlawful motive. Therefore, Padin established a prima facie case of discriminatory discipline under Section 1201(a)(3) of the Act and the Authority's motion to dismiss this cause of action is denied.

In evaluating the record as a whole and the Authority's defense case, the issue becomes whether the PHA rebutted Padin's prima facie case of unlawful coercion, under Section 1201(a)(1), and retaliatory discipline, under Section 1201(a)(3).

The Authority produced no legitimate reason to justify Cionci's threat to "get rid" of Padin when she requested power tools under the contract to perform her job. Accordingly, under the totality of the circumstances and the record as a whole, the Authority violated Section 1201(a)(1).

Once Padin established a prima facie case of discrimination under Section 1201(a)(3), the burden shifted to the Authority to prove that, even if Padin's protected activities were a motivating factor in the Authority's decision to discipline her, the Authority would have taken the same adverse employment action in the absence of protected activity. Delaware County Prison Employees Independent Union v. Delaware County, 56 PPER 37 (Final Order, 2024) (citing Wright Line, Inc., 251 NLRB 1083 (1980)).

The CBA provides that the Authority "shall furnish power tools and equipment necessary to perform job duties to all trades as described herein." Padin is a veteran carpenter with over 25 years of experience. Padin is qualified to determine what power tools and equipment are "necessary" for her to perform her job duties. The CBA does not provide that only the PHA has the authority to determine what power tools and equipment are necessary. Therefore, a reasonable interpretation of this provision is that Padin properly invoked this provision of the CBA to request power tools that she deemed necessary to perform her job duties, which constituted protected activity known to Cionci. Also, Cionci told Williams that employees are not to bring power tools from home demonstrating his understanding that the Authority is responsible for providing power tools.¹

I reject the Authority's argument that only an arbitrator can properly interpret the Tools and Equipment provisions of the CBA and that, as such, I am prevented from concluding that Padin's reliance on the Tools and Equipment provisions is correct and, therefore, protected. Padin's invocation of the CBA for requesting certain power tools that she deemed necessary does not have to be a legally correct interpretation to be protected.

The Authority defends against Padin's case for retaliatory discipline by arguing that Cionci's request for discipline pre-dated her February 16,

¹ The statement was admitted to demonstrate Cionci's understanding of either the CBA or the Authority's responsibilities, and not for the truth.

2024 complaint and that as a matter of law she was not disciplined for the complaint or for engaging in protected activity. This argument ignores the fact that Padin had been engaging in protected activity since August 2023, and before, including her arbitration and reinstatement, and that Cionci refused to provide her with requested necessary equipment for her to do her job duties. The fact that Cionci kept telling Padin that he would order the tools shows that Cionci agreed, at least in principle, that Padin should have those tools. Although I find sufficient evidence of unlawful motive, I do not believe that Cionci's unlawful motivations were the proximate cause of Padin's discipline, and I find that he would have disciplined Padin sans her protected activity or despite his retaliatory motives. The Authority, therefore, has met its burden under Wright Line to rebut Padin's prima facie case, under Section 1201(a)(3).

The written reprimand issued under Cionci's name on February 26, 2024, shows that Cionci gave Padin an assignment to perform drywall repair on January 9, 2024, that took Padin 18 hours to complete and that the work was not up to Authority standards. That reprimand also shows that he assigned Padin to a subfloor job on February 2, 2024 which took Padin and her partner 24 hours to complete over the course of several days. Labor and Employee Specialist Malary Wood credibly testified that Human Resources consolidated the 2 incidents into one discipline to diminish the overall discipline imposed on Padin. In this manner, Padin received 1 written reprimand instead of a written reprimand and a 1-day suspension. Accordingly, the Authority did not try to maximize discipline or build a record of progressive discipline to retaliate against Padin because of her protected activity; rather the Authority minimized her discipline despite her protected activity. Additionally, Cionci sought, and Human Resources imposed, the same discipline on Williams for deficient work performance during the February 2, 2024 project. In this regard, Padin was treated the same as another employee toward whom, on this record, Cionci did not manifest any animus.

At subsequent grievance meetings, Padin explained why she took 6 times the amount of time to perform the work on January 9, 2024 and 3 times the amount of time to perform the work on February 2, 2024. Keshishian did not find her reasons credible to support the amount of time she took. More importantly, however, Padin did not contact Cionci and communicate with him during those jobs to explain the ongoing obstacles to her completion of the assigned work, further undermining her credibility. Padin and Cionci seemingly have a difficult relationship interfering with open communication. However, it was Padin's responsibility to contact Cionci to explain the obstacles she may have faced while she was still on the project. Cionci was unaware of any obstacles to Padin completing those job assignments when he requested that Human Resources investigate Padin for poor job performance and discipline. Also, Human resources was unaware of the reasons for Padin's delay of an extra 15 hours for the January 9, 2024 job and an extra 16 hours for the February 2, 2024 job. The investigation of Cionci and Human Resources showed that other crews with similar assignments completed their work in a timely manner. Significantly, at no time during her grievance hearings did Padin state that she did not have adequate power tools and equipment to timely finish the work assignments.

Moreover, the written reprimand at issue in this case must be evaluated in the context of Padin's work history with the Authority. Arbitrator Licata found that Padin's employment history with the Authority "appear[ed] to be anything but smooth sailing for her and the Authority." Padin has been consistently involved with negative confrontations and interactions with

multiple supervisors. She has also been disciplined for refusing to complete at least one other job assignment. Indeed, Padin even placed a bucket of live and dead roaches on her former supervisor's desk. Clearly, Padin has a volatile relationship with the Authority. The term discipline means an exercise that develops or improves a skill or behavior. Padin has seemingly not improved her attitude, work performance, or communication efforts despite multiple disciplinary actions from different supervisors, including a termination which Arbitrator Licata reduced to a suspension.

Also, Cionci did not seek discipline for Padin during the 6 months that she had been requesting power tools under the CBA, between Padin's August 2023 reinstatement and her February 2024 reprimand. This protected activity, which is the only one charged, did not cause Cionci to seek discipline from Human Resources for Padin. Rather, Cionci sought discipline for Padin, like he did for Williams, who also engaged in poor work performance and toward whom Cionci held no demonstrable, unlawful animus on this record. It was the poor work, and not any type of animus, that motivated Cionci to seek the issuance of a written reprimand to Padin and Williams.² Moreover, there is no evidence on the record that Mr. Wood, who investigated and approved the discipline, harbored any animus against Ms. Padin. Indeed, Mr. Wood reduced Padin's level of discipline. Additionally, Padin's grievance challenging the discipline was reviewed at 2 different steps by 2 different managers (Keshishian and Stevens) who, on this record, manifested no animus toward Padin. After review, both Mr. Keshishian and Ms. Stevenson agreed with the discipline without any demonstrated retaliatory motive.

Accordingly, the Authority violated Section 1201(a)(1) of the Act, but it did not violate Section 1201(a)(3) of the Act. The Authority had independent business reasons for reprimanding Padin, and it would have disciplined Padin under the circumstances despite any unlawful motive. Thus, Padin's February 26, 2024 written reprimand was not unlawfully imposed.

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 within the meaning of Section 301(1) of PERA.

² Padin testified that she overheard Williams complain that his tools were stolen and that the PHA should replenish his tools. Padin asserted that the Authority retaliated against Williams also as a result of his complaining about tools. I have excluded the testimony because, even if it was offered to show that William's engaged in protected activity, and not for the truth, the record contains no date for when Williams allegedly made the complaints and there is no indication of whether those statements were made prior to February 2, 2024, when Cionci recommended him for discipline for poor work performance. Also, there is insufficient evidence from which to infer that Cionci would retaliate with discipline against Williams for his one-time complaint, while he was upset that his tools were stolen and sought replacement, where Cionci did nothing retaliatory during the 6 months of repeated complaints from Padin about tools.

2. Padin is a public employee within the meaning of Section 301(2) of PERA.

3. The Board has jurisdiction over the parties hereto.

4. The Authority has independently committed unfair practices in violation of Section 1201(a) (1) of the Act.

5. The Authority has not committed unfair practices in violation of Section 1201(a) (2), (3) or (4) of the Act.

ORDER

In view of the foregoing and in order to effectuate the policies of the Public Employee Relations Act, the hearing examiner

HEREBY ORDERS AND DIRECTS

that the Authority shall:

1. Cease and desist from interfering, restraining or coercing employees in the exercise of the rights guaranteed in Article IV of the Act and in violation of Section 1201(a) (1) of the Act;

2. Take the following affirmative action, which the hearing examiner finds necessary to effectuate the policies of PERA:

(a) Immediately cease threatening discharge or transfer for requesting certain power tools, notwithstanding the Authority's subjective interpretation of the CBA.

(b) Post a copy of this decision and order within five (5) days from the effective date hereof in a conspicuous place readily accessible to its employees and have the same remain so posted for a period of ten (10) consecutive days; and

(c) Furnish to the Board within twenty (20) days of the date hereof satisfactory evidence of compliance with this decision and order by completion and filing of the attached affidavit of compliance.

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 decision and order shall be and become final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this seventeenth day of March, 2025.

PENNSYLVANIA LABOR RELATIONS BOARD

JACK E. MARINO/S

JACK E. MARINO, Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

MARGARITA PADIN	:	
	:	
	:	
v.	:	CASE NO. PERA-C-24-110-E
	:	
PHILADELPHIA HOUSING AUTHORITY	:	

AFFIDAVIT OF COMPLIANCE

The Authority hereby certifies that it has ceased and desisted from its independent violation of Section 1201(a)(1) of PERA; that it has ceased interfering, restraining or coercing employees in the exercise of the rights guaranteed in Article IV of the Act; that it has ceased and desisted from threatening Padin with discharge or transfer for requesting power tools; that it has posted a copy of the decision and order in the manner directed therein; and that it has served a copy of this affidavit on the Union at its principal place of business.

Signature/Date

Title

SWORN AND SUBSCRIBED TO before me
the day and year first aforesaid.

Signature of Notary Public