

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

TEAMSTERS LOCAL UNION No. 8 :
:
: CASE NO. PERA-C-25-319-E
v. :
:
THE PENNSYLVANIA STATE UNIVERSITY :

PROPOSED DECISION AND ORDER

On December 1, 2025, Teamsters Local Union No. 8 (Union) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) alleging that the Pennsylvania State University (University or Employer) violated Section 1201(a)(1) and (3) of the Public Employee Relations Act (PERA or Act) when, on October 30, 2025, it terminated from employment Adam Nileski, who at the time was on a leave of absence from his University employment in order to serve as a full-time Union business agent, in retaliation for Nileski engaging in protected activity.

On December 16, 2025, the Secretary of the Board issued a complaint and notice of hearing, assigning the matter to conciliation, and designating January 26, 2026, in Harrisburg, as the time and place of hearing.

The hearing was necessary and ultimately held on February 10, 2026, in State College, before the undersigned Hearing Examiner, at which time all parties in interest were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. Additional days of hearing were held on February 23, 2026, via Microsoft Teams, and on March 10, 2026, in State College. The Union filed a post-hearing brief on April 22, 2026. The University filed a post-hearing brief on May 28, 2026.

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

FINDINGS OF FACT

1. The University is a public employer within the meaning of Section 301(1) of PERA. (N.T. 7-8).

2. The Union is an employe organization within the meaning of Section 301(3) of PERA. The Union represents a bargaining unit which existed prior to PERA but was then certified by the Board in 1978 at PERA-R-11,403-C to be the exclusive representative of: "all regular technical-service employes wherever employed by the University in the Commonwealth of Pennsylvania. . . ." There are approximately 2,500 employes in the bargaining unit. The employes in the bargaining unit work blue collar jobs such as janitors, food service, mail delivery, farmers, truck drivers, and trades (electrician, plumber, etc.). (N.T. 7-8, 68; Joint Exhibit 1, PERA-R-11,403-C).

3. At all times relevant to this matter, the parties were subject to a collective bargaining agreement (CBA) with the effective dates of July 1, 2024, through June 30, 2028. (Joint Exhibit 1).

4. The CBA states:

Article XIV - LEAVE OF ABSENCE FOR UNION BUSINESS

14.1 The University shall grant necessary time off without loss of seniority rights, but without continuation of other benefits or rights, to up to two (2) employees in the bargaining unit designated by the Union to act as a full-time paid Union Officer or Business Agent to serve the bargaining unit. Up to two (2) additional employees designated by the Union may be granted time off for the same purpose under the same conditions upon securing written permission of the University, which permission shall not be unreasonably withheld. The period of the leave of absence shall be commensurate with the term of office as Union Officer or Business Agent and shall be renewed from time to time by the University at the request of the Union and the employee involved.

14.2 Any employee granted leave of absence for Union business will be permitted to be covered under the University's insurance program provided said employee and/or the Union pays the total cost of the premiums for same for the period of such leave of absence. . . .

(N.T. 18; Joint Exhibit 1).

5. Adam Nileski is the recording secretary and a business agent for the Union. He has held these positions since 2022. As a business agent, his duties include advocating for members during contract negotiations, communicating with the University over contract disputes, and generally representing the members' interests. Immediately prior to being a full-time business agent, he was employed by the University as a grade three electrician. He worked as a grade three electrician for approximately six years. (N.T. 93-95).

6. On November 15, 2023, the Union requested that, pursuant to Article 14.1 of the CBA, Adam Nileski be granted a leave of absence from his University position in order to serve as Union business agent from January 1, 2024 through December 31, 2026. On December 5, 2023, the University granted the request. (N.T. 31-32; Union Exhibit 3, 4).

7. On September 10, 2025, Nileski attended the Union's monthly membership meeting. After the meeting, Nileski and bargaining unit members Matt Lessman and Mike Howell went to the Port Matilda Hotel restaurant and bar. Nileski and the other Union members sat at their usual high-top table near the bar. After they sat down, Russell "Rusty" Reese walked in with Jesse Wells. At the time, Rusty Reese was an assistant director responsible for the large East Halls student dormitory complex. Wells is a non-Union University employee and friend of Reese. (N.T. 100-102).

8. Nileski knows Reese because, prior to being a business agent, Nileski worked in Area 1 Maintenance. The University splits the main campus up into six different zones for the purpose of trades work. Nileski worked in Area 1, which included many buildings Reese managed. In this context, Nileski interacted with Reese regularly. (N.T. 102-103).

9. As part of his Union duties, Nileski reviews all communications from the University to the Union including copies of all disciplinary communications. Nileski had noticed "a general uptick at an alarming rate" in the number of disciplinary matters that Reese had been involved regarding bargaining-unit members over the past couple of years. Nileski noticed that after 2023, the number of disciplinary matters Reese was involved in seemed, to Nileski, to spike substantially. (105-110; Union Exhibit 20).

10. Reese was the manager of the large East Halls student housing complex through 2023. At this position, he supervised approximately twelve to fifteen bargaining-unit members. He was then promoted in 2023 to his current position of assistant director of East Halls. As assistant director he has five managers who report to him and oversees approximately eighty bargaining unit members. East Halls has sixteen buildings and houses over 5,000 students. As part of his duties, Reese handles the disciplinary issues for all eighty of the bargaining-unit members assigned to East Halls. (N.T. 143-144, 220-222, 238-239; Union Exhibit 20).

11. Reese and Wells, sat down two tables away from Nileski's party. (102-104).

12. With respect to the events of the evening, Nileski testified to the following. Upon seeing Reese, he decided to address Reese over disciplinary matters that Nileski had noticed. Nileski turned to fellow Union members and part-time officers Matt Lessman and Mike Howe that "It is my intention to speak to Mr. Reese" and that they should stay out of it. He said this because he believed he was acting on the Union's behalf and did not want to "drag" Lessman and Howell into anything. Nileski testified: "Some of the things that I said to Mr. Reese, if Mr. Lessman or Mr. Howell would have said those same things, [the University] would certainly had the right to discipline them. . . ." (N.T. 112-114, 155).

13. Nileski testified that he addressed Reese and said: "Hey, Rusty, when are you going to stop being a piece of shit and treat our members with respect and dignity?" Nileski testified that he spoke with an elevated voice, but that he was not shouting or screaming. (114-115).

14. Nileski testified that Reese responded by saying something to the effect of "Excuse me?" or "What do you mean?". (N.T. 116).

15. Nileski testified that he continued to tell Reese that Reese treats Union members "like crap" and that Reese "goes out of his way" to discipline Union members. (N.T. 116).

16. Nileski testified that Reese responded by saying something to the effect of he tries to treat his employees well and tries to do the right thing. (N.T. 116-117).

17. Nileski testified that he responded by saying "I very much disagree. I am processing all these disciplinary documents coming across my desk and I am seeing a [different] story." (N.T. 116-117).

18. Nileski testified that he then said "You probably go home at night and jerk off to the thought of getting one of our members in trouble that day." Nileski testified that he made a "jerk off" hand gesture together with this comment. (N.T. 117, 149).

19. Nileski testified that then Reese's friend, Jesse Wells, responded: "This isn't the time or place." (N.T. 117).

20. Nileski testified that he said: "This is exactly the time or place. I do not have the ability to have these conversations with Mr. Reese at work." (N.T. 117-118).

21. Nileski testified that the relationship between the Union and the University has worsened recently. He testified that his ability as a business agent to have a conversation with a supervisor is almost non-existent. He testified that the only way he can have a conversation with a supervisor, like Reese, is to coordinate through University HR. Nileski testified that he has made requests through University HR to speak to supervisors and has had those requests denied. He testified he saw an opportunity to speak to a supervisor that evening at the Port Matilda Hotel and took that opportunity. (N.T. 118-121).

22. Nileski testified that he said one more time to Reese that he needs to: "stop treating our members like crap." Reese did not respond. There were no further interactions. (N.T. 121).

23. Nileski testified that he then resumed his conversation with Lessman and Howell and they ordered food. (N.T. 128).

24. Jesse Wells is an employee of the University. He is not in the bargaining unit. He has been friends with Reese since childhood. He was with Reese at the port Matilda Hotel as his friend. (N.T. 186-188).

25. Wells testified that he and Reese were sitting at a high-top table near the bar. Wells testified that as they were sitting at their table, they heard a man behind them say "Rusty, you're an asshole man, you're a piece of shit. . .Why do you treat people like [you do]? Why do you do the things you do? Why do you screw people like that?" (N.T. 190).

26. Wells testified that after a short break, Nileski again spoke to Reese and said: "You really screw our members. You probably go home and jerk off to screwing our members." (N.T. 192).

27. Wells testified that he then said to Nileski: "Dude, you need to shut the fuck up. This is not the time or place for this." (N.T. 193).

28. Wells testified that Nileski responded: "I can't do this at work because I never see Rusty." (N.T. 193).

29. Wells testified that he heard Nileski say the word "member" a number of times. (N.T. 206).

30. Reese testified that after he and Wells sat down at a high-top table near the bar: "[Nileski] started yelling across the bar at me about how I needed to treat the Union members with respect that they deserve, that I was a fucking piece of shit, and that [I] probably go home and jerk off at night with how I treat them." (N.T. 223-224).

31. Reese testified that, after a pause: "it started back up again about me being a fucking piece of shit and that I was worthless." (N.T. 224-225).

32. Reese testified that at this point Wells said: "This isn't the place for this." (N.T. 225).

33. Reese testified that Nileski responded: "I can't say these things at work or I will get in trouble. He is a fucking piece of shit. You don't have to work for him". (N.T. 224-225).

34. Reese testified that after a pause, Nileski addressed him a third time. Reese testified he said: "I am sorry." The interaction ended after that. (N.T. 225).

35. Matthew Lessman is a University employee and in the bargaining unit. He is an elevator technician. He serves as a steward and trustee for the Union. (N.T. 301-302).

36. Lessman testified that in the Union meeting on September 10, 2025, a topic of discussion was grievances and work issues at East Halls, which was Reese's area of responsibility. Lessman testified that one issue of conversation that evening was phone calls from Union members working at East Halls being forced to work weekends. (N.T. 311-312).

37. Lessman testified he heard Nileski tell Reese that: "[Nileski] didn't appreciate the way Mr. Reese treated our members and he said he thought {Reese} was a piece of shit for that." (N.T. 312).

38. Lessman testified that in response to a comment, Nileski said: "I guess you do not have to work for [Reese]." (N.T. 314).

39. Lessman testified there were about three or four exchanges between Nileski and Reese and the whole conversation lasted around several minutes. (N.T. 314).

40. Thereafter, on October 15, 2025, Jerry Alley called Nileski and told him to come in for a disciplinary meeting. Alley is Nileski's immediate supervisor in the sense that, if Nileski left his work with the Union and returned to work in Area 1 as an electrician, Alley would be his normal supervisor. Nileski responded that he needed to get back to him. Alley asked if Nileski was refusing to attend the meeting. Nileski replied that it is his understanding he's not compelled to

attend a disciplinary meeting and that he would get back to Alley. He called Alley back that evening and said he was ready to talk more. (N.T. 128-130).

41. On October 15, 2025, Jerry Alley sent Nileski a letter which states:

Date: October 15, 2025
To: Adam Nileski, Grade 3 - Electrician A
From: Jerry Alley, Supervisor
Re: Scheduled Meeting. . . .

Per your request on our phone call earlier today, we are providing written notification of our planned meeting with you that is scheduled for Monday, October 20, 2025, at 11:00 am. This meeting concerns serious allegations that have come to our attention. As a University employee and in accordance with Article 6 of the [CBA], we would like to give you opportunity to respond. . . .

(N.T. 34; Union Exhibit 6).

42. The next day the Union filed a grievance which stated the University's actions violated the CBA and: "This is a[n] unprecedented request of any Union officer on a [leave of absence] to attend a discipline meeting on behalf of themselves." (N.T. 35; Union Exhibit 7).

43. This was the first time in the bargaining history of the parties that the University had ever required a Union officer on leave of absence to attend a discipline meeting as a University employee during their time as a Union officer. (N.T. 36).

44. On October 17, 2025, Jonathan Light, President of the Union, wrote Dovizia Long, the University's Senior Director of Labor & Employment Relations, a letter which states that the Union believed that the University had no right to require Nileski to attend a discipline meeting. The letter went on to state that Light would attend the meeting with Nileski to prevent the University from raising any claims that Nileski refused to attend even though, in the Union's opinion, Nileski has no obligation to attend. (N.T. 37; Union Exhibit 8).

45. A disciplinary meeting was held for Nileski on October 20, 2025. Light attended on behalf of the Union along with Nileski. Jerry Allen, Bruce Smith and Rich Ramish represented the University. The University asked generally what happened at the restaurant. Light demanded to know the specific information and allegations made against Nileski. The University ended the meeting. (N.T. 39-40).

46. On October 21, 2025, Alley sent Nileski a letter which states in relevant part:

We held a meeting with you on Monday, October 20, 2025, to investigate concerns regarding your

conduct on September 10, 2025, at the Port Matilda Hotel.

During this meeting you were asked for your account of the events at the Port Matilda Hotel on September 10th. Despite this, at the conclusion of the meeting, you shared you felt you had not been given the opportunity to present your account of events concerning the matter. Therefore, we are extending an additional opportunity for you to provide your account of events. You may submit either a written statement to me . . . or you may request another in-person meeting

(N.T. 41; Union Exhibit 10).

47. On October 21, 2025, Light responded to Alley's letter with an email to Melissa Camacho-Heenan, University HR, which states in relevant part:

Your letter dated October 21, 2025 is inaccurate. Mr. Nileski did not state that he had not been given the opportunity to present his account of events. Instead he requested to be provided with the specific allegations against him, including the necessary context of those allegations and the questions posed, so that he could provide a meaningful response. . . . If you believe you need more information from Mr. Nileski, please provide a detailed statement of charges, including appropriate context, so that he understands what, exactly, he is being accused of and what, specifically, you wish him to answer.
. . . .

(N.T. 42-43; Union Exhibit 11).

48. On October 22, 2025, Camacho-Heenan wrote Light an email which states in relevant part:

Jon,

Thank you for your response to Mr. Alley's October 21 letter to Mr. Nileski. Without prejudice to our position in future cases relating to whether allegations must be placed in writing, I can confirm that management is investigating allegations that on September 10, 2025 at the Port Matilda Hotel, Mr. Nileski directed multiple verbal statements in a loud, profane, and vulgar manner as well as vulgar hand gestures to other Penn State employees who were also at the Port Matilda Hotel at another table. Specifically, Mr. Nileski is alleged to have directed these statements and gestures to Rusty Reese.

Among the comments that Mr. Nileski is alleged to have directed to Mr. Reese are words to the effect of:

- "Hey Rusty, you are a f***ing asshole."
- "You're a piece of s*** for what you do."
- "You treat people like s***."
- "You screw our members."
- "You are a f***ing piece of shit."
- "You are a s***head."
- "Why do you f*** our members?". . . .

(Union Exhibit 11).

49. A follow-up in-person meeting was held on October 27, 2025. Nileski provided a response at this meeting. (N.T. 43-44).

50. Nileski had a final meeting with the University on October 30, 2025. The University told Nileski at this meeting that he was being terminated. Bruce Smith, Senior Manager of Building Maintenance Services, gave Nileski a letter on October 30, 2025 which states in relevant part:

RE: SUMMARY DISCHARGE
Dear Mr. Nileski:

This letter is to confirm our disciplinary meeting on October 30, 2025 during which you were informed that your employment with the University has been terminated effective immediately, in accordance with Article 6.3 of the [CBA]. On Monday, October 20th and Monday, October 27, 2025, Jerry Alley, Skilled Trades Supervisor, Rich Ramish, HR Consultant, and I met with you and your union representative, Jon Light, to address concerns regarding your conduct at the Port Matilda Hotel the evening of Wednesday, September 10, 2025. . . .

Specifically, in our meetings on October 20th and 27th you were questioned about allegations that you directed multiple verbal statements in a loud, profane, and vulgar manner as well as vulgar hand gestures to a University employee, who was sitting in the restaurant having dinner with a friend In response to the questions presented, you stated you recalled making some of the comments but did not recall if you made the alleged gestures. You stated your comments were not personal, you were operating as a union officer, and you were trying to get the University employee, who is a supervisor, to treat union members with dignity and respect.

After a thorough review, including consideration of your response to our questions, we conclude

you did engage in the alleged behavior Your behavior, actions and comments were profane, unprofessional, and clearly intended to harass and intimidate another University employee during his personal time. Your claim that your behavior is permissible because of your role as a union representative is baseless; that role does not permit or excuse your actions, particularly because those actions were not taken in connection with any union business. You were not representing employees in any action taken by the University or meeting with University representatives. A supervisor was having dinner with a friend off campus during personal time and you publicly barraged and harassed him with profane and vulgar personal attacks. Your actions were unacceptable and a major act of misconduct which warrants summary discharge.

The University rejects the claim by Mr. Light that you are not a University employee or subject to the [CBA] and University conduct expectations. Under the CBA, you are an employee on leave of absence who is receiving benefits under the University plan and earning seniority for your time on Union leave. Accordingly, you remain a University employee and subject to the CBA and University policy. . . .

Regards,

Bruce Smith, Sr. Manager, Building Services

(N.T. 44-45; Union Exhibit 12).

51. The Union filed a grievance over Nileski's termination.
(N.T. 45; Union Exhibit 13).

52. Union officers on leave of absence from the University are paid by the Union. They are not paid by the University. They continue to earn seniority. They participate in the University's health plan. They may participate in the University's 401K plan. They may not contribute to any SERS plan pursuant to SERS rules. They are eligible for education privileges under article 36 of the CBA. They keep a University ID and email address. (N.T. 70-79).

53. As a result of the University's actions, Nileski lost University sponsored health care coverage. He continues to be covered through COBRA for which he pays the premiums. At the time of the hearing, Nileski testified that when the COBRA period ends, he will likely have to find some alternative health care solution. The University also stopped sponsoring life insurance, short and long term disability insurance, and dental and eye health coverage. Nileski also understood that when his work with the Union ended, he would have no job with the University to go back to. (N.T. 152-153, 157).

54. On August 17, 2017, the University issued a disciplinary memo to a bargaining-unit member which states in relevant part:

Date: August 17, 2017
From: Russell Pepper, Manager of Maintenance Services
To: James Drexal, Mechanic A
Subject: FIRST ACTIVE WARNING LETTER

This letter will confirm our meeting on August 14, 2017, concerning your failure to meet acceptable standards of performance. . . .

Specifically, we discussed your negative attitude towards me, your supervisor, on August 1, 2017. When asked for an update on the filter project you were working on, you became indignant, threw filters, walked away from me, and then referred to "management" as assholes. Your behavior was unwarranted and is unacceptable in the workplace.

In the future, it is important that you have a cooperative attitude and communicate with me in a reasonable and civil manner.

Continued failure to meet acceptable standards of performance will result in additional disciplinary action leading to your dismissal.

Russell Pepper
Manager of Maintenance Services

(Union Exhibit 21).

55. On April 27, 2018, the University issued a disciplinary memo to a bargaining-unit member which states in relevant part:

Date: 4/27/2018
To: Chad Laubach
From: Rick Witherite

Subject: FIRST ACTIVE WARNING LETTER

This letter will confirm our disciplinary meeting on April 10th, 2018 concerning your failure in meeting acceptable standards of performance and your inappropriate and unprofessional workplace behavior. . . .

Specifically, we discussed your behavior and actions during an incident on April 9th regarding your alternate vacuum equipment. You reacted violently with threatening and highly disrespectful behavior. An example of your misconduct included but was not limited to standing and screaming profanity at the top of your voice at your supervisor. If there was a

concern about the accommodation provided, that should have been addressed respectfully to your supervisor and Absence Management. Additionally, the manner you conducted yourself during the initial disciplinary meeting on April 10th was far from civil or respectful. You repeatedly lied during the course of the investigation by denying your actions

Chad, this type of behavior is deeply disturbing and will not be tolerated. As a result, you were given a 2-day suspension without pay. . .

(Union Exhibit 21).

56. On October 11, 2023, the University issued a disciplinary memo to a bargaining-unit member which states in relevant part:

Date: October 11, 2023

Charlotte Moyer-Rosenberg

. . .

FIRST ACTIVE WARNING LETTER

Dear Charlotte:

. . .

On September 28, you became visibly upset regarding a management decision. When Colin [Hiller, manager] approached you, you responded with "you guys are fucked up". You then proceeded through the kitchen saying loudly "this is why I hate Penn State". Later, Colin asked to speak with you about your feelings and your interaction with him continued to be highly inappropriate. You continued to curse and act in a disrespectful manner towards your supervisor during this conversation.

When asked about your actions, you stated that you do not trust management and that their decision was wrong. . . .

(Union Exhibit 21).

DISCUSSION

The Union charges that the University violated Section 1201(a)(1) and (3) of the Act when it fired Nileski due to his actions at the Port Matilda Hotel on September 10, 2025.¹

In a discrimination claim, the complainant has the burden of establishing that the affected employee 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). 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). 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). Other factors that the Board considers in determining the intent of the employer may include the following: 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).

The Board and the Commonwealth Court have found improper bias, proving unlawful discrimination under PERA, based solely on disparate treatment. City of Reading v. PLRB, 568 A.2d 715, 719 (Pa. Cmwlth. 1989). In establishing disparate treatment, the charging party must prove that the complainant and the disparately treated employee are similarly situated. Id.

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 unlawful motive. Teamsters Local No. 764 v. Montour County, 35 PPER 12 (Final Order, 2004).

The employer has a defense even if the union proves discriminatory motive. Once the burden of a prima facie case has been met, the employer may rebut a prima facie case of discrimination by proffering a credible nondiscriminatory reason for its actions. Deputy Sheriffs Association of Chester County v. Chester County, 46 PPER 22 (Final Order 2014); see Wright Line, Inc., 251 NLRB 1083, 105 LRRM 1169 (1980), enforced, 662 F.2d 899 (1st Cir. 1981), cert. denied, 455 U.S.

¹ The Union argues an independent Section 1201(a)(1) claim in its Brief at 4-15. However, the Union did not specifically claim an independent Section 1201(a)(1) violation in its specification of charges. I therefore do not consider the Union's independent Section 1201(a)(1) claim and it is dismissed.

989, 102 S.Ct. 1612 (1982). The employer need only show by a preponderance of the evidence that it would have taken the same actions sans the protected conduct. Pennsylvania Federation of Teachers v. Temple University, 23 PPER ¶ 23033 at 64 (Final Order, 1992).

In this case, the alleged protected activity in question is Nileski's statements to Reese at the Port Matilda Hotel on September 10, 2025. Nileski's statements included vulgar expressions and a vulgar gesture. Section 401 of PERA provides employees with the right to engage in concerted activities for the purpose of collective bargaining or other mutual aid and protection. 43 P.S. Section 1101.401. In general, the Board has found that a wide range of Union speech is protected. In Pennsylvania State Troopers Association v. Commonwealth of Pennsylvania, Pennsylvania State Police, 41 PPER 33 (Final Order, 2010), the Board stated that "an employee's criticism of the employer will lose the protection of the act only if it is 'offensive, defamatory, or opprobrious,' and not if it is merely 'intemperate, inflammatory or insulting.'" In AFSCME, District Council 85, Local 3530 v. Millcreek Township, 31 PPER ¶ 31056 (Final Order, 2000), the Board opined that an employee's conduct as a union representative will only lose the protection of the Act where it is so obnoxious or violent that it renders the employee unfit for service. The Board in Millcreek Township held: "Heated, emotional and oftentimes loud exchanges can occur between employees and their employer with regard to matters that arise in the workplace. However, such exchanges do not necessarily lose the protection of the Act simply because someone may be offended."

Recently, the Commonwealth Court held that union communication will not fall outside of Section 401 "unless it is defamatory or libelous, and peripheral to the labor issue." Pennsylvania State System of Higher Education, Petitioner v. Pennsylvania Labor Relations Board, Respondent, 57 PPER ¶ 77, 2026 WL 1587184 (citing Meyer v. Joint Council, I.B.T., C., W. & H., 206 A.2d 382, 387 (Pa. 1965) (holding that fighting words and "libelous utterances," particularly those that are peripheral or insignificant to the labor issues involved, are not protected communications under parallel provisions of the NLRA)).

I now analyze whether Nileski's actions at the Port Matilda Hotel are protected activity under PERA. This determination is core to the disposition of the matter.

There is general consensus among the witnesses to the events that evening at the Port Matilda Hotel and such testimony is put forth above in the Findings of Fact. Summarizing the testimony, immediately before the events at the Port Matilda Hotel, Nileski participated in a Union meeting where a topic of discussion was the problems bargaining-unit members had while working at East Halls. Reese was at the time the assistant director of East Halls. Nileski and two other Union members then went to the Port Matilda Hotel restaurant and bar. They encountered Reese. Nileski then, in the presence of other Union members, addressed Reese with comments that were focused on the way Reese treated Union members including, specifically, on issues of discipline. In doing so, Nileski used vulgar words and gestures. Nileski was not violent nor did he threaten violence. The comments by

Nileski lasted several minutes and the parties continued with their dinners after it was over.

Each case is different and must be judged in the totality of the circumstances. Weighing the totality of circumstances in this matter, I find that Nileski's actions were protected activity for the following reasons. Nileski's comments were clearly concerted activity as they were done in the presence of other Union members and done on behalf of Union members. The record shows that Nileski was solely motivated by Union concerns and not any other non-Union motive. He was, in his way, manifestly aiding and protecting fellow Union members and focused on "matters that arise in the workplace." Millcreek Township, supra.

The record, of course, does show that Nileski used vulgar language and made a vulgar gesture. Indeed, Nileski testified that he said to Reese: "You probably go home at night and jerk off to the thought of getting one of our members in trouble that day." Nileski testified that he made a "jerk off" hand gesture together with this comment. The record also shows that Nileski called Reese a "shit head" or "piece of shit" or similar phrases.

However, the totality of circumstances in this case show that Nileski's actions were protected activity even considering his vulgar expressions. Nileski's comments and gesture were made in direct connection to the labor issues Nileski was concerned about, which was Reese's treatment of bargaining-unit members. While Nileski's words and hand gesture suggesting that Reese may get pleasure from disciplining Union members is certainly salacious, it is directly connected to a labor issue. Nileski's comments that Reese was a "piece of shit" or "a shithead" or similar were made in the clear context that Nileski only believed this because of the way he believed Reese treated bargaining-unit members. The Union is a blue collar unit and I infer from the record that coarse or vulgar language is common. Additionally, while Nileski's comments were made in a public place, Nileski and Reese were sitting near a bar in a restaurant that, I infer from the record, is no stranger to occasional bawdy or rude language.

The totality of circumstances also includes the fact that Nileski is a full-time Union officer and not an active employee of the University. His job is not to work on campus for the University but to serve on behalf of Union members. Thus, he was acting completely within his role of Union business agent when he directed Union concerns to Reese. Reese, also, was a legitimate aim of Nileski's comments. The record shows that Reese is an assistant director of a large dormitory complex at which eighty bargaining-unit members work and was personally involved in approving the discipline of bargaining-unit members.

Further, the record shows that the University does not generally make managers and supervisors available to speak to Nileski about Union issues. Nileski credibly testified that he would not normally have an on campus opportunity to speak with Reese about the Union's concerns. Relatedly, I do not find the fact that Nileski's comments were made in public disqualify them as protected activity. Union officers may speak about work issues in public and in private.

The record also supports a finding that Nileski engaged in protected activity because Nileski was not violent, did not use violent language, and made no physically threatening movements or gestures. The fact that Nileski was **not** violent is a critical part of the totality of circumstances. Finally, the record shows Nileski's statements were delivered in a relatively short amount of time and that they were not especially disruptive. Reese and Wells stayed at their table and had a meal after Nileski had finished speaking.

For the above reasons, I find that the above actions and statements by Nileski are protected activity under Section 401 of PERA.

Moving on, it is clear that the University knew that Nileski had participated in protected activity. The University's October 22, 2025 and October 30, 2025 letters both directly reference his protected activity.

Finally, the record shows the University was motivated by the Nileski's protected activity when the University terminated him. Motive creates the offence. The content of the October 22, 2025 letter from the University to Light concerning Nileski, the content of the October 30, 2025, letter from the University to Nileski and the content of the meetings with Nileski and the University before he was terminated show that the University was focused entirely on the expressions made by Nileski to Reese at the Port Matilda Hotel. I have determined above that these same actions are protected activity. The University, therefore, explicitly terminated Nileski for engaging in protected activity.

In addition to the direct evidence of anti-union animus above, the record also shows that the termination of Nileski occurred extremely closely in time to his protected activity. The events at the Port Matilda Hotel happened on September 10, 2025 and the University fired Nileski by October 30, 2025. The closeness in time between the adverse employment action and the protected activity supports an inference of anti-union animus.

The Union also presented persuasive evidence of disparate treatment. The Union showed an instance where a bargaining-unit member, when confronted by management on the status of a water filter project, received a warning for: "[becoming] indignant, [throwing water] filters, walking away from [management], and then [referring] to "management" as assholes." The Union showed another instance where a bargaining-unit member received a two-day suspension for: "[reacting] violently with threatening and highly disrespectful behavior. An example of [the bargaining-unit member's] misconduct included . . . standing and screaming profanity at the top of [the bargaining-unit member's] voice at [the bargaining-unit member's] supervisor." The Union also showed an instance where a bargaining-unit member received a warning for behavior which included saying "you guys are fucked up" to the bargaining-unit member's manager and "proceed[ing] through the kitchen saying loudly "this is why I hate Penn State [and continuing] to curse and act in a disrespectful manner towards [the bargaining-unit member's] supervisor."

The above are all examples of bargaining-unit members who the University alleged committed similar or more serious acts than the

alleged misconduct it believed Nileski committed and yet the University issued substantially less discipline in these other cases. Indeed, the bargaining-unit member above who the University believed acted "violently" and "[stood] and [screamed] profanity at the top of [the bargaining-unit member's] voice at [the bargaining-unit member's] supervisor" received only a two-day suspension which is substantially less discipline than termination. In comparison, there is no allegation in this case that Nileski acted violently in any way and the record shows he was sitting a distance away from Reese and not standing and screaming at Reese. Nevertheless, the University terminated Nileski. This is overwhelmingly compelling evidence of anti-union animus.

Taking the above together, the Union has succeeded in making a prima facie case of discrimination under Section 1201(a)(3). Once the burden of a prima facie case has been met, the employer may rebut a prima facie case of discrimination by proffering a credible nondiscriminatory reason for its actions. Deputy Sheriffs Association of Chester County v. Chester County, supra. The University stated the following with respect to its reason for terminating Nileski:

Your behavior, actions and comments were profane, unprofessional, and clearly intended to harass and intimidate another University employee during his personal time. Your claim that your behavior is permissible because of your role as a union representative is baseless; that role does not permit or excuse your actions, particularly because those actions were not taken in connection with any union business. You were not representing employees in any action taken by the University or meeting with University representatives. A supervisor was having dinner with a friend off campus during personal time and you publicly barraged and harassed him with profane and vulgar personal attacks. Your actions were unacceptable and a major act of misconduct which warrants summary discharge.

(Union Exhibit 12). I do not find the above to be credible nondiscriminatory reasons to terminate Nileski. As discussed above, I have found Nileski's actions to be, in fact, protected activity. Contrary to the University's assertions in the above letter to Nileski, Nileski's actions were "union business" and he was "representing employees" and acting completely within his "role as a union representative."

Additionally, as discussed above, I do not find the University's distinctions about "personal time" or "off campus" to be legitimate distinctions in this case. Nileski credibly testified that the University does not make supervisors or managers such as Reese generally available to Nileski on campus even though Nileski is a business agent representing employees for whom Reese is responsible as a manager. Therefore, in this context, I find Nileski reasonably chose to speak to Reese at the Port Matilda Hotel instead of on campus - as the University seems to prefer - because Nileski reasonably believed the University would not make Reese available during business hours on

campus to speak to Nileski. Moreover, in general, even if Reese were available to Nileski on campus, there is no prohibition on protected activity in public places or limitation on protected activity to times convenient to the employer. It is entirely proper for union representatives such as business agents to speak to employer management at restaurants about work concerns.

Turning to the University's defense, in general, my discussion above covers many of the issues raised by the University. For example, the University argues at page 13 of its Brief:

First, there is no protected activity. Mr. Nileski's conduct of launching a barrage of profane and vulgar comments at a supervisor while the supervisor was simply having dinner with a friend, did not take place in any union meeting or in the context of engaging management on union business. Accordingly, it is not protected.

I disagree with the University and have put forth my reasons why I find Nileski's actions to be protected activity above.

The University argues in its Brief at 20: "Even assuming *arguendo* that Mr. Nileski was acting in an official capacity with some heightened protection when he initially spoke to Mr. Reese, it is well established that there are limits on how far an employee may go, even when engaged in protected activity." Here the University cites Atlantic Steel Co., 245 NLRB 814 (1979) for a test under which protected activity may lose its status as protected activity. Under Atlantic Steel Co., an employee's conduct loses the Act's protection depends on: (1) the place of the discussion between the employee and the employer; (2) the subject matter of the discussion; (3) the nature of the employee's outburst; and (4) whether the outburst was, in any way, provoked by an employer's unfair labor practice. Id.

I am not bound by national Labor Board precedent unless adopted by the Board or Pennsylvania Courts. If I were to apply Atlantic Steel Co., I would find that it would show that Nileski's actions were protected. The place of the discussion was proper even if not ideal. It is entirely normal and common for people to talk about work issues at public restaurants. The subject of the discussion was entirely about labor issues and the way the Union believes Reese treats bargaining-unit members. The nature of the outburst, while vulgar, was not violent or threatening and concluded after several minutes without further disrupting the evening. And, finally, Nileski credibly testified that his comments were caused by his opinion that Reese was unfairly treating bargaining-unit members.

The University also argues that the evidence of disparate treatment of bargaining-unit members who engaged in similar conduct presented by the Union and credited by me above should not be considered as it is distinguishable. The University argues at pages 25-26 of its Brief:

The Union also contends that Mr. Nileski was subjected to harsher treatment because the University has not discharged other employees who

allegedly engaged in similar conduct. This assertion fails because the incidents cited by the Union are not comparable to the September 10, 2025 encounter. Each example the Union offers that relates to inappropriate language directed at a supervisor occurred within the workplace, arises in direct response to a management question, decision, or equipment issue. Moreover, the examples provided by the Union reflect general expressions of frustration rather than comments directed personally at a supervisor. . . .

Mr. Nileski's conduct is distinguishable in every material respect. His confrontation was unprovoked, occurred entirely outside of work during Mr. Reese's personal time while Mr. Reese was having dinner with a friend, and bore no connection to any workplace grievance, union activity, or management decision that was currently taking place.

(Internal citations omitted). I disagree with the University that these are dispositive differences which would make these cases substantially different from Nileski's case. There are two main differences, I find, between the cases cited by the Union and credited by me. One, Nileski's case happened off campus rather than on campus. I do not find this to be a difference sufficient to make the cases non-comparable because - as credibly testified by Nileski - the University does not make its managers generally available to Union business agents to discuss work issues on campus during business hours. Nevertheless, even if the University had made Reese generally available, it is still proper for a union official such as a business agent to speak with University management about labor issues, within reason, and especially if he or she finds the University manager in a public place such as a restaurant. Two, the main difference between the cases cited by the Union and credited by me and Nileski's case is that Nileski was clearly engaging in protected activity, a fact which the University does not accept.

For the above reasons, the University has committed a violation of Section 1201(a)(1) and (3) of the Act.

CONCLUSIONS

The Hearing Examiner, therefore, after due consideration of the foregoing and the record as a whole, concludes and finds:

1. The University is a public employer within the meaning of Section 301(1) of PERA.
2. The Union is an employe organization within the meaning of Section 301(3) of PERA.
3. The Board has jurisdiction over the parties hereto.

4. The University has committed unfair practices in violation of Section 1201(a)(1) and (3) of PERA.

ORDER

In view of the foregoing and in order to effectuate the policies of the Act, the Hearing Examiner

HEREBY ORDERS AND DIRECTS

that the University shall:

1. Cease and desist from interfering, restraining or coercing employees in the exercise of the rights guaranteed in Article IV of the Act.

2. Cease and desist from 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.

3. Take the following affirmative action:

(a) Immediately retract the discipline issued to Nileski on October 30, 2025, restore the *status quo ante*, reinstate Nileski to his position as employee on leave of absence, restore his seniority, and make him whole for any lost benefits and for losses incurred by him as a result of the University's unfair practices, together with six percent (6%) *per annum* interest;

(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 the bargaining unit employees and have the same remain so posted for a period of ten (10) consecutive days;

(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; and

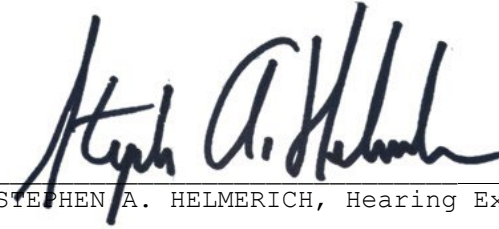
(d) Serve a copy of the attached Affidavit of Compliance upon the Union.

IT IS HEREBY FURTHER ORDERED AND DIRECTED

that in the absence of any exceptions filed pursuant to 34 Pa. Code § 95.98(a) within twenty (20) days of the date hereof, this decision and order shall become and be absolute and final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this
fifteenth day of July, 2026.

PENNSYLVANIA LABOR RELATIONS BOARD

A handwritten signature in black ink, appearing to read "Stephen A. Helmerich". The signature is written in a cursive, flowing style with large, connected letters.

STEPHEN A. HELMERICH, Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

TEAMSTERS LOCAL UNION No. 8 :
 :
 : CASE NO. PERA-C-25-319-E
 v. :
 :
 THE PENNSYLVANIA STATE UNIVERSITY :

AFFIDAVIT OF COMPLIANCE

The Pennsylvania State University hereby certifies that it has ceased and desisted from its violation of Section 1201(a)(1) and (3) of the Public Employe Relations Act; that it has complied with the Proposed Decision and Order as directed therein; that it immediately retracted the discipline issued to Nileski on October 30, 2025, restored the *status quo ante*, reinstated Nileski to his position as employe on leave of absence, restored his seniority, and made him whole for any lost benefits and for losses incurred by him as a result of the University's unfair practices, together with six percent (6%) per annum interest; and that it has served an executed copy of this affidavit on the Union at its principal place of business.

Signature

Title

Date

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

Signature of Notary Public