

dues increase vote and instructed FOP members to forward the email to other FOP members. On March 15, 2011, Sergeant Tidline's email was forwarded to other FOP members by Officer Hope Mathis and Officer Cynthia Page-Roots. [*Citations omitted*].

3. On or about March 15, 2011, FOP Chairman Kristopher Baumann forwarded Sergeant Tidline's email to the Acting director of the MPD Labor and Employee Relations Unit, Mark Viehmeyer, and expressed his concern that an MPD sergeant had ordered subordinates to forward an email regarding anti-union matters, that MPD officials were involved in email chains regarding anti-union matters, and that the Department's email system was being used to undermine the union. Chairman Baumann inquired if any of the MPD officials involved had notified anyone about the email, had requested an investigation, or had taken any action. Significantly, Chairman Baumann did not request that an investigation be initiated, but simply inquired as to whether the MPD had initiated an investigation. Chairman Baumann further inquired whether the MPD authorized the emails, and what other emails relating to the FOP were currently being disseminated. [*Citations Omitted*].

4. On or about March 15, 2011, Mr. Viehmeyer responded to Chairman Baumann's request indicating that he had no knowledge as to whether any of the officials who received the email had taken any action and had no knowledge of any other emails related to the FOP that were currently being disseminated. Finally, Mr. Viehmeyer stated that the Department had not authorized the emails and that the incidents would be investigated. [*Citations Omitted*].

5. On or about July 19, 2011, the FOP obtained a copy of Internal Affairs' Final Investigative Report regarding the improper use of the Department's email system. Despite the fact that the FOP and Chairman Baumann had not requested that Internal Affairs open an investigation and had not filed a complaint of any kind with Internal Affairs, the Final Investigative Report lists "Officer Kristopher Baumann, Chairman, Fraternal Order of Police, DC Lodge #1" as the Complainant. In addition the IS Sheet created by Internal Affairs initiating the investigation lists the FOP as the Complainant.

6. Moreover, the Agent from Internal Affairs conducting the investigation into the improper use of the Department's email system, Agent Barbara Brantley, repeatedly informed FOP members who were being interviewed and investigated that the

FOP and Chairman Baumann were the Complainant in the investigation. This false information was intentionally given to FOP Members to provoke and encourage anti-union animus. This disinformation was also given in order to interview union members about union activities, including union meetings.

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9. IAD Agent Barbara Brantley, Commander Christopher Lojacono, Assistant Chief Alfred Durham, Assistant Chief Michael Anzallo, and Chief of Police Cathy Lanier are responsible parties and PERB precedent and D.C. Code § 1-617.04(a) clearly provides that such agents and representatives of the District and its agencies are responsible for unfair labor practices and it is proper and appropriate to proceed against these individual respondents. *See Fraternal Order of Police v. District of Columbia*, PERB Case No. 08-U-41 (2009).

...

11. Respondents violated D.C. Code § 1-617.04(a) by interfering, restraining, coercing, or retaliating against the exercise of rights guaranteed to the FOP members by the CMPA. Specifically, (a) the FOP was engaged in protected union activities by inquiring with the MPD Labor and Employee Relations Unit regarding anti-union emails sent on the Department's email system; (b) Respondents knew of the activities as evidenced by Chairman Baumann's communications with Mark Veihmeyer, Acting Director of the MPD Labor and Employee Relations Unit; (c) there was express anti-union animus by the Respondents demonstrated by the Respondents' intentional dissemination of false information to FOP Members regarding the FOP and Chairman Baumann, namely, that the FOP and Chairman Baumann were the Complainant in the Internal Affairs investigation regarding the improper use of the Department's email system; and (d) Respondents attempted to interfere, restrain, coerce, and retaliate against the FOP in the exercise of rights guaranteed by the CMPA by providing false information to FOP Members in an attempt to discredit the FOP and Chairman Baumann and provoke anti-union animus.

12. Respondents have also violated D.C. Code § 1-617.04(a)(2) by interfering with the existence or administration of the FOP. Specifically, by providing false information to FOP members in an attempt to discredit the FOP and Chairman Baumann, the

Respondents have interfered with the administration of the FOP and its ability to represent the interests of the union's membership.

(Complaint at 4,5,6,7).

Respondent states the following in Answer:

2. In response to the allegations contained in paragraph 2 of the Complaint, Respondents admit that on March 15, 2011, Sergeant Yvonne Tidline sent an email message to other FOP members on the Department's email system containing the subject "Vote No on Raising of Union Dues." The remaining allegations in paragraph 2 of the Complaint are the legal conclusions of the pleader to which no response is required. To the extent that a response is deemed required, the allegations are denied in entirety.

3. In response to paragraph 3 of the Complaint, respondents admit that on March 15, 2011, Chairman Baumann forwarded Sergeant Tidline's March 15, 2011 email to Acting Director of Labor and Employee Relations Mark Viehmeyer. The remaining allegations in paragraph 3 of the Complaint are the legal conclusions of the pleader to which no response is required. To the extent that a response is deemed required, the allegations are denied in entirety.

4. Respondents admit the allegations contained in paragraph 4 of the Complaint.

5. In response to paragraph 5 of the Complaint, Respondents admit that the Internal Affairs Division Final Investigative Report dated July 14, 2011 lists Officer Kristopher Baumann, Chairman, FOP, DC Lodge #1 as the Complainant. Respondents also admit that the IS Sheet created by Internal Affairs initiating the investigation lists the FOP as the Complainant. The respondents are without sufficient knowledge or information to admit or deny the remaining allegations of said paragraph. To the extent that a response is deemed required, the allegations are denied in entirety.

6. In response to paragraph 6 of the Complaint, Respondents admit that Agent Brantley informed the FOP members, who were targets of the investigation, that she interviewed that the FOP and Kristopher Baumann were the Complainant in the investigation. The Respondents deny the remaining allegations contained in paragraph 6 of the Complaint.

7. Respondents admit to the allegations contained in paragraph 7 of the Complaint.

8. Respondents admit to allegations contained in paragraph 8 of the Complaint.

9. The allegations contained in paragraph 9 of the complaint are the legal conclusions of the pleader to which no response is required. To the extent that a response is deemed required, the allegations are denied in entirety.

(Answer at pgs. 2, 3)

Complainant's Response to Respondent's Answer restates their claim, and cites D.C. Code § 1-617.04(a)(1) to state:

"The District, **its agents and representative** are prohibited from: Interfering with, restraining, or coercing any employee in the exercise of the rights guaranteed by this subchapter." [Emphasis included].

The Board finds that since MPD, through its agents, violated the CMPA and D.C. Code §1-617.04(a). MPD, through its agents, contacted individual Union members and told them to vote a certain way in Union matters. MPD's actions were a clear case of interfering with, and coercing employees into not exercising their right to choose whether or not they want Union dues to be raised.¹ Direct dealing with individual employees violates 1-617.04(a)(1). *AFGE Local 3721 v. DCFESD*, Slip No. 0706. This would not be a case of "mere communication," and was in fact, direct dealing. In *FOP v. MPD*, Slip No. 0649, polling was seen as going beyond permissible "information gathering" when agency seeks employee views on alternate proposals concerning terms of employment. The act of instruction on a vote goes well beyond polling, and, is clearly an instance of direct dealing.

The allegations that MPD considered Officer Bauman's request to be a "complaint", and the allegations that subsequent interviews constituted an Unfair Labor Practice cannot be resolved by the pleadings, and therefore shall be referred to a hearing examiner.

The Board finds that the Complainant has pled allegations that, if proven, would constitute a violation of the CMPA. However, as stated above, it is clear that the parties disagree with respect to a number of facts in this case. On the record before the Board, establishing the existence of the alleged unfair labor practice violations requires credibility determinations about conflicting allegations. "The validation, i.e. proof, of the alleged statutory violation is what proceedings before the Board are intended to determine." *Jackson and Brown v. American Federation of Government Employees, Local 2741, AFL-CIO*, 48 DCR 10959, Slip Op. No. 414 at p. 3, PERB Case No. 95-S-01 (1995).

¹ This is, furthermore, a failure to bargain collectively, violating §1-617.04(a)(5), which constitutes derivative violation of §1-618.4(a)(1). *UDCFA/NEA and UDC*, Slip. No 0285; *IBT Locals 639 and 730 v. DCPS*, Slip. No. 0249, *AFSCME D.C. 20, Local 2776 and DCDFR*, Slip. No. 0245.

The issue of whether the Respondents' actions rise to the level of violations of the CMPA is a matter best determined after the establishment of a factual record, through an unfair labor practice hearing. Consequently, the motion to dismiss is denied, and the Board directs that this matter undergo an unfair labor practice hearing.

ORDER

IT IS HEREBY ORDERED THAT:

1. As to the issue of the e-mail sent, relief shall be granted to FOP ("FOP" or "Petitioners") in the form of PERB's determination that MPD engaged in unfair labor practices in violation of D.C. Code § 1-617.04(a); Respondents are ordered to cease and desist from their interference and retaliatory actions against the FOP; Respondents are to conspicuously post no less than (2) notices of their violations and PERB's Order in each MPD building; Respondent is to impose discipline against the MPD members found to have engaged in unfair labor practices consistent with its disciplinary requirements.
2. The rest of the matter is to be referred to a hearing examiner.
3. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD
Washington, D.C.

November 21, 2011

CERTIFICATE OF SERVICE

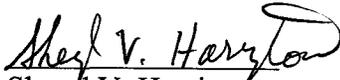
This is to certify that the attached Decision and Order in PERB Case No.11-U-52 was transmitted via Fax and U.S. Mail to the following parties on this 21st day of November 2011.

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