

Notice: This decision may be formally revised before it is published in the District of Columbia Register. Parties should promptly notify this office of any errors so that they may be corrected before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

**Government of the District of Columbia
Public Employee Relations Board**

In the Matter of:)	
)	
University of the District of Columbia Faculty Association/NEA,)	
)	PERB Case No. 11-U-02
Complainant,)	
)	Slip Op. No. 1319
v.)	
)	
University of the District of Columbia,)	
)	
Respondent.)	
)	

DECISION AND ORDER

I. Statement of the Case

The University of the District of Columbia Faculty Association/NEA (“Complainant” or “Union”) filed an Unfair Labor Practice Complaint¹ (“Complaint”), alleging that the University of the District of Columbia (“University” or “Respondent”) committed an unfair labor practice by refusing to bargain in good faith and by subsequently engaging in coercive communication with bargaining unit faculty in an attempt to discourage membership in the Union.

The University responded with a document styled Answer to Unfair Labor Practices Complaint and Motion for Judgment on the Pleadings and/or Motion to Strike (“Answer”). The University asserts that the allegations in the Complaint relate to confidential settlement discussions protected under Board Rule 558.1. The Union then filed an Opposition to the Motion to Dismiss or Strike, in which it argued that Rule 558.1 prohibits “only the use of the substance of an agreement as proof of a violation,” not “proof that an agreement was reached.” (Opposition to Motion to Dismiss or Strike at 3).

¹ Complainant later filed an Amended Unfair Labor Practice Complaint, adding a paragraph to the factual allegations incorporating actions taken by the University after the filing of the Answer and updating the name of the University’s Chief Negotiator. The Complaint and Amended Complaint contain no differences relevant to this Decision and Order.

Pursuant to Rule 500.4, the Public Employee Relations Board ("PERB") Executive Director administratively dismissed the Complaint ("Dismissal"). In the Dismissal, the Executive Director found that portions of Complaint paragraphs 10-11 and 14-15 involved protected discussions or evidence obtained during the Bridge Agreement negotiations. (Dismissal at 3). Based on Board Rule 558.1, the Executive Director concluded that an unfair labor practice charge based on or supported by these settlement discussions is barred, and that allowing such a charge to proceed would undermine the Board's policy of encouraging parties to voluntarily settle disputes of this nature. *Id.*

On the same day that the Dismissal was issued, the Union filed a Motion to Disqualify Johnine Barnes ("Motion to Disqualify").

The Union filed a Motion for Reconsideration of the Executive Director's Administrative Dismissal ("Motion"), alleging that the Executive Director misinterpreted Rule 558.1 (Motion at 1). Additionally, the Union submitted a letter asking that the Board also consider the Union's Motion to Disqualify Johnine Barnes as counsel for UDC. UDC responded with an Opposition to the Motion for Reconsideration, arguing that the Executive Director's decision was "reasonable and supported by Board precedent." (Opposition to Motion for Reconsideration at 3).

The Executive Director denied the Union's Motion for Reconsideration on May 24, 2012 ("Denial"). In the Denial, the Executive Director stated that the Union made no argument that the Dismissal was unreasonable or unsupported by Board precedent. (Denial at 2). The Executive Director found that the Union instead reiterated its argument from the Complaint that UDC refused to bargain in good faith by failing to comply with the terms of a negotiated settlement agreement, as well as its argument that the Bridge Agreement was enforceable. *Id.* The Executive Director concluded that "mere disagreement with the Executive Director's decision is not a sufficient basis for reversing that decision." *Id.*; quoting *Lomax v. International Brotherhood of Teamsters, Local 639*, __ D.C. Reg. __, Slip Op. No. 942, PERB Case No. 08-U-17 (2008). Further, the Executive Director found that the dismissal of the underlying Complaint rendered the Motion to Disqualify moot. (Denial at FN 1).

Next, the Union filed a document styled Appeal from the Executive Director's Administrative Dismissal ("Appeal"). In the Appeal, the Union requests that the Board reconsider the Executive Director's Dismissal and his denial of the Motion to Disqualify. (Appeal at 1). On June 25, 2012, the Executive Director granted UDC's request for an extension of time in order to respond to the Appeal. On July 11, 2012, UDC responded with a document styled Opposition to Appeal from the Executive Director's Administrative Dismissal.

II. Discussion

The Board will uphold an Executive Director's administrative dismissal where the decision was reasonable and supported by Board precedent. *See, e.g., Lomax v. Int'l Brotherhood of Teamsters, Local Union 639*, __ D.C. Reg. __, Slip Op. No. 849, PERB Case No. 06-U-09 (June 21, 2007).

Evidence obtained during voluntary settlement negotiations is confidential and protected by Board Rules 558.1 – 558.3, which state:

It is Board policy to encourage the voluntary efforts of the parties to settle or adjust disputes involving issues of representation, unfair labor practices, standards of conduct or issues arising during negotiations.

In addition, the parties' efforts at resolution and any settlements or adjustments reached shall be consistent with the provisions, purposes and policies of the CMPA.

No admissions, offers of settlement or proposals of adjustment made during such efforts toward resolution may be used in any proceeding as evidence or as an admission of a violation of any law or regulation.

In the instant case, the Complaint alleges that UDC failed to bargain in good faith during the settlement discussions, failed to ratify the Bridge Agreement, and communicated directly with bargaining unit members about the impact certain litigation would have on the Bridge Agreement. (Complaint at 6).

The Board finds that the protections of Rule 558 cease once the parties have reached a tentative agreement. Therefore, the Executive Director's administrative dismissal is overturned.

The issue of whether UDC's actions rise to the level of a violation of the CMPA is a matter best determined after the establishment of a factual record through an unfair labor practice hearing. *See Barganier v. FOP/DOCLC and DC DOC*, 45 D.C. Reg. 4013, Slip Op. No. 542, PERB Case No. 98-S-03 (1998).

The Board finds that the Union has pled or asserted allegations that, if proven, would constitute a statutory violation. Therefore, the Complaint will continue to be processed through an unfair labor practice hearing.

ORDER

IT IS HEREBY ORDERED THAT:

1. The University of the District of Columbia Faculty Association's Appeal is granted
2. The Board's Executive Director shall refer the Complainant's Unfair Labor Practice Complaint to a Hearing Examiner.
3. The Notice of Hearing shall be issued seven (7) days prior to the date of the hearing.
4. 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.

August 24, 2012

CERTIFICATE OF SERVICE

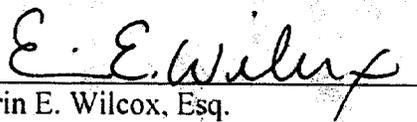
This is to certify that the attached Decision and Order in PERB Case No. 11-U-02 was transmitted via U.S. Mail and e-mail to the following parties on this the 24th day of August, 2012.

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