Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
Fraternal Order of Police/Metropolitan Police Department Labor Committee,	
Complainant,	PERB Case No. 07-U-21
v.	Opinion No. 1358
District of Columbia Metropolitan Police Department,	
Respondent.	

DECISION AND ORDER

I. Statement of the Case

Complainant Fraternal Order of Police/Metropolitan Police Department Labor Committee ("FOP," "Union," or "Complainant") filed an unfair labor practice complaint ("Complaint") against Respondent District of Columbia Metropolitan Police Department ("MPD" or "Respondent"), alleging violations of D.C. Code § 1-617.04a)(1) and (5) for requiring "individual members of the FOP to forfeit their collectively bargained for seniority rights in order to remain detailed to a specialized unit." (Complaint at 1). In its Answer ("Answer)", MPD denied violating the Comprehensive Merit Personnel Act ("CMPA"), and asked that the Board dismiss the Complaint (Answer at 1-3).

An evidentiary hearing was conducted by Hearing Examiner Andrew M. Strongin. The Hearing Examiner issued a Report and Recommendation ("Report"), finding that MPD's actions did not constitute a violation of D.C. Code § 1-617.04(a)(1) and (5), and recommended that the Complaint be dismissed. (Report at 14). FOP filed exceptions to the Report ("Exceptions"), claiming that the Hearing Examiner "failed to properly apply the relevant standard for determining whether [MPD] engaged in direct dealing with members of the Union, and whether [MPD] retaliated against the Union." (Exceptions at 1). MPD filed an Opposition to FOP's Exceptions ("Opposition"), alleging that the Hearing Examiner correctly found no evidence of

retaliation or direct dealing. (Opposition at 1). The Report, Exceptions, and Opposition are before the Board for disposition.

II. Hearing Examiner's Report and Recommendation

A. Facts

The Complaint arises from the November 2006 "Open Season" process, in which police officers with MPD's First District bid on days off, shift choice, and changes to their patrol service area ("PSA"). (Report at 1). Since at least 1999, the Open Season process has been governed by Special Order 99-20 and the seniority provisions of the parties' collective bargaining agreement ("CBA"). *Id.* Special Order 99-20 requires the First District to hold a separate Open Season for all PSA officers, including officers on special detail.[1] *Id.* Prior to each Open Season, a seniority list is posted for review by the participating officers. (Report at 2).

MPD and FOP discussed the November 2006 Open Season at a regularly-scheduled monthly labor relations meeting. *Id.* MPD was represented by Commander Groomes and First District Manager Zalewski, and FOP was represented by Chief Shop Steward Martin and Shop Steward Steinhilber. *Id.* At this meeting, the parties agreed that the First District would follow the same bidding process used in the November 2005 Open Season, and that detailed officers would not participate in the selection process. *Id.* It is undisputed that detailed officers did not participate in the 2005 Open Season process. *Id.*

In preparation for the November 2006 Open Season, Zalewski drafted preference sheets and a seniority list. *Id.* To permit detailed officers to participate in open season, Zalewski sent Martin a draft of a memorandum ("October 25 Memorandum"), which was intended to inform detailed officers of their right "to remain in your detail or opt out and select from a PSA assignment based upon your seniority in the First District." *Id.* Further, the October 25 Memorandum advised the detailed officers that if they chose to remain in their detailed position and forgo Open Season, they may end up waiving their seniority rights upon their return to a PSA assignment[2]. *Id.*

Martin reviewed the preference sheet and the October 25 Memorandum, initialed each of them, and left them for Zalewski without noting any objections. (Report at 3). Interpreting the

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[1] The relevant portion of Special Order 99-20 states:

> All PSA officers in a district will be assigned to a watch and days off group as a single unit...Officers detailed to the Focus Mission Team will identify a preference with PSA officers. Current members of the Focus Mission Team will work their selected watch and days off after returning to their PSA assignment.

[2] The October 25 Memorandum stated:

> Those members who elect to remain on their detail will do so with the understanding that in the event the detail ends, they will be placed by the Commander of the First District based upon the needs of the First District at the time the detail ends. Consideration for seniority, watch, and days off will be given to members who are returned back to a PSA when a detail ends.

initials and lack of objections as approval of the October 25 Memorandum, Groomes signed the memorandum and distributed it to the membership. *Id.*

At the evidentiary hearing, Martin testified that her initials signified only that she had reviewed the documents, not that she had approved them. *Id.* The Hearing Examiner found that:

> Martin testifies that she called [FOP] Chairman Baumann immediately after initialing the documents to discuss her concern that the proposed process was inconsistent with Special Order 99-20, and that she subsequently – she could not recall specifically when – called Zalewski to voice the Union's objection to the October 25 Memorandum as violative of the seniority rights of the detailed officers, and specifically to advise him that the Union "is not in the business of entering into personal contracts." Martin was unable to testify to Zalewski's response to this concern, if any, except to confirm that the memorandum subsequently was distributed to membership.

Id. Zalewski denied speaking to Martin about her concerns, and testified that he would have immediately raised the issue with Groomes if Martin had raised her objections about the October 25 Memorandum. *Id.*

After receiving the October 25 Memorandum, former Chief Shop Steward Douglas approached Groomes – "apparently on his own initiative" – to state that the October 25 Memorandum was a major rights violation and there was going to be a major grievance. (Report at 4). Douglas encouraged Groomes to rescind the memorandum. *Id.* Believing Douglas to speak for FOP, Groomes directed Zalewski to rescind the October 25 Memorandum and issued a second memorandum ("November 3 Memorandum"):

> Please take notice that the option for Detailed Members to remain in their detail and not select in the Open Season is hereby rescinded based upon issues raised by the Fraternal Order of Police Union.
>
> Therefore, all members of the First District must now select in the open season regardless of their detail.
>
> It was originally intended to allow detailed members to select and remain in their detail with their days off. This would have allowed PSA officers more selection opportunities with part of the weekend off.
>
> The impact of this will not affect officers assigned to the PSA as detailed members with seniority may elect to tie up preferential days off while they are detailed out of the PSA on their details.

Id. After stating his findings of fact, the Hearing Examiner considered FOP's direct dealing and retaliation claims separately. (Report at 4).

B. Direct Dealing

The Hearing Examiner noted that in the Complaint, FOP alleged that the October 25 Memorandum constitutes direct dealing by presenting a choice to individual unit members that affected their rights, thus seeking to alter the terms and conditions of the officers' employment through direct negotiation with the officers and not their exclusive representative. (Report at 5). According to FOP's Complaint, the October 25 Memorandum offered a "false choice" to the detailed PSA officers of either remaining in their detail and losing their seniority rights protected by Special Order 99-20 and the collective bargaining agreement, or ending their detail in order to preserve their seniority rights. *Id.* Further, FOP alleged that MPD's intention in issuing the memorandum is irrelevant because the conduct tends to undermine FOP's status as exclusive bargaining representative. *Id.* Similarly irrelevant is the rescission of the memorandum because FOP had already been harmed. *Id.* In addition, FOP contended that MPD should not have relied on Martin's initials on the seniority sheet and October 25 Memorandum because Martin subsequently spoke with Groomes, and that Groomes admitted she may have misinterpreted the significance of Martin's initials. *Id.* Finally, the Complaint stated that Martin was not sufficiently senior in FOP to agree to the substance of the memorandum. *Id.*

According to the Hearing Examiner's Report, MPD contended that it cannot have engaged in direct dealing because it reasonably believed that Chief Shop Steward Martin approved the October 25 Memorandum. (Report at 6). MPD's belief was reasonable because Martin had agreed at the earlier labor management relations meeting to follow the 2005 Open Season process, which similarly excluded detailed officers. *Id.* Zalewski denied having received a phone call from Martin voicing her objections to the memorandum, and the Hearing Officer credited Zalewski's testimony over Martin's. *Id.* MPD states that Martin could have noted any objections on the face of the memorandum, and that FOP held Martin out as its principal point of contact on First District Issues. *Id.*

In his Report, the Hearing Examiner found that it was undisputed that "the substance of the October 25 Memorandum relates to matters that fall squarely within the province of the Union's role as exclusive bargaining agent, as they affect the process through which the employees will select their assignments and exercise their seniority rights." (Report at 6). The significant issue for the Hearing Examiner was whether FOP authorized the distribution of the October 25 Memorandum. *Id.*

The Hearing examiner concluded that FOP authorized the distribution of the October 25 Memorandum through the actions of Chief Shop Steward Martin, thereby providing a complete defense to the allegation of direct dealing. (Report at 6). The Hearing Examiner found support for this conclusion in MPD's testimony regarding the parties' agreement to follow the procedures used during the 2005 Open Season (in which detailed officers were excluded), as well as in MPD's more specific and definitive testimony regarding that meeting. (Report at 7).

Further, the Hearing Examiner found that it was reasonable for MPD to interpret Martin's initials on the October 25 Memorandum, without any written objections, as evidence of FOP's agreement with the process set forth in the memorandum. *Id.* The Hearing Examiner stated that Martin's "testimony regarding her effort to convey her objections to Zalewski is not compelling, and is overshadowed by Zalewski's emphatic testimony that Martin did not lodge any objection to the October 25 Memorandum prior to its distribution." *Id.* Although FOP claimed that Martin was not authorized to approve the memorandum, the Hearing Examiner determined that the testimony of Martin, Chairman Baumann, and others demonstrated that "it is undisputed that the Union held Martin out as its primary point of contact," and that there was "no evidence that the Union ever gave [MPD] any reason to believe it could not rely on Martin as the Union's agent with respect to First District matters generally, and this issue in particular." (Report at 8).

Therefore, the Hearing Examiner concluded that, consistent with the record, Board precedent, and the law of agency, MPD distributed the October 25 Memorandum only after receiving FOP's approval, and thus did not disregard FOP's status as the exclusive bargaining representative by engaging in direct dealing with the FOP membership. (Report at 8).

C. Retaliation

In addition to the charge of direct dealing, FOP alleged that the November 3 Memorandum rescinding the October 25 Memorandum is retaliatory, undermines FOP's status as an exclusive representative, and chills the exercise of protected rights. (Report at 8). Making out a *prima facie* case of retaliation, FOP contends that its objection to the October 25 Memorandum was a protected activity, MPD knew that FOP was engaged in a protected activity, and that retaliatory intent may be inferred from the totality of the circumstances, specifically the disparaging language of the November 3 Memorandum and that it was issued the same day Groomes agreed to rescind the October 25 Memorandum due to the threat of a major grievance. *Id.* Chairman Baumann testified that FOP received multiple calls from its membership asking why FOP had "ruined their details and why it had limited preferential days off." *Id.*

Citing *AFSCME, Council 20 v. D.C. Board of Trustees of the District of Columbia*, 36 D.C. Reg. 427, Slip Op. No. 200, PERB Case No. 88-U-32 (1989)[3], MPD contends that the November 3 Memorandum merely communicated information to the membership regarding the reason for and implications of the October 25 Memorandum's rescission. (Report at 9).

The Hearing Examiner agreed with MPD, concluding that the November 3 Memorandum did not violate D.C. Code § 1-617.04. (Report at 12). In reaching this conclusion, the Hearing Examiner relied on Slip Op. No. 200, as well as Board precedent set forth in *AFGE Local 872 v. D.C. Department of Public Works*, 38 D.C. Reg. 1586, Slip Op. No. 264 (1991) and *AFGE Local 631 v. D.C. Water and Sewer Authority*, 52 D.C. Reg. 5248, Slip Op. No. 778 at p. 12, PERB Case No. 04-U-02 (2005). (Report at 11-12). In each of these cases, the Board found that an

[3] The Board concluded that a letter distributed by the Board of Trustees "was nothing more than the employer communicating to its employees on the status of negotiations, which does not, standing alone, constitute a violation of the D.C. Code." (Slip Op. No. 200 at p. 5).

employer's language to its employees may not "have the Local's sensibilities in mind," but such language does not necessarily constitute an unfair labor practice. *AFGE Local 631*, Slip Op. No. 778 at p. 12.

Specifically, the Hearing Examiner found that the first two paragraphs of the November 3 Memorandum "innocuously impart truthful information to the employees regarding the status of the Open Season, and are not violative of the CMPA." (Report at 12). The third paragraph contains "nothing unlawful, without more, about [MPD] informing its employees of its intention in distributing the October 25 Memorandum that it was rescinding." *Id.* The Hearing Examiner found the fourth paragraph the most problematic, but "not so problematic as to support a finding of a violation of the CMPA." *Id.* The implication that MPD was trying to look out for the interests of the non-detailed officers by providing them with preferential treatment during the open season process, but that FOP's interference prevented this, could cause FOP members to challenge their union officers, much as it did in the *AFSCME Council 20* and *AFGE Local 872* cases. (Report at 13). Nonetheless, the Hearing Examiner found that the statements were "an accurate account of the facts and potential consequences of the Union's intervention as understood by [MPD], which [MPD] is permitted to communicate to membership." *Id.*

Finally, the Hearing Examiner concluded that the law does not require MPD to seek FOP's consent before communicating accurate information to its members, nor must MPD's language be neutral. (Report at 13). Additionally, FOP was free to "counter the Memorandum with statements of its own." *Id.*

III. Exceptions and Opposition

A. Exception 1: The Hearing Examiner Failed to Reasonably Apply the Findings of Fact to the Relevant Law Regarding the Union's Retaliation Claim

FOP's first exception to the Report is that the Hearing Examiner failed to "consider the obvious, yet unwritten intentions and logical implications of [MPD's] November 3 Memorandum that rescinded the Open Season proposal for First District PSA Officers contained in the October 25 Memorandum." (Exceptions at 9). Particularly, FOP takes issue with the Hearing Examiner's statement that:

> ...the basic gist of the [November 3] Memorandum is that the Union intervened in the Open Season process to protect the collectively-bargained seniority rights of its First District members, which arguably would have been undermined had [MPD] held the detailed officers out of the Open Season. What [MPD] did is to highlight the Union's success, albeit without the Union's consent and through language that is not, strictly speaking, neutral.

(Exceptions at 10-11; Report at 13). FOP states that the Hearing Examiner's use of the term "success" is based on a "miracle reading of the Memorandum that defies logic," and that "[i]f [MPD] had truly wanted to 'highlight the Union's success,' it would have written something

similar to the nature of the foregoing: 'The Union leadership, looking out for the best interest of its membership, has requested that [MPD] rescind the plan set forth in the October 25 Memorandum.'" *Id.* FOP takes issue with the Hearing Examiner's characterization of the November 3 Memorandum's language as "not, strictly speaking, neutral," contending that the Memorandum's language had "negative connotation[s]" and rose to the level of retaliation. (Report at 13; Exceptions at 11).

Additionally, FOP alleges that the Hearing Examiner erred when he concluded that MPD was not required to seek FOP's consent "before communicating accurately to its members," and that the law does not require "strict neutrality of such communications." (Report at 13; Exceptions at 12). FOP states that while MPD "is permitted to accurately impart facts to union members, it is not permitted to infuse its union-disparaging opinion into these facts." (Exceptions at 12). FOP alleges that the third and fourth paragraphs of the November 3 Memorandum contains the intent of MPD and MPD's predicted consequences of FOP's actions, which are not facts. *Id.* Further, FOP alleges that the Hearing Examiner incorrectly stated that FOP was free to counter the November 3 Memorandum with its own statement, because such a statement "does not negate the fact that the retaliatory conduct occurred." (Exceptions at 13). Similarly, FOP states that its members were not "fully capable of evaluating the relative merits of [FOP and MPD's] positions for themselves," as the Hearing Examiner found, because that "is true only when the facts of the two positions are represented impartially to the membership." *Id.*

In its Opposition, MPD states that FOP's disagreement with the Hearing Examiner's interpretation of the November 3 Memorandum "is insufficient to invalidate the Hearing Officer's recommendations." (Opposition at 9). MPD cites to *AFGE Local 874 v. D.C. Department of Public Works*, 38 D.C. Reg. 6693, Slip Op. No. 266, PERB Case Nos. 89-U-15, 89-U-18, and 90-U-04 (1991) for this proposition, as well as to *Hatton v. FOP/DOC Labor Committee*, 47 D.C. Reg. 769, Slip Op. No. 451, PERB Case No. 95-U-02 (1995) for the Board's holding that "issues of fact concerning the probative value of evidence and credibility resolutions are reserved to the Hearing Examiner." (Opposition at 9).

MPD contends that the Hearing Examiner's findings are supported by the record, citing to the testimony of Groomes and Zalewski on the circumstances giving rise to the November 3 Memorandum, the intent behind the October 25 Memorandum, the meaning and rationale of each paragraph of the November 3 Memorandum, the effect of the November 3 Memorandum on the Open Season process, and the consequences of the change on the officers of the First District. (Opposition at 10). Further, MPD points out that the Hearing Examiner relied on Board precedent to determine that MPD had not engaged in retaliatory conduct through the November 3 Memorandum. (Opposition at 11).

The Board will uphold a hearing examiner's findings and conclusions when they are reasonable, supported by the record, and consistent with Board precedent. *See AFGE Local 1403 v. D.C. Office of the Attorney General*, Slip Op. No. 873, PERB Case Nos. 05-U-32 and 05-UC-01 (2011). The Board has held that a mere disagreement with a hearing examiner's findings is not grounds for reversal of those findings where they are fully supported by the record. *See Fraternal Order of Police/Metropolitan Police Department Labor Committee*, Slip

Op. No. 1302, PERB Case Nos. 07-U-49, 08-U-13, and 08-U-16 (July 26, 2012). Additionally, the Board has rejected challenges to a hearing examiner's findings based on competing evidence, the probative weight accorded to evidence, and credibility resolutions. *Id.*; *see also AFGE Local 2741 v. D.C. Department of Recreation and Parks*, 46 D.C. Reg. 6502, Slip Op. No. 558, PERB Case No. 98-U-16 (1999). Finally, "issues of fact concerning the probative value of evidence and credibility resolutions are reserved to the hearing examiner." *Hatton*, Slip Op. No. 451 at p. 4; *see also University of the District of Columbia Faculty Association/NEA v. University of the District of Columbia*, 35 D.C. Reg. 8594, Slip Op. No. 285, PERB Case No. 86-U-16 (1992); *Bagenstose, et al., v. D.C. Public Schools*, 38 D.C. Reg. 4514, Slip Op. No. 270, PERB Case No. 88-U-34 (1991).

In the instant case, FOP disagrees with the Hearing Examiner's interpretation of the November 3 Memorandum's intent, as well as the Hearing Examiner's credibility determinations based on Groomes and Zalewski's testimony. (Exceptions at 10-11). The Hearing Examiner found that the first paragraph of the November 3 Memorandum "merely states that the option for detailed members to remain in their detail and not select in the Open Season was rescinded based upon issues raised by the Union," and credited Groomes' "clear, unequivocal, and uncontested" testimony on this point. (Report at 12). Further, the second paragraph adds the statement that "as a result of the Union's intervention, all members of the First District must select in the Open Season regardless of their detail," which was "precisely what the Union sought in ultimately objecting to the alleged direct dealing." *Id.* The Hearing Examiner concluded that these two paragraphs "innocuously impart truthful information" to the bargaining unit members, which is not a violation of the CMPA. *Id.* In the third paragraph, the Hearing Examiner concluded that MPD was simply informing its employees of the purpose behind the October 25 Memorandum, which it legally permitted to do. *Id.* Finally, the Hearing Examiner concluded that while the wording of the final paragraph of the November 3 Memorandum may not have been chosen "with the Local's sensibilities in mind," it did not rise to the level of retaliation. (Report at 13).

The Board finds that the Hearing Examiner's findings and conclusions on this point are reasonable, supported by the record, and consistent with Board precedent. In arriving at his conclusions, the Hearing Examiner relied on evidence and testimony presented, as well as Board precedent in *AFSCME Council 20*, *AFGE Local 874*, and *AFGE Local 631*. (Report at 9-13). The Board will not overturn the Hearing Examiner's conclusions based on FOP's disagreement with the Hearing Examiner's interpretation of the evidence and caselaw. *See FOP/MPDLC*, Slip Op. No. 1302. Therefore, this conclusion is affirmed.

B. Exception II: The Hearing Examiner Failed to Consider the Record Evidence Regarding Officer Martin's Lack of Authority to Approve the October 25, 2006, Memo on Behalf of the Union.

In its second exception, FOP alleges that the Hearing Examiner erred in determining that Martin was authorized to consent to the distribution of the October 25 Memorandum. (Exceptions at 14). Specifically, FOP contends that while Martin has authority to act on behalf of FOP in some situations, "she certainly does not have the authority to consent to any agreement that would contradict the terms of the parties' collective bargaining agreement," and the fact that

Martin was the primary point of contact on First District Open Season issues "is of no moment." *Id.*

Additionally, FOP alleges that the Hearing Examiner "failed to consider [MPD's] irresponsibility and utter neglect in training its officials in matters related to collective bargaining," which FOP believes is responsible for MPD taking Martin's initials on the draft of the October 25 Memorandum as a sign of her approval. (Report at 15). In support of this contention, FOP points to Groomes' testimony that her knowledge of the parties' collective bargaining agreement process is based on "trial and error" and that she has received "no formal training" on collective bargaining issues. *Id.* Further, FOP states that there is no evidence of Martin's explicit authority, and that the Hearing Examiner erred in finding Martin held implicit authority to approve the October 25 Memorandum. (Report at 15-16).

In its Opposition, MPD alleges that the Hearing Examiner was correct in concluding that regardless of whether Martin had actual authority to consent to the October 25 Memorandum, MPD reasonably relied on Martin's apparent authority to do so. (Opposition at 12). MPD contends that "[a]lthough the Hearing Examiner did not specifically utilize the terms 'actual authority' and 'apparent authority,' it is clear from his analysis that he was proceeding under the theory of apparent authority." *Id.* In support of this contention, MPD points to the D.C. Court of Appeals' acceptance of the Restatement (Second) of Agency, which describes apparent authority as arising "when the principal places the agent in such a position as to mislead third persons into believing that the agent is clothed with the authority which in fact he does not possess." (Opposition at 13; *citing Makins v. District of Columbia*, 861 A.2d 590, 594 (D.C. 2004)). MPD states that the record is "replete with evidence" that FOP placed Martin in the position of Chief Shop Steward for the First District and "clothed her in the apparent authority to handle day-to-day labor relations matters." (Opposition at 13). MPD points to portions of Chairman Baumann and Groomes' testimony regarding the role of the chief shop stewards generally and Martin in particular. (Opposition at 13-15).

Further, MPD denies FOP's allegation that MPD's alleged failure to train its officials in the collective bargaining process contributed to MPD's reliance on Martin's authority to consent to the October 25 Memorandum. (Opposition at 15). MPD states that regardless of training, "[t]he fact remains that Complainant placed Chief Shop Steward Martin in a position which caused Respondents to reasonably believe that Complainant had consented to the October 25, 2006 memorandum." *Id.*

Martin testified that her initials on the October 25 Memorandum meant only that she had reviewed the document, not that she consented to it, and that she conveyed her objections to Zalewski. (Report at 7). Nonetheless, the Hearing Examiner credited Zalewski's "emphatic testimony" that Martin had never objected to the October 25 Memorandum prior to its distribution. *Id.* The Hearing Examiner stated that Zalewski and Groomes "testified very specifically to their intention to avoid disruption to the 2006 Open Season," and the Hearing Examiner found particularly credible Zalewski's testimony that he would have informed Groomes of any FOP objections. *Id.* Further, the Hearing Examiner concluded that the testimony of Martin, Chairman Baumann, and others demonstrated that FOP clearly held Martin

out as is primary point of contact, and that there was no evidence that MPD should have believed otherwise. (Report at 8).

Crediting Zalewski and Groomes' testimony, the Hearing Examiner found that Martin had not objected to the October 25 Memorandum prior to its issuance. (Report at 7). Credibility determinations are the province of the hearing examiner. *See Hatton*, Slip Op. No. 451 at p. 4. Further, the Board will not accept a challenge to a hearing examiner's findings based on the probative weight accorded to evidence. *See Fraternal Order of Police/Metropolitan Police Department Labor Committee*, Slip Op. No. 1302. Therefore, the Board will not overturn the determination to credit Zalewski and Groomes over Martin. After concluding that FOP had not objected to the October 25 Memorandum, the Hearing Examiner relied upon testimony from Chairman Baumann, Martin, and other witnesses to find that FOP held Martin out as its primary point on contact. (Report at 8). Further, the Hearing Examiner found no evidence that FOP ever gave MPD reason to believe that Martin was not FOP's agent with respect to the First District open season issue. *Id.* Thus, the Hearing Examiner's conclusion that MPD reasonably relied on Martin's apparent authority to consent to the October 25 Memorandum was informed by credibility determinations and the probative weight accorded to the testimony and evidence presented. Therefore, the Hearing Examiner's conclusion that Martin had the apparent authority to consent to the October 25 Memorandum will not be disturbed.

III. Conclusion

For the reasons stated above, FOP's Exceptions are dismissed. Pursuant to Board Rule 520.14, the Board finds the Hearing Examiner's conclusions and recommendations to be reasonable, supported by the record, and consistent with Board precedent. Therefore, the Board adopts the Hearing Examiner's Report, and the Complaint is dismissed.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Fraternal Order of Police/Metropolitan Police Department Labor Committee's Unfair Labor Practice Complaint is dismissed.

2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

January 31, 2013

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 07-U-21 was transmitted via U.S. Mail and e-mail to the following parties on this the 2nd day of January, 2013.

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