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. 11-U-38
v.	Opinion No. 1370
District of Columbia Metropolitan Police Department,	
Respondent.	

DECISION AND ORDER

I. Statement of the Case

On June 8, 2011, the Fraternal Order of Police/Metropolitan Police Department Labor Committee ("FOP" or "Complainant") filed an Unfair Labor Practice Complaint ("Complaint"), alleging that the Metropolitan Police Department ("MPD"),[1] Chief Cathy Lanier, Inspector Dierdre Porter, and Sergeant Yvonne Tidline violated D.C. Code § 1-617.04(a) of the Comprehensive Merit Personnel Act ("CMPA").[2] MPD, on behalf of MPD, Chief Lanier, and

[1] On March 12, 2013, FOP filed a Motion to withdraw Chief Cathy Lanier and Inspector Dierdre Porter as individually named respondents. FOP did not request to withdraw Sergeant Yvonne Tidline as an individual respondent.

[2] As FOP has filed under § 1-617.04(a) for liability of the District for prohibited conduct, the Executive Director has removed Sergeant Tidline as an individual respondent from the caption, consistent with the Board's precedent requiring individual respondents named in their official capacities to be removed from the complaint for the reason that suits against District officials in their official capacities should be treated as suits against the District. *See Fraternal Order of Police/Metropolitan Police Dep't Labor Comm. v. D.C. Metropolitan Police Dep't*, 59 D.C. Reg. 6579, Slip Op. No. 1118 at p. 4-5, PERB Case No. 08-U-19 (2011). The D.C. Superior Court upheld the Board's dismissal of such respondents in *Fraternal Order of Police/Metropolitan Police Dep't Labor Comm. v. D.C. Public Employee Relations Board*, Civ. Case No. 2011 CA 007396 P(MPA) (D.C. Super. Ct. Jan 9, 2013).

Inspector Dierdre Porter (hereinafter referred to as MPD), filed an Answer ("MPD Answer"), denying the allegations in Complaint 11-U-38 and raising the affirmative defense that the Board does not have jurisdiction. Sergeant Tidline filed a separate Answer ("Tidline Answer"), denying the allegations in Complaint 11-U-38.

In addition, FOP filed a Motion for Consolidation of PERB Case Nos. 11-U-38 and 11-U-43 ("Motion"), because FOP asserted "both ULPs concern the same factual allegations against Sergeant Tidline." (Motion at 3). On August 1, 2011, Metropolitan Police Department filed an Opposition to Complainant's Motion to Consolidate ("Opposition to Motion"), arguing that the two cases did not involve the same parties.

FOP's Complaint and Motion to Consolidate are before the Board for disposition.

II. Background

The parties agree that on or about March 15, 2011, through MPD's email system, Sergeant Tidline sent an email to FOP members with the subject: "Vote NO on Raising of Union Dues." (Complaint at 3, MPD Answer at 2, Tidline Answer at 2). FOP alleges that the email "encouraged FOP member[s] to vote 'no' on an upcoming dues increase vote and instructed FOP members to forward the email to other FOP members." (Complaint at 3). FOP alleges the email was forwarded by FOP members, and that MPD official Inspector Porter was included in one of the forwarded emails. *Id.*

In addition, FOP alleges that FOP Chairman Kristopher Baumann forwarded the emails to Acting Director of the MPD Labor and Employee Relations Unit, Mark Viehmeyer, and made several inquiries into the circumstances surrounding the email. (Complaint at 3-4). FOP alleges that Mr. Veihmeyer responded by indicating that he had no knowledge of the emails, that MPD had not authorized the emails, and that the incidents would be investigated. (Complaint at 4). FOP alleges that Chairman Baumann then requested permission to send an email to FOP members on MPD's email system, regarding the Special Membership Meeting and dues assessment vote. *Id.* FOP alleges that Mr. Veihmeyer denied Chairman Baumann's request to send an email to FOP members on MPD's email system. *Id.*

III. Discussion

FOP has alleged two unfair labor practices: (1) MPD interfered, restrained, coerced, or retaliated against employees for exercising their rights guaranteed by the CMPA when Sergeant Tidline sent the March 15, 2011, email, violating D.C Code § 1-617.04(a)(1); and (2) by permitting Sergeant Tidline's email and denying Chairman Baumann use of MPD's email system to clarify information contained in Sergeant Tidline's email, MPD interfered with the rights of FOP members and the administration of the FOP, violating D.C. Code § 1-617.04(a)(1) and (2). (Complaint at 4-6).

For the Board to have jurisdiction over a complaint, a complainant must plead or assert allegations that, if proven, would establish the alleged statutory violations made in the complaint. *See Virginia Dade v. National Association of Government Employees, Service Employees*

International Union, Local R3-06, 46 D.C. Reg. 6876, Slip Op. No. 491 at p. 4, PERB Case No. 96-U-22 (1996); and *Gregory Miller v. American Federation of Government Employees, Local 631, AFL-CIO and DC. Department of Public Works*, 48 D.C. Reg. 6560, Slip Op. No. 371, PERB Case Nos. 93-S-02 and 93-U-25 (1994). In addition, the Board views contested facts in the light most favorable to the Complainant in determining whether the Complaint gives rise to an unfair labor practice. *See JoAnne G. Hicks v. DC Office of the Deputy Mayor of Finance, Office of the Controller, and American Federation of State, County, and Municipal Employees, District Council 24,* 40 D.C. Reg. 1751, Slip Op. No. 303, PERB Case No. 91-U-17 (1992). "Without the existence of such evidence, Respondent's actions cannot be found to constitute the asserted unfair labor practice. Therefore, a Complaint that fails to allege the existence of such evidence does not present allegations sufficient to support the cause of action." *Goodine v. FOP/DOC Labor Committee*, 42 D.C. Reg. 5163; Slip Op. No. 476 at p. 3, PERB Case No. 96-U-16 (1996).

A. Sergeant Tidline's March 15, 2011, email

FOP alleges that MPD committed an unfair labor practice in violation of D.C Code § 1-617.04(a)(1), when Sergeant Tidline sent the March 15, 2011, email. D.C Code § 1-617.04(a) only concerns prohibited conduct by the "District, its agent, or representative." (2001 ed.). In order to find that MPD engaged in prohibited conduct, Sergeant Tidline must have acted as an agent of MPD when she sent the email. In order to have been an agent of MPD at the time she sent her email, her actions must have been made in her official capacity to find MPD liable for her actions, because suits against the District arise from actions of an employee only in their official capacity. *See Fraternal Order of Police/Metropolitan Police Dep't Labor Comm. v. D.C. Metropolitan Police Dep't*, 59 D.C. Reg. 6579, Slip Op. No. 1118 at p. 4-5, PERB Case No. 08-U-19 (2011); *see also Fraternal Order of Police/Metropolitan Police Dep't Labor Comm. v. D.C. Public Employee Relations Board*, Civ. Case No. 2011 CA 007396 P(MPA) (D.C. Super. Ct. Jan 9, 2013) (upholding the Board's dismissal of individually-named respondents in an unfair labor practice complaint against the District).

In her Answer, Sergeant Tidline asserts that, as a union member voicing her opinion to other union members about a union matter, she was engaged in a protected activity when she sent the email. (Tidline Answer at 2-3). In addition, she argues that she did not "order" or "instruct" FOP members to take any particular action. (Tidline Answer at 2). Further, the parties have not disputed that Sergeant Tidline was a union member at the time she sent the March 15, 2011, email.

On the face of the pleadings, which includes a copy of Sergeant Tidline's email, and the limited record before the Board, it is clear that Sergeant Tidline was acting in the capacity of a union member and not in her official capacity as an agent of MPD, when she sent the email. As Sergeant Tidline's actions cannot be imputed to MPD, MPD cannot have violated the CMPA. Therefore, FOP has not asserted allegations, which proven, would establish a violation of the CMPA. Thus, FOP's unfair labor practice complaint, regarding Sergeant Tidline's email, is dismissed.

B. Denial of MPD's email system

FOP argues that MPD committed an unfair labor practice, when it denied FOP use of MPD's email system to send a clarifying email after Sergeant Tidline's email was sent. (Complaint at 7). MPD argues that the Board lacks jurisdiction over the matter, since the parties' collective bargaining agreement is determinative of the issue. (MPD Answer at 5). 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.

IV. Motion to Consolidate

FOP asserts in its Motion that Complaint 11-U-38 and Complaint 11-U-43 "concern the same factual allegations against Sergeant Tidline." (Motion at 3). In its Motion, FOP requests that the Board consolidate Complaint 11-U-38 and Complaint 11-U-43 and enter an Order, consolidating the Complaints. *Id.* MPD opposes FOP's Motion, because the Complaints involve different parties and different issues. (Opposition to Motion at 3).

The Board's determination whether or not to consolidate matters properly before it is essentially a matter of policy. *AFGE v. DPW*, Slip Op. No. 306, PERB Case Nos. 94-U-02 and 94-U-08 (citing *Service Employees International Union, Local 722, AFL-CIO v. Dep't of Human Services*, Slip Op. No. 344, PERB Case Nos. 93-R-01 and 93-U-09 (1993) (consolidating two cases involving the same parties and related issues in different proceedings based on considerations of efficiency and economy of the Board's processes)). Moreover, consolidation is not governed by statute or rule. *Id.* In addition, the Board has stated:

> The Board's rules encourage consolidation of cases where the two parties are the same, the facts are the same or related, the issue is the same and the representatives are the same. The Board will consolidate cases for efficiency and economy.

Doctors Council of the District of Columbia and Constance R. Diangelo v. D.C Government Office of the Chief Medical Examiner, Slip. Op. No. 993, PERB Case Nos. 05-U-47 and 07-U-22 (2009) (upholding a hearing examiner's decision to consolidate unfair labor practice complaints).

As the unfair labor practice complaint, regarding Sergeant Tidline's email, is dismissed, the allegations in Complaint 11-U-38 and 11-U-43 no longer allege the same issues. Furthermore, the parties in the Complaints are different. Consolidation of the two cases would not further the Board's considerations of efficiency and economy of the Board's processes. Therefore, the Motion to Consolidate is denied.

V. Conclusion

Based on the reasons stated above, FOP's unfair labor practice complaint against MPD, pertaining to the email sent by Sergeant Tidline, is dismissed with prejudice. As to the issue regarding MPD's denial of FOP's use of MPD's email system, MPD and FOP are ordered to attend mandatory mediation, pursuant to Board Rule 558.4, prior to hearing. The Complainant's

Motion to Consolidate is denied.

ORDER

IT IS HEREBY ORDERED THAT:

1. FOP's Complaint, regarding Sergeant Tidline's email, is dismissed with prejudice.
2. FOP's Motion to Consolidate is denied.
3. The unfair labor practice claim by FOP, regarding MPD's denial of the use of MPD's email system, will be referred to a hearing examiner for an unfair labor practice hearing. That dispute will be first submitted to the Board's mediation program to allow the parties the opportunity to reach a settlement by negotiating with one another with the assistance of a Board appointed mediator.
4. The parties will be contacted to schedule the mandatory mediation within seven (7) days of the issuance of this Decision and Order.
5. 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.

March 14, 2013

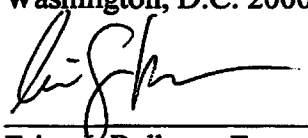
CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order and Notice was transmitted to the following parties on this the 15th day of March, 2013.

Mark Viehmeyer — **U.S. Mail**
Nicole L. Lynch
Metropolitan Police Department
300 Indiana Avenue, N.W., Room 4126
Washington, D.C. 20001

Anthony M. Conti — **U.S. Mail**
Daniel J. McCartin
Conti Fenn & Lawrence, LLC
36 South Charles Street, Suite 2501
Baltimore, M.D. 21201

Sergeant Yvonne Tidline — **U.S. Mail**
First District
101 M Street, S.W.
Washington, D.C. 20001



Erica J. Balkum, Esq.
Attorney-Advisor
Public Employee Relations Board
1100 4th Street, S.W.
Suite E630
Washington, DC 20024
Telephone: (202) 727-1822
Facsimile: (202) 727-9116