

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:)	
)	
Fraternal Order of Police/ Metropolitan Police Department, Labor Committee)	
)	
Complainant,)	PERB Case No. 11-U-43
)	
v.)	Opinion No. 1394
)	
Yvonne Tidline,)	Motion for Reconsideration
)	
Respondent.)	
)	

DECISION AND ORDER

I. Statement of the Case

On July 11, 2011, the Fraternal Order of Police/Metropolitan Police Department Labor Committee (“FOP” or “Union”) filed an Unfair Labor Practice Complaint (“Complaint”) against Sergeant Yvonne Tidline (“Respondent” or “Sgt. Tidline”) for sending an email, regarding union matters. On July 26, 2011, Sgt. Tidline filed an Answer to FOP’s Complaint, asserting that she sent the email in her capacity as a union member.

On March 18, 2013, the Executive Director issued an Administrative Dismissal, dismissing FOP’s Complaint. On April 1, 2013, pursuant to Board Rule 500.4, FOP filed a timely Motion for Reconsideration (“Motion”), asserting that the Administrative Dismissal was improper. FOP requests the Board reverse the Executive Director’s Administrative Dismissal of the Complaint.

II. Background

FOP filed the Complaint against the Respondent, alleging that Respondent violated D.C. Code § 1-617.04(b)(1) of the Comprehensive Merit Personnel Act (“CMPA”), when Respondent sent an email to other FOP members, containing the “Vote NO on Raising of Union Dues.” (Complaint at 2-3, Motion at 2).

Prior to FOP filing the present Complaint against Sgt. Tidline, FOP filed a similar Complaint against the Metropolitan Police Department ("MPD") for the same incident.¹ *Fraternal Order of Police/Metropolitan Police Department Labor Committee v. D.C. Metropolitan Police Department*, 60 D.C. Reg. 5312, Slip Op. No. 1370, PERB Case No. 11-U-38 (2013). In Opinion No. 1370, the Board found that Sgt. Tidline sent the email in her capacity as a union member, and her actions could not be imputed to MPD in her official capacity. *Id.* at 3.

Based on the Board's finding that Sgt. Tidline acted in her capacity as a union member, the present Complaint was administratively dismissed, on the grounds that FOP did not set forth allegations that Sgt. Tidline's actions rose to the level of a potential violation of the CMPA. (Administrative Dismissal at 2).

III. Analysis

The Board will uphold an Executive Director's administrative dismissal where the decision was reasonable and supported by Board precedent. *See Lomax v. Int'l Brotherhood of Teamsters, Local Union 639*, 59 D.C. Reg. 3474, Slip Op. No. 849, PERB Case No. 06-U-09 (2007).

FOP filed the present Motion, arguing that the Board's finding in Opinion No. 1227 that Sgt. Tidline's email constituted an unfair labor practice is contradictory to the Executive Director's Dismissal. (Motion at 3)(citing *Fraternal Order of Police/Metropolitan Police Department Labor Committee v. D.C. Metropolitan Police Department*, 59 D.C. Reg. 6978, Slip Op. No. 1227, PERB Case No. 11-U-52 (2012), *vacated, in part, Fraternal Order of Police/Metropolitan Police Department Labor Committee v. D.C. Metropolitan Police Department*, 60 D.C. Reg. 5322, Slip Op. No. 1372, PERB Case No. 11-U-52 (2013)). FOP claims the Board's findings in Opinion No. 1227 makes the Administrative Dismissal improper, because Opinion No. 1227 evidences issues of fact that prevent administrative dismissal. (Motion at 4). FOP argues that the Board interpreted Respondent's email differently in Opinion No. 1227, and that the Board found that "Sergeant Tidline's email constituted a 'clear' violation of the CMPA." (Motion at 5). FOP contends that the Board's finding in Opinion No. 1227 warrants overturning the Executive Director's administrative dismissal and ordering the Parties to an unfair labor practice hearing. (Motion at 4). FOP supports its argument by raising the issue that an unfair labor practice hearing would determine whether Sgt. Tidline was acting as a union member or "as an agent of the District with supervisory authority over other members of the bargaining unit," at the time the email was sent. (Motion at 5).

¹ FOP originally filed PERB Case No. 11-U-38 against MPD and the Respondent for a violation of D.C. Code § 1-617.04(a). The Executive Director removed Sgt. Tidline as an individual Respondent, 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 Department Labor Committee v. D.C. Metropolitan Police Department*, 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).

The Board rejects FOP's arguments. FOP relies upon Opinion No. 1227, PERB Case No. 11-U-52, which involved a different Respondent and a different statutory cause of action than the present Complaint. Moreover, in Opinion No. 1372, the Board vacated its finding in Opinion No. 1227 that MPD committed an unfair labor practice when Sgt. Tidline sent the email, because the Board found that Sgt. Tidline was acting in her capacity as a union member when she sent the email. *See Fraternal Order of Police/Metropolitan Police Department Labor Committee v. D.C. Metropolitan Police Department*, 60 D.C. Reg. 5322, Slip Op. No. 1372, PERB Case No. 11-U-52 (2013). We specifically note the fact that Sgt. Tidline was a union member was not before the Board in its determinations in Opinion No. 1227. Additionally, Opinion No. 1227 did not contain any discussion of official capacity or agency of Sgt. Tidline. Thus, the Board's finding in Opinion No. 1227, which was subsequently vacated, is not determinative of the capacity in which Sgt. Tidline sent the email for the present Complaint.

In its Motion, FOP's arguments fail to address Opinion No. 1370, in which the Board ruled on FOP's ULP complaint against MPD, regarding the issue of Sgt. Tidline's email. *Fraternal Order of Police/Metropolitan Police Department Labor Committee v. D.C. Metropolitan Police Department*, 60 D.C. Reg. 5312, Slip Op. No. 1370, PERB Case No. 11-U-38 (2013). As discussed above, prior to filing the Complaint in the above-captioned matter, FOP filed a ULP complaint, PERB Case No. 11-U-38, against MPD under D.C. Code § 1-617.04(a) for Sgt. Tidline's email. *Id.* In Opinion No. 1370, the Board found that Sergeant Tidline sent the email as a union member to other union members about a union issue. *Id.* at 3. The Board concluded that Sergeant Tidline acted in her capacity as a union member when she sent the email, and that her actions could not be imputed to MPD, which resulted in the dismissal of that portion of FOP's ULP complaint. *Id.*

FOP, notwithstanding, asserts that the Board's vacated findings in Opinion No. 1227 and the findings in the Executive Director's Administrative Dismissal are contradictory and evidence a dispute over issues of facts, which FOP argues requires an unfair labor practice hearing. (Motion at 6). In particular, FOP argues: "Although Sergeant Tidline is a member of the bargaining unit, she wears two hats, both as a union member and as an agent of the District with supervisory authority over other members of the bargaining unit." (Motion at 4).

Board Rule 520.10 states: "If the investigation reveals that there is no issue of fact to warrant a hearing, the Board may render a decision upon the pleadings or may request briefs and/or oral argument." *See* Board Rule 520.10. In the present case, FOP, however, does not dispute that the fact that Sgt. Tidline was a union member at the time of sending an email to other union members about union issues. Notwithstanding, FOP's position is that a factual dispute exists as to whether Sgt. Tidline sent the email as an agent of MPD, or in the capacity of a union member. (Motion at 4). The Board fully considered this particular issue in Opinion No. 1370, and the Board explicitly found that Sergeant Tidline was acting in her capacity as a union member when the email was sent. Slip Op. No. 1370 at 3.

In addition, FOP argues that the Administrative Dismissal improperly relied upon the Board's determination that Sgt. Tidline was acting in the capacity of a union member. (Motion at 6). FOP argues that the Administrative Dismissal's reliance upon the Board's finding in Opinion No. 1370 did not construe FOP's Complaint in the light most favorable to the

Complainant. (Motion at 6-7).

The Board is required to “view contested facts in the light most favorable to the Complainant in determining whether the Complaint gives rise to an unfair labor practice.” (Motion at 6)(citing *JoAnne G. Hicks v. D.C. Office of the Deputy Mayor of Finance*, 40 D.C. Reg. 1751, Slip Op. No. 303, PERB Case No. 91-U-17 (1992). Assuming *arguendo* that there was an issue as to whether Sgt. Tidline was acting as an agent of MPD, FOP filed this present case against Sgt. Tidline under D.C. § 1-617.04(b). To adopt FOP’s argument that there is potential liability against Sgt. Tidline as an agent of MPD, FOP would have been required to file a suit against MPD, not Sgt. Tidline, under D.C. Code § 1-617.04(a), as suits against individual respondents in their official capacity are construed as suits against the District. See *Fraternal Order of Police/Metropolitan Police Department Labor Committee v. D.C. Metropolitan Police Department*, 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). Consequently, if the Board were to adopt FOP’s argument, the Board would have been required to dismiss the present Complaint against Sgt. Tidline, because FOP has filed the Complaint against Sgt. Tidline as an individual respondent under D.C. Code § 1-617.04(b), not against MPD under D.C. Code § 1-617.04(a).

FOP does not assert any law or legal precedent that the Administrative Dismissal contravenes. The Board finds that FOP’s Motion for Reconsideration is based on a mere disagreement with the Administrative Dismissal. “A mere disagreement with the Executive Director’s decision is not a sufficient basis for reversing the decision.” *Lomax v. Int’l Brotherhood of Teamsters, Local Union 639*, 59 D.C. Reg. 3474, Slip Op. No. 849, PERB Case No. 06-U-09 (2007).

The Board denies FOP’s Motion for Reconsideration. As a result, the Board affirms the Administrative Dismissal of the Complaint.

ORDER

IT IS HEREBY ORDERED THAT:

1. FOP’s Motion for Reconsideration is denied.
2. The Complaint is dismissed in its entirety.
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.

May 28, 2013

CERTIFICATE OF SERVICE

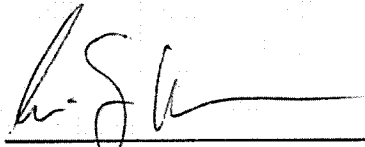
This is to certify that the attached Decision and Order for PERB Case No. 11-U-43 was transmitted to the following parties on this the 14th day of June, 2013.

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