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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
ANTHONY GALES)	OEA Matter No. 2401-0201-09
Employee)	
v.)	Date of Issuance: October 4, 2010
DISTRICT OF COLUMBIA PUBLIC SCHOOLS)	Lois Hochhauser, Esq.
Agency)	Administrative Judge
Mr. Anthony Gales, Employee)	
Sara White, Esq., Agency Representative)	

INITIAL DECISION

INTRODUCTION AND STATEMENT OF FACTS

Anthony Gales, Employee herein, filed a petition with the Office of Employee Appeals (OEA) on August 12, 2009, appealing the decision of the D.C. Public Schools, Agency herein, to remove him from his position pursuant to a reduction-in-force. The matter was assigned to me on June 11, 2010.

In his petition, Employee stated that on July 21, 2009, he had filed a grievance regarding his removal with Teamsters, Local 639, Union herein. Therefore, on July 12, 2010, I issued an Order directing Employee to present legal and/or factual argument regarding this Office's jurisdiction consistent with D.C. Code Section 1-616.52 (2001 ed.) by August 5, 2010. The Order stated that if Employee did not respond to the Order in a timely manner, the appeal would be dismissed without further notice. The parties were notified that unless they were advised to the contrary, the record in this matter would close on August 5, 2010. Employee did not respond to the Order and the record therefore closed on August 5, 2010.

JURISDICTION

The jurisdiction of this Office was not established.

ISSUE

Should this petition for appeal be dismissed?

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS

In his petition, Employee stated that he filed a grievance regarding his removal with the Teamster, Local 639 on July 31, 2009. He filed this appeal with OEA on August 12, 2010.

This Office's jurisdiction is conferred upon it by law. It is governed in this matter by D.C. Office Code (2001) Section 1-616.52 which states in pertinent part:

(d) Any system of grievance resolution or review of adverse actions negotiated between the District and a labor organization shall take precedence over the procedures of this subchapter [providing appeal rights to OEA] for employees in a bargaining unit represented by a labor organization.

(e) Matters covered under this subchapter that also fall within the coverage of a negotiated grievance procedure may, in the discretion of the aggrieved employee, be raised either pursuant to Section 1-606.03, or the negotiated grievance procedure, **but not both**. (emphasis added).

(f) An employee shall be deemed to have exercised their option (*sic*) pursuant to subsection (e) of this section to raise a matter either under the applicable statutory procedures or under the negotiated grievance in writing in accordance with the provision of the negotiated grievance procedure applicable to the parties, **whichever occurs first**.(emphasis added).

Employee has the burden of proof on issues of jurisdiction, pursuant to OEA Rule 629.2, 46 D.C. Reg. 9317 (1999). Employee must meet this burden by a "preponderance of the evidence" which is defined in OEA Rule 629.1, as that "degree of relevant evidence, which a reasonable mind, considering the record as a whole, would accept as sufficient to find a contested fact more probably true than untrue". The facts before the Administrative Judge establish that Employee elected to pursue his removal by filing a grievance with his exclusive bargaining representative several weeks before he filed his petition with OEA. The Administrative Judge concludes that Employee failed to meet his burden of proof on the issue of jurisdiction.

In addition, this Office has long maintained that a petition for appeal may be dismissed with prejudice when an employee fails to prosecute the appeal. Pursuant to OEA Rule 622.3, 46 D.C. Reg. 9313 (1999), failure to prosecute an appeal includes failure to "[s]ubmit required documents after being provided with a deadline for such submission." *See, e.g., Employee v. Agency*, OEA Matter No.1602-0078-83, 32 D.C. Reg. 1244 (1985). Employee failed to respond to the July 12, 2010 Order despite notification in that Order that his failure to respond in a timely manner would result in the

dismissal of the petition without further notice. Employee did not request an extension of time to file his response or otherwise contact the undersigned. The Order was sent to the address provided by Employee in his petition and was not returned to this Office; so it is presumed to have been properly delivered. Employee's failure to prosecute this appeal provides an additional ground for dismissing the petition.

ORDER

It is hereby ORDERED that the petition for appeal is DISMISSED.

FOR THE OFFICE:

LOIS HOCHHAUSER, ESQ.
Administrative Judge