THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
DEVARNITA WILLIAMS,	)	
Employee	)	OEA Matter No.: 1601-0171-13
	)	
v.	)	Date of Issuance: February 6, 2015
	)	
D.C. PUBLIC SCHOOLS,	)	
Agency	)	MONICA DOHNJI, Esq.
	)	Administrative Judge

Monica Molner, Esq., Employee Representative
Carl Turpin, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On September 30, 2013, Devarnita Williams, ("Employee") filed a Petition for Appeal with the Office of Employee Appeals ("OEA" or "Office") contesting the D.C Public Schools' ("DCPS" or "Agency") decision to terminate her effective August 30, 2013. On November 15, 2013, Agency filed its Answer to Employee's Petition for Appeal.

Following a failed mediation attempt, this matter was assigned to the undersigned Administrative Judge ("AJ") on June 4, 2014. A Status/Prehearing Conference was held in this matter on July 28, 2014. Thereafter, Employee filed a Motion to Compel Discovery and a Motion for Sanctions. While Employee's Motion to Compel Discovery was granted by the undersigned, her Motion for Sanction was denied. Subsequently, per the parties' request, the undersigned issued a Protective Order on October 6, 2014. On October 20, 2014, the undersigned issued an Order convening a Prehearing Conference. Employee included a Motion for Summary Judgment with her Prehearing Statement submitted to this Office on November 24, 2014. The Prehearing Conference was held in this matter on December 3, 2014, wherein, Agency requested additional time to submit a response to Employee's Motion for Summary Judgment. Agency's request for additional time was granted. Agency filed its response to the Motion for Summary Judgment on December 22, 2014, and Employee filed a reply to Agency's response on December 30, 2014. After considering the parties' arguments as presented in their submissions to this Office, I decided that an Evidentiary Hearing was not required. The record is now closed.

JURISDICTION

The Office has jurisdiction in this matter pursuant to D.C. Official Code § 1-606.03 (2001).

ISSUES

Whether Agency's action of removing Employee from service was done in accordance with applicable law, rule or regulation.

FINDINGS OF FACTS, ANALYSIS AND CONCLUSION

According to the record, Employee was a Teacher at Kimble Elementary School ("Kimble"). Employee was also a member of the Washington Teachers' Union ("WTU"). The WTU signed a Collective Bargaining Agreement ("CBA") with DCPS in March of 2010. Employee was employed with DCPS from August 27, 2004 through August 30, 2013. On April 29, 2013, a student at Employee's school made allegations of misconduct against Employee to Principal Miller. On the same day, Principal Miller contacted Officer Trina Melton, who completed an incident report. Thereafter, several students provided Investigator Couser and Administrative Assistant Camille Williams with signed written statements detailing the alleged misconduct. Employee provided a statement to Principal Miller. Employee also met and provided Investigator Couser with a statement. Agency issued its Investigative Report on May 21, 2013, and on July 19, 2013, the Office of General Counsel reviewed the Investigative Report and concluded that there was legally sufficient evidence to substantiate the allegation. Thereafter, on July 26, 2013, Agency held a Corporal Punishment Review Board meeting to discuss the allegations against Employee. The board held that termination was the appropriate adverse action. Employee was not notified of, or asked to participate in this meeting.

On July 29, 2013, Agency issued a Notice of Termination to Employee. Pursuant to this Notice, Employee would be placed on administrative leave from August 19, 2013, through August 30, 2013.[1] The Notice also stated that Employee was terminated for:

Ground(s): 5-E DCMR Section 1401.2(n) Discourteous treatment of the public, supervisor, or other employees.

Reason(s): Multiple witnesses state that you have referred to students in your elementary school class as "whore" and "bitches." You admit to describing your students as "Thieving ass kids."

In August of 2013, a WTU union representative requested the investigative file regarding Employee's termination. The WTU union representative also submitted a written reply to the July 29, 2013, termination notice highlighting that Employee's termination be rescinded because Agency was in violation of Article 7.12.7 of the CBA. Agency provided the investigative file to WTU union representatives in August of 2013. On August 23, 2013, a WTU union representative met with Ms. Erin Pitt from Agency and provided an oral reply to the July 29, 2013, notice of termination. Employee was terminated effective August 31, 2013.

[1] See Agency's Prehearing Statement at Tab1 (November 24, 2014).

Employee's Position

In her Motion for Summary Judgment, Employee argues the following:[2]

Employee has a property interest in her employment with the District of Columbia. Therefore, to remove her, Agency must provide her with adequate due process. Agency denied Employee's due process as a matter of law when it failed to issue proper notice of the charges against Employee. Citing to Title 5 DCMR §§1401.3 and 1401.4, Employee explains that when subject to an adverse action, an employee must be given notice that contains the reasons and basis for the ground(s) of the adverse action in sufficient detail. Additionally, citing to 5 DCMR §§1401.1 and 1401.2, Employee highlights that the notice must be received at least ten (10) days prior to the effective date of the adverse action.

Employee further notes that CBA Article 7.8.1 provides that "the official shall provide the employee with advance written notice of the charge[s], which shall include a specific statement of the evidence supporting such charge[s] no later than ten (10) school days prior to the effective date of the discipline. Employee contends that she did not receive adequate notice of the charges or the evidence in support of the same. She states that during the investigation, she just knew that student R had said that Employee called students "bitches" and "whores" on one occasion. She was not informed about allegations that occurred on a second date. Employee argues that the reason given in her Notice of Termination is not a specific statement of the evidence as it does not identify the dates of the alleged charges, witnesses or provide any context. Thus, it is inconceivable how an individual is supposed to defend against such a vague notice.

In addition, Employee notes that CBA Article 7.12.12 requires that a complaint against a teacher be placed in writing to the teacher's supervisor, and such complaint must be provided to a teacher within seventy-two (72) hours, with an opportunity to respond. However, this did not occur in the instant matter, and Employee raised the same deficiency during her oral reply to the Notice of Termination. Employee reiterates that failure to provide notification of the charges against her deprived her of the right to due process as she was unable to adequately defend herself by providing a full and complete statement during the investigation. Employee was unaware of the allegation that she used discourteous language on a second date, the extent of the charges against her, or the specific occurrences described by the students. Employee conveys that if she had been aware of these issues or even questioned about them during the investigation, she could have provided more contemporaneous information. Employee further maintains that when she received the investigative report, the statement from the students did not provide adequate notice as they were written in a confusing manner, did not identify the date of the second occurrence, and the students appeared to describe very different situations. Thus, Agency failed to meet its obligation related to notice and thereby, violated Employee's procedural due process right, and as such, Employee is entitled to summary judgment as a matter of law.

Furthermore, Employee contends that Agency was untimely in issuing the adverse action. Employee explains that Agency did not complete the adverse action and it did not timely provide Employee with the investigative report within the timeline required by Article 7.8.3 of the CBA. Employee explains that Principal Miller was aware of the alleged infraction on April 29, 2013, and

[2] Employee's Prehearing Submissions (November 24, 2014). See also Employee's Request to Reply to Agency's Opposition to Summary Judgment (December 30, 2014).

the investigation was conducted and completed by May 21, 2013. However, neither Employee nor the union was provided with the investigation within the required thirty (30) days. They were provided with the investigation report after the Notice of Termination was issued on July 29, 2014. Also, Employee notes that the disciplinary action was initiated three (3) months after the issue was reported to Principal Miller, and the investigation file was given to the union more than two (2) months after it was completed.

Employee argues that the thirty (30) day rule in this case is similar to the former "45 day rule" for agency to commence an adverse action against an employee. Agency notes that OEA has consistently found that this rule was mandatory, rather than discretionary and did not require the showing of actual harm as a result of a violation, and that any violation resulted in a summary reversal of the adverse action.[3] Employee notes that in *Adamson*, OEA applied this mandatory analysis to a CBA provision implementing mandatory time limits on disciplinary actions, such as the provision here. Employee explains that the Administrative Judge ("AJ') in *Adamson* found that a total rescission of the adverse action taken against the employee is the proper remedy. Employee maintains that the CBA in the instant matter requiring action within thirty (30) days as a matter of law is nondiscretionary, and has the effect of a regulation.

Employee further maintains that the D.C. Superior Court in *Metropolitan Police Department v. Public Employee Relations Board*, MP 92-29 (D.C. Sup. Ct. Aug. 5, 1993), concluded that the purpose of the rule was to limit the time in which an employee is faced with uncertainty about when she may be subject to disciplinary action. Employee highlights that while the current CBA provision references timeframes for an investigation, OEA has ruled in reference to the prior 45-day rule that such an investigation does not toll a mandatory timeline for an adverse action.[4] Therefore, the referral of the instant adverse action to a mandatory timeline for investigation does not toll the deadline for Agency to issue an adverse action and consequently, this action must be overturned as it was not issued in a timely manner and Employee is entitled to summary judgment as a matter of law.

Employee also notes that Agency does not dispute the fact that the CBA calls for a specific thirty (30) day timeline for adverse action which was not complied with in this case. Employee notes that instead, Agency argues that the union has consistently waived this time limit. Employee also states that Agency's citations regarding arbitration are not directly on point and are related to the grievance process instead of the mandatory processing deadline as addressed by OEA. Employee further explains that the affidavit Agency submitted from Erin Pitts admits that this direct issue regarding timeline addressed in CBA Article 7.8.3 has never been directly arbitrated.

Agency's Position

Agency argues the following in its response to Employee's Dispositive Motion:[5]

Agency submits that by letter dated July 29, 2013, Employee received notice that she would be separated from service with DCPS effective August 31, 2013. Agency notes that Employee admitted to calling her students "thieving ass kids". Agency explains that an allegation against Employee was reported to Principal Miller on April 29, 2013. An investigation was conducted

[3] *Citing Adamson v. Metropolitan Police Department*, OEA Matter No. 1601-0041-04 (February 14, 2006).
[4] *Citing Brooks Caldwell v. Department of Public Works*, OEA Matter No. 1601-0139-93 (April 12, 1995).
[5] Agency's Response to Employee's Dispositive Motion (December 22, 2014).

wherein; students, Employee and others were interviewed. Agency explains that the Employee, as well as the students involved provided written signed statements on May 20, 2013 to the principal.

With regards to Employee's motion for Summary Disposition, Agency avers that, if there is a conflict on the fact of the issue, the dispositive motion must be denied.[6] Agency explains that OEA is obligated to review the record in the light most favorable to the party opposing the motion and must resolve any doubt as to the existence of a factual dispute against the moving party. Agency agrees that it must provide Employee all of her due process rights. It explains that it did provide Employee with adequate notice of the charges against her pursuant to 5-E DCMR 1401.3. Agency further highlights that it was in compliance with the CBA. It explains that, Employee incorrectly cited to CBA section 7.12, noting that the complaint process in Article 7.12 of the CBA is not applicable to DCMR Title 5 Chapter 14. Agency states that Employee received the Notice of Termination on July 30, 2013, and the termination was effective August 30, 2013, proving that Employee was provided with adequate notice.

Furthermore, Agency contends that the adverse action was completed within the timeline set by the CBA and past practice of DCPS and WTU. Agency notes that Employee's argument that Agency did not complete the adverse action within the timeline required by the CBA lacks merit. Agency goes on to explain that it does not dispute the fact that the CBA calls for a specific timeline in Article 7.8.3. And that although the language in Article 7.8.3 is very specific, DCPS and WTU have mutually agreed and have a long practice of not following the timeline outlined in Article 7.8.3. Agency states that since the CBA was signed in March of 2010, WTU has consistently waived the time limit requirement. Citing to an arbitration case, Agency argues that the WTU president has waived the time limit requirements. Agency maintains that based on the review of its investigative reports chart, there have been extremely few cases that were completed within thirty (30) days.

Agency argues that although it has a policy of informing the WTU quarterly when an investigation may take more than thirty (30) days, there are a significant number of investigation reports that were completed after thirty (30) days where WTU was not notified. Agency explains that although it routinely takes more than thirty (30) days to complete misconduct investigations, WTU has never arbitrated the issue that the discipline and termination of the employee should be reversed due to the length of time DCPS took to complete the investigation or provide a copy of the investigative report to the employee or WTU. Agency further explains that it has been understood by both DCPS and WTU that the circumstances are such that it would be unreasonable to require strict compliance with the time limit specified in CBA Article 7.8.3. According to Agency, it has been generally held that even where an agreement expressly requires time limit waivers to be in writing, it has been held that the parties' action may constitute a waiver without it being in writing.

Citing to *Sherman Lankford v. D.C. Metropolitan Police Department*, OEA No. 1601-0147-06, Agency argues that Employee has not been prejudiced in initiating her termination. Agency argues that Employee's reference to *Adamson* is misplaced, noting that, Adamson involves CBA rules that the Metropolitan Police Department ("MPD") was required to issue discipline action within 55 days of investigation. Agency maintains that contrary to *Adamson*, and past practice between MPD and its union, the WTU and DCPS have consistently waived the strict requirements of completing investigation report and subsequent termination of employees. Agency further argues that the investigative report was not untimely and that it would not bar OEA from having jurisdiction.

[6] *Citing Allen v. District of Columbia*, 100 A.3d 63 (D.C. 2014).

Although the CBA has specific language regarding timeframes, the parties have historically waived the time line. Agency notes that there exists genuine factual and legal issues that demand an administrative hearing; therefore, OEA must dismiss Employee's dispositive motion.

Whether Employee's Motion for Summary Judgment should be dismissed

Pursuant to OEA Rule 628.2, 59 DCR 2129 (March 16, 2012), Agency has the burden of proving by a preponderance of the evidence that the proposed disciplinary action was taken for cause. Further, OEA Rule 615.1 provides that: "[i]f, upon examination of the record in an appeal, it appears to the Administrative Judge that there are no material and genuine issues of fact, that a party is entitled to a decision as a matter of law, or that the appeal fails to state a claim upon which relief can be granted, the Administrative Judge may, after notifying the parties and giving them an opportunity to submit additional evidence or legal argument, render a summary disposition of the matter without further proceedings." OEA Rule 615.2 also highlights that, "[a]n Administrative Judge may render a summary disposition either sua sponte, after notice under § 615.1, or upon motion of a party."

In the instant matter, Employee filed a Motion for Summary Disposition, and Agency was provided with the opportunity to respond to Employee's motion. Although there appears to be several material and genuine issues of facts as it relates to the underlining cause of action, there are no material issues of facts with regards to the issues raised by Employee in her Motion for Summary Disposition. Specifically, both parties agree that Agency did not meet the required thirty (30) day timeline as specified in the CBA between Employee's union and Agency, when it issued it decision to terminate Employee. In *Brown v. Watts*, 933 A.2d 529 (April 15, 2010), the Court of Appeals held that OEA is not jurisdictionally barred from considering claims that a termination violated the express terms of an applicable collective bargaining agreement. The court explained that the Comprehensive Merit Personnel Act ("CMPA") gives this Office broad authority to decide and hear cases involving adverse actions that result in removal, including "matters covered under subchapter [D.C. Code §1-616] that also fall within the coverage of a negotiated grievance procedure."[7] In this case, Employee was a member of the Washington Teachers Union ("WTU") when she was terminated and governed by Agency's CBA with WTU. Based on the holding in *Watts*, I find that this Office may interpret the relevant provisions of the CBA between WTU and DCPS, as it relates to the adverse action in question in this matter. CBA Article 7.8.3 provides as follows:

> The initiation of the disciplinary action *shall* be taken no later than thirty (30) days after the Supervisor's knowledge of the alleged infraction. In cases requiring an investigation, any investigation conducted by or on behalf of DCPS into the alleged infraction *shall* be completed, with any investigation report provided to the employee involved and to the WTU within thirty (30) days after the Supervisor's knowledge of the alleged infraction. *This time limit may be extended by mutual consent but if not so extended, must be strictly adhered to.* (Emphasis added).

[7] Pursuant to D.C. Code § 1-616.52(d), "[a]ny 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 for employees in a bargaining unit represented by the labor organization" (emphasis added).

As noted above, Agency does not dispute the fact that it did not comply with the thirty (30) day timeline required by the CBA provision above. Instead, Agency makes the following arguments: 1) that the adverse action was completed within the timeline set by the CBA and past practice of DCPS and WTU, explaining that DCPS and WTU have mutually agreed and have a long practice of not following the timeline outlined in Article 7.8.3; 2) since the CBA was signed in March of 2010, WTU has consistently waived the time limit requirement; 3) the WTU president has waived the time limit requirements; 4) based on the review of its chart of investigative reports, there have been extremely few cases that were completed within thirty (30) days; 5) although it routinely takes more than thirty (30) days to complete misconduct investigations, WTU has never arbitrated the issue that the discipline and termination of an employee should be reversed due to the length of time DCPS took to complete the investigation or provide a copy of the investigative report to the employee or WTU; 6) it has been understood by both DCPS and WTU that the circumstances are such that it would be unreasonable to require strict compliance with the time limit specified in CBA Article 7.8.3; 7) it has been generally held that even were an agreement expressly requires time limit waivers to be in writing, it has been held that the parties' action may constitute a waiver without it being in writing; and 8) Employee has not been prejudiced by the delay. I disagree with Agency's assertions and I also find that Agency's arguments are without merit.

Moreover, Agency has not provided this Office with any evidence to support its assertion that Agency and WTU have mutually agreed to not follow the terms of CBA Article 7.8.3. Further, while Agency argues that since the CBA was signed in 2010, WTU has consistently waived the time limit requirement in Article 7.8.3, Agency has failed to present any credible evidence in support of this argument except for the fact that it has completed very few cases within the required thirty (30) days. While Agency claims that the WTU president has consistently waived this requirement in arbitration, there is no evidence in the record to support this assertion. Additionally, in Agency's Response to Employee's Dispositive Motion, Agency stated that the WTU president noted that WTU and DCPS have a long history of waiving the time limit in grievance process found in the collective bargaining agreement. While this may be accurate, it should be noted that this is not arbitration or a grievance proceeding, and OEA does not hear grievances. The practices at OEA are different from those in arbitration or grievance process and a practice in one forum is not necessarily transferrable to another.

In addition, I find that Agency's argument that it has very few cases that that were completed within the required thirty (30) days to be without merit. Because Agency has drastically failed to comply with this provision of the CBA does not invalidate the provision, and this is not a plausible defense for noncompliance. Moreover, because this issue has never been adjudicated before this Office does not indicate that if raised, OEA cannot now rule on it. And just because other Agency employees in cases where Agency violated this provision failed to raise the issue, does not give Agency a pass nor does it mean that Agency cannot be penalized for violating this provision. I also disagree with Agency's argument that both parties understood that it would be unreasonable to require strict compliance with the time limit specified in CBA Article 7.8.3. This provision clearly states that, "[t]his time limit may be extended by mutual consent but if not so extended, *must be strictly adhered to.*" *(*Emphasis added). Therefore, I conclude that, if the parties did not intend for this provision to be complied with, it should not have been included in the CBA or in the alternative, they should have amended the CBA to reflect what they considered reasonable.

Agency also argues that the parties' actions of waiving this time limit in the past may produce a waiver without it being in writing. I disagree. In the current matter, as a party to this

agreement, Employee has not acted in any way to indicate to Agency that she is waiving this right. Furthermore, CBA Article 7.8.3 clearly states that the investigation report has to be provided to both Employee and WTU, thereby, making Employee a party to this agreement. Moreover, even if WTU has waived this right in the past, it has not done so in this case. And Agency did not request an extension to initiate and/or complete its investigation into the allegation against Employee after the required thirty (30) days from either WTU or Employee.

Agency asserts that this matter is distinguishable from *Adamson* because that case involved a CBA rule that required MPD to issue disciplinary action within fifty-five (55) days of investigation. Agency explains that contrary to *Adamson*, and past practice at MPD, WTU and DCPS have consistently waived the strict requirements of completing investigation reports and subsequent termination of employees. I disagree with this argument. Just like in *Adamson*, the CBA between Agency and WTU requires Agency to initiate disciplinary actions within thirty (30) days. Article 7.8.3 of the CBA between WTU and DCPS, which Employee is a beneficiary of, clearly states that the "initiation of the disciplinary action *shall* be taken no later than thirty (30) days after the Supervisor's knowledge of the alleged infraction." (Emphasis added). Furthermore, because this issue has never been adjudicated in front of OEA, I find that there is no past practice to compare it to.

The facts remain that, Agency was made aware of Employee's alleged misconduct when it was reported to Principal Miller on April 29, 2013. Following an internal investigation, in a letter dated July 29, 2013, Employee was notified of Agency's decision to terminate Employee. April 29, 2013 to July 29, 2013, is equivalent to approximately ninety (90) days, which is more than the thirty (30) days required under CBA Article 7.8.3 for Agency to initiate disciplinary action against Employee. Here, it is abundantly clear that Agency violated the thirty (30) day rule which it agreed to in the CBA, when it issued its Notice of Termination to Employee ninety (90) days after it became aware of the alleged incident. Moreover, Agency has not submitted any evidence to prove that it Agency requested any extension in time to complete its investigation. I also find Agency's argument that Employee was not prejudiced by the delay to be irrelevant. The use of the word "shall" in Article 7.8.3 further holsters its original intention that this rule is mandatory and does not require that Employee be prejudiced. As previously noted by this Office and D.C. Courts, the reasoning for provisions involving specific time limits like in the current case is to limit the time in which an employee is faced with uncertainty about when he or she may be subjected to disciplinary action. Like in *Adamson*, Employee does not have to show actual harm as a result of Agency's failure to timely initiate disciplinary action against her. Accordingly, CBA Article 7.8.3 has to be strictly adhered to.

Additionally, I agree with Employee that the thirty (30) day rule is similar to the previous 45 day and the 55 day rule. As stated in Adamson, although the forty-five (45) day rule is no longer in existence, the legal principles that were clearly established from the numerous decisions generated by that rule are applicable to the thirty (30) day rule in the instant matter. And for the reasons stated above, I find that Agency was in violation of the thirty (30) day rule, and as such, Employee's Motion for Summary Disposition should be granted. Consequently, I conclude that the proper remedy is a total rescission of the adverse action taken against Employee. Further, in light of this decision, I find that I need not reach the merits of Agency's action.

Employee further argues that Agency did not provide her with adequate due process. Employee explains that according to Title 5-E DCMR §§1401.3 and 1401.4, when subject to an adverse action, an employee must be given notice that contains the reasons and basis for the

ground(s) of the adverse action in sufficient detail. Additionally, Employee notes that pursuant to 5-E DCMR §§1401.1 and 1401.2, the notice must be received at least ten (10) days prior to the effective date of the adverse action. Agency on the other hand states that, it provided Employee with adequate notice in the July 29, 2013 Notice of Termination, and that Employee was fully aware of the charges when she met with Investigator Couser on May 20, 2013. Agency highlights that Principal Miller informed Employee of the charges against her on May 6 and May 8, 2013. Additionally, Agency maintains that Employee met with Ms. Erin Pitts to discuss the basis for the termination.

Title 5-E DCMR provides in pertinent parts as follows:

> 1401.3 An employee who is the subject of an adverse action shall be given notice of the ground(s) on which the adverse action is based.
>
> 1401.4 The notice shall contain the reasons and basis for the ground(s) of the adverse action in sufficient detail to reasonably inform the employee of the specific grounds and reasons for the adverse action.

Despite Agency's assertion that Employee was aware of the charges against her from her interaction with Investigator Course and Ms. Erin Pitts, I find that Agency did not comply with the notice provision in Title 5-E DCMR §§1401.3 and 1401.4 above. The July 29, 2013, Notice of Termination stated that, "the ground(s) and reason(s) for your termination are as follows:

> Ground(s) 5-E DCMR Section 1401.2(n) Discourteous treatment of the public, supervisor, or other employees.
>
> Reason(s) Multiple witnesses state that you have referred to students in your elementary school class as "whores" and "bitches." You admit to describing your students as "thieving ass kids.""

I agree with Employee's argument that the reasons for the termination, as stated in the July 29, 2013, Notice of Termination is not sufficiently detailed to reasonably inform the employee of the specific reasons for the adverse action. Agency provided Employee with a broad reason of why she was being terminated, without including the dates of the alleged incidents, as well as the names of the students who made these allegations against Employee. Absent such information, I find that the reason provided by Agency in the Notice of Termination is vague, and a reasonable employee may be unable to fully defend themselves under this circumstance. However, with regards to the ten (10) day notice requirement, I find that Agency did provide Employee more than the required ten (10) day notice. Agency issued the Notice of Termination to Employee on July 29, 2013, and the effective date of Employee's termination was August 30, 2013. Therefore, I find that Agency provided Employee more than the required ten (10) day notice prior to the effective date of the adverse action.

ORDER

Based on the foregoing, it is hereby **ORDERED** that Employee's Motion for Summary Disposition is **GRANTED**.

It is further **ORDERED** that:

1. Agency's action of terminating Employee from service is **REVERSED**; and

2. Agency shall reinstate Employee to her last position of record and reimburse her all back-pay, benefits lost as a result of her removal, and attorney's fees; and

3. Agency shall file with this Office, within thirty (30) days from the date on which this decision becomes final, documents evidencing compliance with the terms of this Order.

FOR THE OFFICE:

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MONICA DOHNJI, Esq.
Administrative Judge