THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	
EMPLOYEE,	OEA Matter No. 2401-0018-25
	Date of Issuance: October 6, 2025
v.	
	Joseph E. Lim, Esq.
D.C RENTAL HOUSING COMMISSION, Agency	Senior Administrative Judge

Employee *Pro-Se*
Daniel Thaler, Esq., Agency Representative

INTIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On January 13, 2025, Employee filed a petition for appeal with the Office of Employee Appeals ("OEA" or "the Office") contesting the District of Columbia Rental Housing Commission ("RHC" or "the Agency") adverse action of removing her from service due to a Reduction-in-Force ("RIF"). In response to OEA's January 14, 2025, letter, Agency filed its Answer to Employee's Petition with a Motion to Dismiss on February 13, 2025. I was assigned this matter on February 13, 2025. According to the documents of record, Employee was a member of the American Federation of Government Employees District 2725 ("AFGE"). Further, it is apparent to the undersigned that Employee's position was covered by a collective bargaining agreement ("CBA") entered into between Agency and AFGE.

After Agency filed its Motion to Dismiss, I determined that there existed a question as to whether the OEA has jurisdiction over the instant appeal. Consequently, I issued an order on March 20, 2025, requiring Employee to address said issue in a written brief. On April 14, 2025, Employee filed her Opposition to Agency's Motion to Dismiss. After carefully reviewing the documents of record, I have determined that no further proceedings are warranted. The record is closed.

ISSUE

Whether this Office has jurisdiction over this matter.

BURDEN OF PROOF

OEA Rule 631.1, 68 D.C. Reg. 012473 (2021) states that "The burden of proof with regard to material issues of fact shall be by a preponderance of the evidence." OEA Rule 631.2, *id*., states that "For appeals filed under § 604.1, the employee shall have the burden of proof as to issues of jurisdiction, including timeliness of filing. The agency shall have the burden of proof as to all other issues."

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS OF LAW

Title 1, Chapter 6, Subchapter VI of the D.C. Official Code (2001), a portion of the CMPA, sets forth the law governing this Office. D.C. Official Code § 1-606.03 ("Appeal procedures") reads in pertinent part as follows:

> (a) An employee may appeal [to this Office] a final agency decision affecting a performance rating which results in removal of the employee . . ., an adverse action for cause that results in removal, reduction in grade, or suspension for 10 days or more . . ., or a reduction in force [RIF]. . .
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> Of note, D.C. Official Code § 1-616.52, provides as follows:
>
> (a) An official reprimand or a suspension of less than 10 days may be contested as a grievance pursuant to § 1-616.53 except that the grievance must be filed within 10 days of receipt of the final decision on the reprimand or suspension.
>
> (b) An appeal from a removal, a reduction in grade, or suspension of 10 days or more may be made to the Office of Employee Appeals. When, upon appeal, the action or decision by an agency is found to be unwarranted by the Office of Employee Appeals, the corrective or remedial action directed by the Office of Employee Appeals shall be taken in accordance with the provisions of subchapter VI of this chapter within 30 days of the OEA decision.
>
> (c) A grievance pursuant to subsection (a) of this section or an appeal pursuant to subsection (b) of this section shall not serve to delay the effective date of a decision by the agency.
>
> (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 for employees in a bargaining unit represented by a labor organization. If an employee does not pay dues or a service fee to the labor organization, he or she shall pay all reasonable costs to the labor organization incurred in representing such employee.

> *(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 § 1-606.03, or the negotiated grievance procedure, but not both.*
>
> *(f) An employee shall be deemed to have exercised their option pursuant to subsection (e) of this section to raise a matter either under the applicable statutory procedures or under the negotiated grievance procedure at such time as the employee timely files an appeal under this section or timely files a grievance in writing in accordance with the provision of the negotiated grievance procedure applicable to the parties, whichever event occurs first.*
>
> *Emphasis Added.*

Based on the preceding, a District government employee, who is otherwise covered by the protections afforded to most District government employees under D.C. Official Code § 1-606.03, may elect to have an Agency's action reviewed under the auspices of the OEA. However, some District government employees, like Employee herein, have other protections afforded to them pursuant to various collective bargaining agreements entered into by and between an employees' union and a District government agency.

In the instant matter, according to a letter dated December 30, 2024, from Countee Gilliam, AFGE union president for District 2725, addressed to Chief Administrative Judge Adam Hunter of RHC with regards to Employee's RIF, "[t]his grievance is submitted in accordance with the Collective Bargaining Agreement (CBA) between the District of Columbia Department of Housing and Community Development (DCHD) and Local 2725 of the American Federation of Government Employees (the Union) pursuant to Article 9 §C(2)(a) and Article 9§D(d)."[1] Subsequently, a letter dated January 13, 2025, from Countee Gilliam, AFGE union president for District 2725, to Chief Administrative Judge Adam Hunter of RHC stated that: "Pursuant to Article 9 §D(d) of the parties' Agreement, the Union sent a Step 4 Grievance to your attention dated December 30, 2024, regarding the aforementioned matter. The Union received your Step 4 response, which denied the grievance on Thursday, January 9, 2025. Therefore, in accordance with Article 9§D(e) of the Collective Bargaining Agreement (CBA), this letter is to advise you that the Union intends to invoke arbitration in this matter."[2]

As was noted above, on January 13, 2025, Employee filed her petition for appeal with the Office of Employee Appeals. It is undisputed that Employee was a member of the AFGE union at the time of her RIF and that her union filed a grievance to Agency on her behalf. It is also uncontroverted that under the terms of the collective bargaining agreement between the District Government and AFGE, Employee has the right to appeal an Agency final decision by choosing one of the following: 1) the negotiated grievance procedure in the collective bargaining agreement, **or** 2) a petition for appeal with the [OEA]. Employee may not do both.

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[1] Agency Answer to Employee's Petition for Appeal, Tab 17.
[2] Agency's Motion to Dismiss with Prejudice, Exhibit 1.

Employee raises several defenses to her RIF: that Agency never served her Union with the RIF notice and that Agency gave false data to the Executive Office of the Mayor to obtain permission to conduct a RIF. Apart from bare allegations, Employee did not submit any evidence. Nonetheless, even if her allegations are true, she sidesteps the issue of OEA's jurisdiction over her appeal. Employee then alleges that she filed her Petition for Appeal ("PFA") with OEA on January 10, 2025, not January 11, 2024. However, OEA's official copy of her PFA was date stamped "January 13, 2025." Thus, the date that Employee filed her PFA occurred after December 30, 2024, the date she filed a grievance against Agency in accordance with her union's CBA with Agency.

According to D.C. Official Code § 1-616.52 (e), an aggrieved employee cannot simultaneously review a matter before the OEA and through a negotiated grievance procedure. Also, D.C. Official Code § 1-616.52(f), further provides that once an avenue of review, either through the OEA or through a negotiated grievance procedure, is first selected, then the possibility of review via the other route is closed. I find that Employee initially opted to contest her removal under the auspices of the Collective Bargaining Agreement as noted in the letter her union sent to Agency on her behalf. Consequently, I find that the OEA lacks jurisdiction over the instant matter[3].

ORDER

Based on the foregoing, it is hereby ORDERED that this matter be DISMISSED for lack of jurisdiction.

FOR THE OFFICE: s/s *Joseph Lim*
Joseph Lim, Esq.

[3] Since this decision is predicated on the Office's lack of jurisdiction, I am unable to address the factual merits, if any, of the Employee's appeal.