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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
EMPLOYEE ¹ ,)	OEA Matter No. 1601-0066-22
)	
v.)	Date of Issuance: February 21, 2023
)	
D.C. PUBLIC SCHOOLS,)	MONICA DOHNJI, Esq.
Agency)	Senior Administrative Judge
_____)	
Employee, <i>Pro Se</i>		
Gehrie Bellamy, Esq., Agency Representative		

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On July 15, 2022, Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the District of Columbia Public Schools’ (“Agency”) decision to terminate him from his position as a Custodian, effective July 30, 2022. Employee was terminated for having a ‘Minimally Effective’ rating under the D.C. Public Schools’ Effective Assessment System for School-Based Personnel (“IMPACT”), during the 2021-2022 school year; after having received a rating of ‘Developing’ during the 2020-2021 school year. OEA issued a Request for Agency Answer to Petition for Appeal on August 1, 2022. Agency submitted its Answer to Employee’s Petition for Appeal on August 30, 2022. This matter was initially assigned to the undersigned on September 2, 2022.

A Status/Prehearing Conference was held on October 5, 2022, with both parties present.² Thereafter, on October 6, 2022, I issued a Post Status/Prehearing Conference Order requiring the parties to address the issues raised during the October 5, 2022, Conference. Agency’s brief was due on or before October 27, 2022, while Employee’s brief was due on or before November 17, 2022. Agency had the option to submit a sur-reply by December 1, 2022. Agency resubmitted its Prehearing Statement on November 1, 2022. Employee filed his brief on November 18, 2022. Agency did not file a sur-reply. Upon review of the record and

¹ Employee’s name was removed from this decision for the purposes of publication on the Office of Employee Appeals’ website.

² Agency filed a Prehearing Statement on September 30, 2022. During the October 5, 2022, Status/Prehearing Conference, Agency requested that its Prehearing Statement be considered, in-lieu of a Post-Status/Prehearing Conference brief. Agency also submitted additional documentation in support of its position.

considering the parties' arguments as presented in their submissions to this Office, I have decided that there are no material facts in dispute, and as such, an Evidentiary Hearing is not required. The record is now closed.

JURISDICTION

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

ISSUE

Whether Agency's action of separating Employee from service pursuant to a decline in his IMPACT rating from 'Developing' during the 2020-2021 school year, to 'Minimally Effective' during the 2021-2022 school year was done in accordance with all applicable laws, rules, or regulations.

BURDEN OF PROOF

OEA Rule § 631.1, 6-B District of Columbia Municipal Regulations ("DCMR") Ch. 600, et seq (December 27, 2021) states:

The burden of proof for material issues of fact shall be by a preponderance of the evidence. "Preponderance of the evidence" shall mean:

the degree of relevant evidence that a reasonable person, considering the record as a whole, would accept as sufficient to find that a contested fact is more likely to be true than untrue.³

OEA Rule § 631.2 *id.* states:

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 LAW⁴

The following findings of fact, analysis, and conclusions of law are based on the documentary evidence presented by the parties during the course of Employee's appeal process with OEA. D.C. Official Code § 1-606.03 (2001) gives this Office the authority to review, *inter alia*, appeals from separations pursuant to a performance rating. Here, Employee was employed as a Custodian with Agency in 2018. Employee was placed at the Bunker Hill Elementary School during the 2020-2021 and the 2021-2022 school years. His performance was assessed using the D.C. Public Schools' Effective Assessment System for School-Based Personnel ("IMPACT"). For the 2020-2021 school year, Employee received an IMPACT rating of "Developing". He subsequently received an IMPACT rating of "Minimally Effective" for the 2021-

³ OEA Rule § 699.1.

⁴ Although I may not discuss every aspect of the evidence in the analysis of this case, I have carefully considered the entire record. *See Antelope Coal Co./Rio Tino Energy America v. Goodin*, 743 F.3d 1331, 1350 (10th Cir. 2014) (citing *Clifton v. Chater*, 79 F.3d 1007, 1009-10 (10th Cir. 1996)) ("The record must demonstrate that the ALJ considered all of the evidence, but an ALJ is not required to discuss every piece of evidence").

2022 school year and he was terminated by Agency due to a decline in his scores. Employee was on approved FMLA from April 27, 2022, to June 10, 2022. Employee was also a member of the Teamster Union.

Employee's Position

Employee notes in his Petition for Appeal that he was terminated while he was on approved leave. Employee states that he was on approved medical leave from April 2022 to June 2022. Employee further avers that he was on approved medical leave during the second part of the IMPACT evaluation. He explains that he was not given the opportunity to prove his work ability during that time. Thus, Employee concluded that he was unfairly evaluated. Employee also asserts that he did not receive a conference, meeting or corrective action to warn him of the termination. Employee cites that the principal requested to have a conference with him on June 14, 2022. Employee notes that the last corrective action issued against him was in December of 2021. Employee also explains that he informed the principal that although he was back in school full time, he could not meet with the principal because he was still under medical treatment per orders from his doctor.⁵

Employee avers that although he was aware of the 'Developing' IMPACT rating he received during the 2020-2021 school year, he was not provided with any guidance or training on how to improve his work performance. He maintains that he was required to perform the workload of two (2) people. Employee asserts that he was constantly harassed by the school principal and the school foreman. Employee also avers that he did not have access to his email while he was out on medical leave, thus, he did not receive the principal's email requests for a post assessment conference.⁶

Agency's Position

Agency asserts in its August 30, 2022, Answer that in 2005, pursuant to the DC Omnibus Authorization Act, PL 109-356 (D.C. Code §1-617.18), DCPS was granted authority to develop its own evaluation process and tool for evaluating its employees and it exercised this managerial prerogative when it created IMPACT. Agency argues that it followed proper D.C. statutes, regulations, and laws in conducting Employee's performance evaluation. Agency notes that, IMPACT is a performance evaluation system utilized by DCPS to evaluate school-based personnel for the 2018-2019, 2019-2020, 2020-2021, school years.⁷

Agency provides that Employee's position, Custodian was within IMPACT Group 19. Agency further provides that Employee was assessed during two (2) assessment Cycles - Cycles 1 and 3. He was observed and evaluated on all IMPACT components under Group 19, and he received a 'Minimally Effective IMPACT rating during the 2021-2022 school year, after having received a 'Developing' IMPACT ratings for the 2020-2021 school year. Agency states that it properly conducted Employee's performance evaluation using the IMPACT process. Because Employee's IMPACT rating declined between two consecutive school years from 'Developing' to 'Minimally Effective' his employment was terminated pursuant to the IMPACT procedure.⁸

⁵ Petition for Appeal (July 15, 2022). See also Employee's Brief (November 18, 2022).

⁶ Employee's Brief (November 18, 2022).

⁷ Agency's Answer (August 30, 2022). See also Agency's Prehearing Statement (September 30, 2022, and November 1, 2022).

⁸ *Id.*

Agency asserts that although Employee was on FMLA from April 2022- June 10, 2022, according to the DCPS Office of Equity, an employee may still be rated for IMPACT, so long as they were continuously available for more than half of the school year. Agency maintains that Employee “was only absent the second to last month of the 2021-2022 school year, he was available over seven (7) months in order to be evaluated and thus, was eligible to receive an IMPACT rating.”⁹ Additionally, Agency cites that it made two (2) attempts to schedule a conference with Employee to discuss his 2021-2022 IMPACT ratings. Agency states that the second attempt was made on June 15, 2022, five (5) days after Employee returned from his FMLA absence.¹⁰

Governing Authority

District of Columbia Municipal Regulation (“DCMR”) 5-E DCMR §§1306.1, and 1306.4-5 gives the Superintendent authority to set procedures for evaluating Agency’s employees.¹¹ The above-referenced DCMR sections provide that each employee shall be evaluated each semester by an appropriate supervisor and rated annually prior to the end of the year, based on procedures established by the Superintendent. 5-E DCMR 1401 provides in pertinent part as follows:

1401.1: Adverse action shall be taken for grounds that will promote the efficiency and discipline of the service and shall not be arbitrary or capricious.

1401.2: For purposes of this section, “just cause for adverse action” may include, but is not necessarily limited to, one (1) or more of the following grounds:

(c) Incompetence, including either inability or failure to perform satisfactorily the duties of the position of employment.

Furthermore, the D.C. Code § 1-616.52(d) states, in pertinent part:

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.

The 109th Congress of the United States enacted the 2005 District of Columbia Omnibus Authorization Act, PL 109-356, which states in part:

⁹ *Id.*

¹⁰ *Id.* It should be noted that Agency did not provide this Office with copies of the alleged emails.

¹¹ DCMR § 1306 provides in pertinent parts as follows:

1306.1 - Official performance evaluation ratings for all employees of the Board of Education shall be inclusive of work performed through June 30th, unless otherwise specified in this section.

1306.4 - Employees in grades ET 6-15 shall be evaluated each semester by the appropriate supervisor and rated annually, prior to the end of the school year, under procedures established by the Superintendent.

1306.5 – The Superintendent shall develop procedures for the evaluation of employees in the B schedule, EG schedule, and ET 2 through 5, except as provided in § 1306.3.

Notwithstanding any other provision of law, rule, or regulation, during fiscal year 2006 and each succeeding fiscal year, the evaluation process and instruments for evaluation of District of Columbia Public School employees shall be a non-negotiable item for collective bargaining purposes. D.C. Code § 1-617.18.

Thus, Agency was granted the authority to develop its own evaluation process and tool for evaluating Agency employees and exercised this management prerogative when it created the IMPACT evaluation system.

Accordingly, in reviewing this matter, I will address whether Agency followed the procedures it developed in evaluating its employee; and whether Agency's termination of Employee pursuant to his IMPACT rating was supported by just cause. As referenced above, 'just cause' for adverse actions includes incompetence – an employee's inability or failure to perform satisfactorily the duties of their position of employment.

The IMPACT Process

IMPACT was the performance evaluation system utilized by DCPS to evaluate its employees during 2021-2022 school year. According to the record, Agency conducts annual performance evaluations for all its employees. Agency utilized IMPACT as its evaluation system for all school-based employees.¹²

Employee's position, Custodian at Bunker Hill Elementary School was within Group 19. According to the IMPACT process, Group 19 employees had two (2) assessment cycles – typically in January and June of each year. Here, Employee was assessed during Cycle 1 and Cycle 3 for the 2020-2021 and 2021-2022 school years.

Employee was assessed on a total of three (3) IMPACT components, namely:

- 1) Custodian Standard (CUST) – comprised of 90% of Group 19 employees' scores;
- 2) Commitment to the School Community (CSC) – 10% of Group 19 employees' scores; and
- 3) Core Professionalism (CP) – This component is scored differently from the others. This is a measure of four (4) basic professional requirements for all school-based personnel. These requirements are as follows:
 - 1) Attendance;
 - 2) On-time arrival;
 - 3) Compliance with policies and procedures; and
 - 4) Respect.

School-based personnel assessed through IMPACT ultimately received a final IMPACT score at the end of the school year of either:

- 1) Ineffective = 100-199 points (immediate separation from school);
- 2) Minimally Effective = 200-249 points (given access to additional professional development - Individuals who receive a rating of 'Minimally Effective' for two (2) consecutive years are subject to separation from the school system);

¹² Agency's Answer, *supra*.

- 3) Developing = 250-299 points (Individuals who receive a rating of ‘Developing’ for three (3) consecutive years are subject to separation from the school system);
- 4) Effective = 300-349 points; and
- 5) Highly Effective = 350-400 points.

IMPACT process also provides that employees are entitled to a conference with the administrator as part of each assessment cycle. It further notes that if the administrator makes at least two attempts to schedule a conference with the employee prior to the Cycle deadline and the employee is unable to meet or unresponsive, the assessment will be valid without the conference. Valid attempt methods include, but are not limited to, phone calls, text messages, emails, notes in your school inbox, and/or in-person conversations.

Analysis

In the instant matter, Employee received thirty (30) points deductions under the CP component for the 2021-2022 school year. Employee received a final IMPACT score of 238, and his rating was ‘Minimally Effective’ for the 2021-2022 school year. For the 2020-2021 school year, Employee received a final IMPACT score of 253, after a ten (10) points deduction for the CP component, and a final IMPACT rating of ‘Developing’. Pursuant to the IMPACT process, if an employee’s performance declines from ‘Developing’ to ‘Minimally Effective’, the employee will be subject to separation.¹³ Applying this to the instant matter, because Employee’s IMPACT rating declined from a ‘Developing’ during the 2020-2021 school year to a ‘Minimally Effective’ rating during the 2021-2022 school year, Employee would have been subject to termination. However, as will be discussed below, Agency did not comply with the IMPACT process, as such, I find that a portion of Employee’s 2021-2022 school year IMPACT evaluation is invalid, and Agency does not have just cause to terminate Employee.

For the 2021 -2022 school year, Employee was entitled to two (2) conferences which were to be held after he was assessed. Employee had one (1) conference on February 11, 2022. He asserts that he did not receive a conference, meeting or corrective action to warn him of the termination. However, Employee conceded that the principal requested to have a conference with him on June 14, 2022, after he returned to work from FMLA on June 13, 2022. He claimed that he was out on FMLA and did not have access to his work email. The IMPACT process provides that “[a]s part of each assessment cycle, [the employee] *will have a conference with [their] administrator*. At this conference [the employee] will receive feedback based on the Custodian Standards rubric and discuss next steps for professional growth. if the administrator *makes at least two attempts to schedule a conference with the employee prior to the Cycle deadline and the employee is unable to meet or unresponsive, the assessment will be valid without the conference...* Valid attempt methods include, but are not limited to, phone calls. text messages, emails, notes in your school inbox, and/or in-person conversations.”¹⁴ (Emphasis added). Additionally, the IMPACT 2021-2022 Custodian- Holistic Evaluation provided by Agency specifically stated that “... In order for an assessment to be valid without a conference, an evaluator must make two attempts.”¹⁵ (Emphasis added). The Cycle 3, deadline for the 2021-2022 school year was June 9, 2022.¹⁶ The record shows that Employee was still out on approved leave on June 9, 2022. Thus, Agency’s first attempt to

¹³ *Id.* at Tab 11 pg. 21.

¹⁴ *Id.* at Tab 11, pg. 6.

¹⁵ Agency’s Answer, *supra*, at Tab 3, pg. 1.

¹⁶ https://dcps.dc.gov/sites/default/files/dc/sites/dcps/page_content/attachments/IMPACT2021-AnnualGuide_updated9-16-v2.pdf, at pg. 9. Retrieved on February 8, 2022.

schedule a conference with Employee after the Cycle 3 evaluation was on June 8, 2022. Since Employee was on approved FMLA leave, I find that Employee was not unresponsive. I further find that because Employee was not in ‘duty’ status at the time of the request, Agency cannot hold this against him.¹⁷ Additionally, Agency’s second attempt to schedule the post-assessment conference was on June 15, 2022. The IMPACT process requires the administrator to make “*at least two attempts to schedule a conference with the employee prior to the Cycle deadline...*” (Emphasis added). As previously noted, the Cycle 3 deadline for the 2021-2022 school year was June 9, 2022. Therefore, Agency’s second email to Employee to schedule a post-assessment conference falls outside of the Cycle deadline. Accordingly, I conclude that, Agency’s attempts to schedule a post-assessment conference for the Cycle 3 assessment were insufficient. Based on the foregoing, I further conclude that Agency did not provide Employee with a post-assessment conference as required by the IMPACT process and it has failed to provide evidence that it made two (2) attempts to schedule the conference, in compliance with the IMPACT process. For this reason, I find that absent the post-assessment conference, or two (2) attempts to schedule a post-assessment conference prior to the Cycle 3, deadline, Employee’s Cycle 3 assessment is invalid.

Employee further noted that he was constantly being harassed by the school principal and the school foreman. D.C. Code § 2-1411.02, specifically reserves complaints of unlawful discrimination to the Office of Human Rights (“OHR”). Per this statute, the purpose of the OHR is to “secure an end to unlawful discrimination in employment...for any reason other than that of individual merit.” Complaints classified as unlawful discrimination are described in the District of Columbia Human Rights Act.¹⁸ Additionally, District Personnel Manual (“DPM”) § 1631.1(q) reserves allegations of unlawful discrimination to Office of Human Rights. Accordingly, I find that Employee’s discrimination claims fall outside the scope of OEA’s jurisdiction.

Pursuant to the IMPACT process, the CP portion of the IMPACT assessment is scored separately. While I disagree with Agency’s scoring of Employee’s CP 1 portion, I find that the number of points deducted under this section does not negatively impact Employee’s overall IMPACT rating of ‘Minimally Effective’ for the 2021- 2022 school year. For the 2021-2022 school year, Employee received a total IMPACT score of 268 prior to the CP deductions. Employee received a ‘Slightly Below Standard’ for Cycle 1, and a ten (10) points deduction for that Cycle. For Cycle 3, Employee received a ‘Significantly Below Standard’ rating for CP 1 and CP 3, and he was deducted a total of twenty (20) points for these. The record shows that Employee was out on approved FMLA leave from April 27, 2022, to June 10, 2022. Thus, I conclude that Agency was not justified in charging Employee with AWOL for June 7 – June 9, 2022, and ultimately rating him as ‘Significantly Below Standard’ under CP1. Nonetheless, the IMPACT policy provides that, “If you receive a rating of Significantly Below Standard on *any* standard of the Core Professionalism rubric during a cycle, you will receive an overall rating of Significantly Below Standard for that cycle, and twenty (20) points will be deducted from your final IMPACT score.”¹⁹ (Emphasis added). Here, Employee also received a ‘Significantly Below Standard’ rating for the CP 3 Standard under Cycle 3 of the 2021-2022 school year. Agency noted that

¹⁷ Assuming *arguendo* that Employee was in duty status on June 8, 2022, and Agency’s post-assessment email request to Employee was valid, Agency would still not be in compliance with the IMPACT process that requires two (2) post-assessment conference attempts prior to the Cycle deadline. Agency’s second attempt to schedule a post-assessment conference was done on June 15, 2022, which was after the Cycle 3 deadline of June 9, 2022.

¹⁸ D.C. Code §§ 1-2501 *et seq.*

¹⁹ Agency’s Answer, *supra*, at Tab 11, pg. 15

Employee failed “to secure the building. [Employee] received a verbal warning on [March 2, 2022] doors not secure[.] Employee received a written warning on [April 5, 2022] unsecured accessible doors.” These policy violations on March 2, 2022, and April 5, 2022, are sufficient justification for a ‘Significantly Below Standard’ rating and a twenty (20) point deduction under the CP 3 Standard. Accordingly, I conclude that Agency was justified in deducting twenty (20) points from Employee’s 2021-2022 school year CP portion for Cycle 3 and ten (10) points for Cycle 1, bringing his total IMPACT score from 268 to 238, which equates to a ‘Minimally Effective’ rating.

Employee does not disagree with his IMPACT rating, comments or the IMPACT process. However, Employee noted that he was out on FMLA during the second IMPACT assessment of the 2021-2022 school year. According to the record, Employee was out on approved FMLA leave from April 27, 2022, to June 10, 2022. The IMPACT policy provides that “If your school leader conducted your observation prior to you going out on leave, that observation is valid; even if you went out on leave prior to the completion of a post-observation conference.”²⁰ Based on Employee’s Cycle 3 evaluation for the 2021-2022 school year, it appears that Employee was evaluated prior to him going out on FMLA. Specifically, under IMPACT Standard – CUST 6 – Safety, the principal noted that “Mr. Cook sometimes ensures that he is following appropriate closing procedures. On both 3/1 and 4/4 the building was left unsecure with doors propped open and not properly locked.”²¹ (Emphasis added). For the 2021-2022, school year, Agency noted under Employee’s CP1 (Attendance) assessment for Cycle 3 that “[Employee] did not call in on 6/7, 6/8, or 6/9-AWOL.”²² Agency also asserted under CP 3 – Policies and Procedures that “[Employee’s] leave was denied on 6/6, [Employee] left his tour of duty. Failure to secure the building. [Employee] received a verbal warning on 3/2 doors not secure[.] Employee received a written warning on 4/5 unsecured accessible doors.”²³ Employee does not dispute any of these comments or incidents that occurred in March and April of 2022, as stated by Agency in his Cycle 3 IMPACT assessment. Accordingly, I conclude that Employee was observed/evaluated prior to Employee’s FMLA start date of April 27, 2022 – June 10, 2022. Therefore, I find that the bulk of Employee’s observation (CUST and CSC) was conducted prior to Employee going on FMLA on April 27, 2022. Consequently, I further find that Employee’s Cycle 3 IMPACT assessment is valid.

The IMPACT Guidebook also provides under the Holistic evaluation section as follows: “Holistic evaluations include Commitment to the School Community, Core Professionalism, and Primary Rubric non-instructional evaluations (including the LEAP Leadership Framework evaluations). If you were out *continuously for over half of any given cycle your school leader may ask for an exception from that cycle.*”²⁴ Here, Employee was in school throughout Cycle 1 of the 2021-2022 school year. The deadline for Cycle 1 evaluation was January 27, 2022, and the deadline for Cycle 3 evaluation was June 9, 2022. Thus, it can be reasonably assumed that Cycle 3 ran from January 28, 2022, to June 9, 2022. There were a total of 133 calendar days in the Cycle 3 assessment period which ran from January 28, 2022, to June 9, 2022. Employee was out on FMLA from April 27, 2022 – June 10, 2022, this is approximately 44 calendar days or six (6) weeks. Employee was on duty from January 28, 2022, to April 26, 2022, which is approximately 88 calendar days or twelve (12) weeks. Accordingly, I find that

²⁰ Agency’s Answer, *supra*, at Tab 13, pg. 2/4.

²¹ *Id.* at Tab 3, pg. 3/4

²² *Id.* at Tab 5. Based on the record, Employee was not AWOL on these dates, but on approved FMLA leave.

²³ *Id.*

²⁴ *Id.* at Tab 13, pg. 2/4.

Employee was in duty status for more than half of Cycle 3 of the 2021-2022 school year, thus, he could be evaluated.

This Office has consistently held that the primary responsibility for managing and disciplining Agency's work force is a matter entrusted to the Agency, not to OEA.²⁵ As performance evaluations are "subjective and individualized in nature,"²⁶ this Office will not substitute its judgment for that of an agency; rather, this Office limits its review to determining if "managerial discretion has been legitimately invoked and properly exercised."²⁷ Here, although I find that Agency was within its rights to evaluate Employee during Cycle 3, of the 2021-2022, school year even though Employee was on FMLA leave, I conclude that Agency failed to provide Employee with a post-assessment conference and *did not make* two (2) attempts prior to the cycle deadline to schedule a post-assessment conference as required by the IMPACT process (emphasis added). Based on the foregoing, I find that Employee's Cycle 3 IMPACT assessment for the 2021-2022 school year was invalid and Agency did not have sufficient 'just cause' to terminate Employee, due to the decline of his IMPACT rating from 'Developing' during the 2020-2021 school year, to 'Minimally Effective' during the 2021-2022 school year.

ORDER

Based on the foregoing, it is hereby **ORDERED** that:

1. Agency's action of separating Employee from service is **REVERSED**; and
2. Agency shall reinstate Employee to his last position of record; or a comparable position; and
3. Agency shall reimburse Employee all back-pay and benefits lost as a result of the separation; and
4. 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:

/s/ Monica N. Dohnji
MONICA DOHNJI, Esq.
Senior Administrative Judge

²⁵ See *Mavins v. District Department of Transportation*, OEA Matter No. 1601-0202-09, *Opinion and Order on Petition for Review* (March 19, 2013); *Mills v. District Department of Public Works*, OEA Matter No. 1601-0009-09, *Opinion and Order on Petition for Review* (December 12, 2011); *Washington Teachers' Union Local No. 6, American Federation of Teachers, AFL-CIO v. Board of Education of the District of Columbia*, 109 F.3d 774 (D.C. Cir. 1997); see also *Huntley v. Metropolitan Police Department*, OEA Matter No. 1601-0111-91, *Opinion and Order on Petition for Review* (March 18, 1994); and *Hutchinson v. District of Columbia Fire Department*, OEA Matter No. 1601-0119-90, *Opinion and Order on Petition for Review* (July 2, 1994).

²⁶ See also *American Federation of Government Employees, AFL-CIO v. Office of Personnel Management*, 821 F.2d 761, 765 (D.C. Cir. 1987) (noting that the federal government has long employed the use of subjective performance evaluations to help make RIF decisions).

²⁷ See *Stokes v. District of Columbia*, 502 A.2d 1006, 1009 (D.C. 1985).