THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
DARRELL DUNSTON	)	OEA Matter No. 1601-0183-11
Employee	)	
	)	Date of Issuance: July 30, 2012
v.	)	
	)	Lois Hochhauser, Esq.
DISTRICT OF COLUMBIA PUBLIC SCHOOLS	)	Administrative Judge
Agency	)	
	)	

Mr. Darrell Dunston, Employee
Bobbie Hoye, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND STATEMENT OF FACTS

Darrell Dunston, Employee herein, filed a petition with the Office of Employee Appeals (OEA) on July 26, 2011, appealing the final decision of the District of Columbia Public Schools, Agency herein, to remove him from his position as Maintenance Worker, effective July 29, 2011. At the time of his removal, Employee was in permanent and career status. In the final Agency notice, dated July 15, 2011, Agency advised Employee that he could appeal his termination by either filing a grievance pursuant to a collective bargaining agreement between Agency and his Union, or by filing an appeal with this Office. In his petition, Employee stated that he filed a grievance on July 18, 2011 with Teamsters Local 639, his exclusive bargaining representative. Agency argued in its Answer, submitted on September 22, 2011, that the matter should be dismissed pursuant to D.C. Official Code § 1-616.52, because Employee filed a grievance with his Union prior to filing his appeal with OEA.

The matter was assigned to me on May 7, 2012 for the purpose of determining jurisdiction. I issued an Order on May 29, 2012, advising Employee that the matter had been assigned to me for the limited purpose of determining jurisdiction. I stated that jurisdiction was at issue because D.C. Official Code § 1-616.52 provides that an employee can select only one method of appealing an adverse action, and that it appeared that he had filed a grievance pursuant to a collective bargaining agreement prior to filing the instant appeal. I directed him to submit legal and/or factual arguments

supporting his claim that this Office has jurisdiction of this matter. Employee was informed that he had the burden of proof on the issue of jurisdiction. The parties were advised that the record would close on June 15, 2012, unless they were notified to the contrary. Employee filed his response in a timely manner. The record closed on June 15, 2012.

JURISDICTION

The jurisdiction of this Office was not established.

ISSUE

Should this petition for appeal be dismissed?

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS

Employee did not address the issue of jurisdiction in his June 14, 2012 submission. He did not dispute that he filed the grievance with the Union prior to filing the petition for appeal with OEA. Rather, he contended that he had always received positive performance reviews and asserted that his employment problems began in August 2010, when an assistant principal began working at the school to which he was assigned. However, jurisdiction is the only issue before this Administrative Judge. The other issues cannot be addressed unless and until this Office's jurisdiction is established.

This Office's jurisdiction is conferred upon it by law. It is governed in this matter by D.C. Official Code § 1-616.52 which provides in pertinent part the following:

> (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 § 1-606.03, or the negotiated grievance procedure, **but not both**. (emphasis added).
>
> (f) An employee shall be deemed to have exercised their *(sic)* 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).

Employee submitted the Grievance Reporting Form to his Union on July 20, 2011. In it he grieved his removal and asked to be returned to his job. The Form states that a copy of the grievance would be presented to Employer. Thus he filed a grievance with his labor organization based on his removal, the same issue that is the basis of his petition before this Office. By submitting the Form, he chose to pursue his appeal through a negotiated grievance procedure. As stated in D.C. Official Code § 1-616.52(e), Employee is limited to one method of appealing an adverse action. The method chosen, according to D.C. Official Code § 1-616.52(f), is the one initiated by Employee first. In this instance, Employee filed the grievance with his Union six days before filing his petition for appeal with OEA. Thus this Office does not have authority to hear his appeal.

Employee has the burden of proof on all issues of jurisdiction, pursuant to OEA Rule 628.2, 59 D.C. Reg. 2129 (March 16, 2012). He must meet this burden by a "preponderance of the evidence" which is defined in OEA Rule 628.1, 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 establish that Employee filed a grievance with his exclusive bargaining representative six days before he filed his petition for appeal with OEA. He did not present good cause why the petition for appeal before this Office should not be dismissed based on D.C. Official Code § 1-616.52, cited above. In sum, Employee did not meet his burden of proof on this issue of jurisdiction.

ORDER

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

FOR THE OFFICE: LOIS HOCHHAUSER, ESQ.
Administrative Judge