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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
CHARLTON MCKENZIE,)	
Employee)	OEA Matter No. 1601-0388-10
)	
v.)	Date of Issuance: April 9, 2013
)	
D.C. PUBLIC SCHOOLS,)	MONICA DOHNJI, Esq.
Agency)	Administrative Judge
_____)	
Charlton McKenzie, Employee, <i>pro se</i>		
Carl Turpin, Esq., Agency Representative		

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On August 27, 2010, Charlton McKenzie (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the D.C. Public Schools’ (“Agency” or “DCPS”) decision to terminate him for receiving an “Ineffective” rating under the D.C. Public Schools’ Effectiveness Assessment System for School-Based Personnel (“IMPACT”) for school year 2009-2010. On September 29, 2010, Agency submitted its Answer to Employee’s Petition for Appeal.

This matter was assigned to the undersigned Administrative Judge (“AJ”) on July 18, 2012. Thereafter, on July 27, 2012, I issued an Order scheduling a Status Conference for August 15, 2012. Both parties were present for the Status Conference. On September 11, 2012, I issued a Post-Status Conference Order requiring the parties to submit written briefs addressing the issues raised at the Status Conference. On September 25, 2012, the undersigned received Agency’s Motion for extension of time to file brief. The Motion was granted in an Order dated October 1, 2012. Following Employee’s failure to submit his Post Status Conference brief, on November 14, 2012, the undersigned issued an Order for Statement of Good Cause requiring Employee to submit a statement of good cause based on his failure to submit his Post Status Conference brief. On November 22, 2012, Employee submitted his Post Status Conference brief. Subsequently, on December 3, 2012, the undersigned issued an Order Convening a Prehearing Conference for December 19, 2012. Both parties were present for the Prehearing Conference and both submitted

their Prehearing Statements. Thereafter, the undersigned on January 16, 2013, issued an Order scheduling an Evidentiary Hearing for March 6, 2013. On March 1, 2013, Agency filed a Motion to Dismiss for lack of jurisdiction. Consequently, the undersigned issued an Order cancelling the March 6, 2013 Evidentiary Hearing. This Order also required Employee to address the jurisdictional issue raised in this matter. Employee had until March 22, 2013, to respond, while Agency had until April 5, 2013, to submit a response to Employee's reply if it chose to do so. While Employee submitted a timely response to this Order, Agency did not submit a reply to Employee's response brief on jurisdiction. The record is now closed.

JURISDICTION

As will be explained below, the jurisdiction of this Office has not been established.

ISSUE

Whether this appeal should be dismissed for lack of jurisdiction.

ANALYSIS AND CONCLUSION

The threshold issue in this matter is one of jurisdiction. This Office has no authority to review issues beyond its jurisdiction.¹ Therefore, issues regarding jurisdiction may be raised at any time during the course of the proceeding.² This Office's jurisdiction is conferred upon it by law, and was initially established by the District of Columbia Comprehensive Merit Personnel Act of 1978 ("CMPA"), D.C. Official Code §1-601-01, *et seq.* (2001). It was amended by the Omnibus Personnel Reform Amendment Act of 1998 ("OPRAA"), D.C. Law 12-124, which took effect on October 21, 1998. Both the CMPA and OPRAA confer jurisdiction on this Office to hear appeals, with some exceptions not relevant to this case, of permanent employees in Career and Education Service who are not serving in a probationary period, or who have successfully completed their probationary period.

In its Motion to Dismiss, Agency stated that OEA did not have jurisdiction over Employee's appeal because Employee filed a grievance with the International Brotherhood of Teamsters, Local Union 639 on August 2, 2010, pursuant to the Collective Bargaining Agreement ("CBA") between his Union and DCPS, disputing his termination.³ D.C. Official Code (2001) §1-616.52 reads in pertinent part as follows:

(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.

¹ See *Banks v. District of Columbia Public School*, OEA Matter No. 1602-0030-90, *Opinion and Order on Petition for Review* (September 30, 1992).

² See *Brown v. District of Columbia Public School*, OEA Matter No. 1601-0027-87, *Opinion and Order on Petition for Review* (July 29, 1993); *Jordan v. Department of Human Services*, OEA Matter No. 1601-0110-90, *Opinion and Order on Petition for Review* (January 22, 1993); *Maradi v. District of Columbia Gen. Hosp.*, OEA Matter No. J-0371-94, *Opinion and Order on Petition for Review* (July 7, 1995).

³ See Agency's Notice of Motion to Dismiss (March 1, 2013).

(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).

Additionally, the Notice of “Ineffective” IMPACT Rating and Termination dated July 23, 2010, informed Employee that he may “elect to file an appeal to [his] termination in *one* of the following ways:

1. You may elect to file a grievance pursuant to the Collective Bargaining Agreement between DCPS and your Union...
2. You may elect to file an appeal with the D.C. Office of Employee Appeals (OEA)...

According to Employee’s termination letter and pursuant to the above referenced code, Employee had the option to appeal his termination with either OEA or through his Union, **but not both**. (Emphasis added). Employee elected to appeal his termination by filing a grievance under the CBA between Agency and his local union several weeks before he filed his petition for appeal with OEA.⁴ And by doing so, Employee waived his rights to be heard by this Office. Therefore, I conclude that this Office does not have jurisdiction over Employee’s appeal. And for this reason, I am unable to address the factual merits, if any, of this matter.

ORDER

It is hereby ORDERED that this matter be DISMISSED for lack of jurisdiction.

FOR THE OFFICE:

MONICA DOHNJI, Esq.
Administrative Judge

⁴ *Id.* at Exhibit No. 2.