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THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	OEA Matter No.: 2401-0255-10AF15
WEBSTER ROGERS,)	
Employee)	
)	Date of Issuance: November 3, 2015
v.)	
)	
DISTRICT OF COLUMBIA)	
PUBLIC SCHOOLS,)	
Agency)	Sommer J. Murphy, Esq.
_____)	Administrative Judge
Omar Vincent Melehy, Esq., Employee Representative		
Carl Turpin, Esq., Agency Representative		

ADDENDUM DECISION ON ATTORNEY FEES

On December 2, 2009, Webster Rogers (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“the OEA” or “the Office”) contesting the District of Columbia Public Schools’ (“Agency” or “DCPS”) action of terminating his employment through a Reduction-in-Force (“RIF”). The effective date of the RIF was November 2, 2009. Employee’s position of record at the time his position was abolished was an ET-15 Music Teacher at Moten Elementary School (“Moten”). Employee was in Educational Service status at the time he was terminated.

On June 13, 2012, the Undersigned issued an Initial Decision (“ID”), finding that Agency’s action of abolishing Employee’s position was done in accordance with D.C. Official Code § 1-624.08, and that the RIF, which resulted in his removal, should be upheld. Employee subsequently filed an appeal with D.C. Superior Court on August 6, 2012. On December 9, 2013, the Honorable Judge John Mott reversed and remanded the Undersigned’s ID and held that the RIF was conducted under the incorrect regulation. Specifically, Judge Mott held that a mistake of law arose by applying the criteria in 5 D.C.M.R § 1500 *et seq.*, instead of Chapter 24 of the D.C. Personnel Manual (“DPM”), after determining that the Abolishment Act (D.C. Code § 1-624.08) governed the RIF.¹

¹ See 2012 CA 006364 P(MPA) (December 9, 2013).

The parties were subsequently ordered to submit additional briefs on the issues as enumerated in Judge Mott's December 9, 2013 Order. On February 27, 2015, the Undersigned issued an Initial Decision on Remand, finding that Agency failed to prove by a preponderance of the evidence that it conducted the 2009 RIF in accordance with the procedures set forth in D.C. Code §1-624.08 and Chapter 24 of the DPM.² Agency's action of terminating Employee was therefore reversed. Agency was further ordered to reinstate Employee to his previous position of record, and reimburse him for all back-pay and benefits lost from the effective date of his termination.³

In April of 2015, Agency filed a Petition for Review with OEA's Board; however, the appeal was denied and Agency was ordered to reinstate Employee in accordance with the Undersigned's February 27, 2015 ID.⁴ Agency filed an appeal of the Board's Opinion and Order on Petition for Review in D.C. Superior Court on August 25, 2015. Employee then filed a Motion for Award of Attorney's Fees and Costs Along with Supporting Memorandum with OEA on August 14, 2015. Employee's Supplemental Memorandum in Support of An Award of Attorney's Fees and Costs was submitted to OEA on August 31, 2015.⁵ On August 31, 2015, Agency submitted a Motion to Strike Employee's Petitions for Attorney's fees, arguing that Employee's submission should be dismissed as being premature.

JURISDICTION

The Office has jurisdiction in this matter pursuant to D.C. Official Code § 1-606.08 (2001).

ISSUE

Whether Employee's motion for attorney's fees should be dismissed.

ANALYSIS AND CONCLUSIONS OF LAW

D.C. Code Ann. § 1-606.8 (1999 repl.) provides that an Administrative Judge of this Office may require payment by the agency of reasonable attorney fees if the appellant is: 1) the prevailing party; 2) and payment is warranted in the interest of justice." *See also* OEA Rule 635.1, 46 D.C. Reg. at 9320. An employee is considered the "prevailing party," if he or she received "all or significant part of the relief sought" as a result of the decision.⁶

In this case, Agency filed a Petition for Review of the Board's Opinion and Order on Petition for Review in D.C. Superior court on August 25, 2015.⁷ According to the Superior Court's docket, there has been no final disposition of Agency's appeal and an Initial Scheduling Conference has been set for December 12, 2015. Thus, at this point, the question of whether

² 2401-0255-10-R14 at 9 (February 27, 2015).

³ *Id.*

⁴ *Rogers v. DCPS*, OEA Matter No. Opinion and Order on Petition for Review, OEA Matter No. 2401-0255-10-R14 (April 3, 2015).

⁵ Employee submitted a corrected version of Exhibit B to be included with its previous filing on August 17, 2015.

⁶ *Zervas v. D.C. Office of Personnel*, OEA Matter No. 1601-0138-88AF92 (May 13, 1993).

⁷ 2012 CA 006364 P(MPA).

Employee is a prevailing party has not been finally determined. Consequently, the motion for attorney fees is premature and must now be dismissed. However, the dismissal is without prejudice, since Employee may yet become a prevailing party. If Employee is determined to be the prevailing party, he may resubmit a motion for attorney fees to this Office.

Based on the aforementioned, it is hereby **ORDERED** that Employee's Motion for Award of Attorney's Fees is **DISMISSED** *without prejudice*.

FOR THE OFFICE:

Sommer Joy Murphy, Esq.
Administrative Judge