THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
JACQUELINE TOWNES,	)	
Employee	)	OEA Matter No. 1601-0181-11
	)	
v.	)	Date of Issuance: July 8, 2014
	)	
D.C. PUBLIC SCHOOLS,	)	
Agency	)	STEPHANIE N. HARRIS, Esq.
	)	Administrative Judge

Jacqueline Townes, Employee *Pro Se*
Sara White, Esq., Agency's Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On August 22, 2011, Jacqueline Townes ("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 her from her position as a Counselor effective August 12, 2011. Employee was terminated for receiving a 'Minimally Effective' rating under the IMPACT Performance Assessment System for the 2009-2010, and 2010-2011 school years. On September 26, 2011, Agency submitted its Answer to Employee's Petition for Appeal.

I was assigned this matter on June 18, 2013. Thereafter, I issued an Order dated September 3, 2013, requiring the parties to attend a Prehearing Conference on October 1, 2013. Agency was present for the Prehearing Conference, but Employee did not appear. On October 1, 2013, the undersigned issued an Order for Statement of Good Cause, wherein Employee was ordered to explain her failure to attend the October 1, 2014, Prehearing Conference. On October 7, 2013, Employee submitted her Statement of Good Cause, which was accepted by the undersigned.

On November 18, 2013, the undersigned issued a second Order convening a Prehearing Conference for December 13, 2013. Subsequently, the undersigned granted Agency's request that the Prehearing Conference be rescheduled. The Prehearing Conference was subsequently held on January 28, 2014, and both parties were in attendance. Thereafter, I issued a Post

Prehearing Conference Order wherein the parties were required to submit briefs addressing the issues raised during the Prehearing Conference. Agency's brief was due on February 25, 2014 and Employee's brief was due on March 25, 2014. Both parties timely submitted their briefs.

Upon further review of the record, the undersigned issued an Order on May 9, 2014, requiring Agency to submit a brief and additional documentation in this matter concerning Employee's collective bargaining unit. Agency's brief was due on or before May 30, 2014 with Employee having an optional reply date of June 13, 2014. Agency's brief was not submitted by the required deadline. Consequently, On June 5, 2014, the undersigned issued on Order for Statement of Good Cause ordering Agency to submit its brief and explain its failure to submit its brief by the required deadline. Agency's brief and Statement of Good Cause was due on or before June 19, 2014, with Employee having an optional reply brief deadline on or before July 3, 2014. Agency timely submitted its brief and Statement of Good Cause on June 19, 2014 and Employee submitted its optional brief on July 7, 2014.

Both parties have submitted all of the requested briefs in this matter. After considering the parties arguments as presented in their submissions to this Office, the undersigned has determined that there are no material facts in dispute, and as such, an Evidentiary Hearing is not required. The record is now closed.

JURISDICTION

The 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 two consecutive 'Minimally Effective' performance ratings under the IMPACT system was done in accordance with all applicable laws, rules, or regulations.

BURDEN OF PROOF

OEA Rule 628.1, 59 DCR 2129 (March 16, 2012) states:

> The burden of proof with regard to material issues of fact shall be by a preponderance of the evidence. "Preponderance of the evidence" shall mean:
>
> > 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.

OEA Rule 628.2 *id.* states:

> 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.

ANALYSIS AND CONCLUSIONS OF LAW

The following findings of facts, 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.

Employee's Position

In her Petition for Appeal and Brief, Employee claims that there was no 'just cause' and she should not have been terminated; her IMPACT performance assessment was wrong; and Agency did not follow all of the IMPACT procedures.[1] She states that she received two evaluations for the 2010-2011 school year, and that the first evaluation, Cycle 1, was performed by Pamela Ransome, a principal at the school she worked at. Employee argues that Principal Ransome's evaluation was based on personal opinions, not work performance, and was conducted "at 8:30 at night by cell phone."[2] She states that she asked to meet with Principal Ransome to discuss the scores and was told that she could discuss them, but the scores would not be changed and she did not have to sign the IMPACT evaluation. Employee also claims that Principal Ransome did not give much thought or attention to her evaluation, which lasted for the duration of ten (10) minutes. She submits that her Cycle 2 evaluation was conducted by an Assistant Principal, in an office where mutual interaction and feedback was offered. She notes that her Cycle 2 evaluation score was higher and demonstrated growth. Employee also submitted documentation showing that she sent an email to the Impact team contesting her scores, but notes that no one "made a visit where they talked to me." Employee argues that Agency's action was improper and the rating "Developing" did not exist when she was employed with DCPS.[3]

In her Supplemental Brief, Employee argues that Agency has not met its burden of proof in showing that she was properly and lawfully terminated, stating that her termination was arbitrary, capricious, and wrongful. She states that 1) her evaluation was improperly performed and out of guidelines; 2) her work performance was improperly evaluated and not the product of fair, knowledgeable, and impartial review of her work; and 3) Agency failed to consider criteria essential for a fair and objective assessment of her performance. Employee states that she was never observed and there was never any physical contact where the evaluator came into her work space. Employee alleges that she was not advised of the job description she was being evaluated on and although she received her IMPACT evaluation handbook, she did not receive a description of her specific job duties or notice of the nexus between her job duties as it relates to the IMPACT process. She also claims that employees who received a 'Minimally Effective'

[1] Petition for Appeal (August 22, 2011); Employee Brief (March 25, 2014).
[2] Petition for Appeal p. 2; Employee Optional Brief, p. 2 (July 7, 2014).
[3] *Id.*

rating were supposed to receive professional development training, but she was not sent to any such training. Employee also relays that she is not a member of the Council of School Officers ("CSO") collective bargaining unit and that personal issues with the former principal formed part of the basis for her IMPACT score. Additionally, Employee provided detailed arguments regarding scoring areas where she believed that she should have received a higher score.[4]

Agency's Position

In its Answer, Agency asserts 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.[5] Additionally, Agency asserts that OEA has limited jurisdiction to review a termination based on performance. Agency explains that, according to its agreement with the Washington Teachers' Union, to which Employee is a member, OEA's decision on Employee's termination based on performance is limited to whether the evaluation process and tools were properly administered.[6]

Agency argues that Employee's termination was done in accordance with all applicable laws. Agency states that Employee's IMPACT scores reflect appropriate and informed assessments of her performance as a Counselor during school years 2009-2010 and 2010-2011. According to Agency, Employee received a final IMPACT rating of 'Minimally Effective' for two consecutive school years, under the IMPACT rating system thus warranting her termination.[7] Additionally, Agency denies that 1) Employee's performance assessment was based on something other than work performance; and 2) Principal Ransome did not give much thought or attention to Employee's evaluation. Further, Agency asserts that Employee's termination was based on appropriate and informed assessments of her performance as a Counselor.[8]

Governing Authority

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. Agency contends that because Employee was a member of the Washington Teachers' Union ("WTU") when she was terminated, the Collective Bargaining Agreement ("CBA") between Agency and WTU applies to this matter and as such, OEA has limited jurisdiction over this matter.

In *Brown v. Watts*,[9] the Court of Appeals held that OEA is not jurisdictionally barred from considering claims that a termination violated the express terms of an applicable collective bargaining agreement. The court explained that the Comprehensive Merit Personnel Act ("CMPA") gives this Office broad authority to decide and hear cases involving adverse actions that result in removal, including "matters covered under subchapter [D.C. Code §1-616] that also

[4] Employee Supplemental Brief (June 5, 2014); Employee Optional Brief (July 7, 2014).
[5] *See* Agency Answer (September 26, 2011). *See also* Agency Brief (June 19, 2014).
[6] *Id*.
[7] Agency Answer, Tab 1 (September 26, 2011).
[8] *Id*.
[9] 933 A.2d 529 (April 15, 2010).

fall within the coverage of a negotiated grievance procedure."[10] In this case, Agency contends that Employee was a member of the WTU when she was terminated and governed by Agency's CBA with WTU. The WTU CBA provided by Agency lists Employee's position, Counselor, as one of the positions covered by the CBA.[11] Therefore, the undersigned finds that Employee is a member of the WTU bargaining unit. Based on the holding in *Watts*, I find that this Office may interpret the relevant provisions of the CBA between WTU and DCPS, as it relates to the adverse action in question in this matter. Sections 15.3 and 15.4 of the CBA between WTU and Agency provides in pertinent part as follows:

> 15.3: DCPS' compliance with the evaluation process, and *not the evaluation judgment*, shall be subject to the grievance and arbitration procedure. (Emphasis added).
>
> 15.4: The standard for separation under the evaluation process shall be "just cause", which shall be defined as *adherence to the evaluation process only*. (Emphasis added).

Accordingly, I am primarily guided by §§ 15.3 and15.4 of the CBA between WTU and DCPS in reviewing this matter, and as such, the undersigned will address whether or not Agency's termination of Employee pursuant to her performance evaluation was supported by just cause. As referenced above, 'just cause' is defined as adherence to the *evaluation process only* (emphasis added). Thus, OEA's jurisdiction over this matter is limited to Agency's adherence to the IMPACT process during the relevant school years.

The IMPACT Process

Agency relays that it conducts annual performance evaluations for all its employees and utilized IMPACT as its evaluation system for all school-based employees during the 2009-2010 and 2010-2011school year.[12] With the IMPACT system, all staff received written feedback regarding their evaluations, as well as a post-evaluation conference with their evaluators. IMPACT evaluations and ratings for each assessment cycle were available online for employees to review by 12:01 a.m., the day after the end of each cycle. For the 2009-2010 and 2010-2011school years, if employees had any issues or concerns about their IMPACT evaluation and rating, they were encouraged to contact DCPS' IMPACT team by telephone or email. At the close of the school year, all employees received an email indicating that their final scores were available online. Additionally, a hard copy of the report was mailed to the employees' home address on file.[13]

According to Agency, in or around September 2010, all principals and assistant principals at DCPS were provided with training materials, which they then used to conduct a full-day training with all staff members. The training detailed the IMPACT process, consequences, and

[10] Pursuant to D.C. Code § 1-616.52(d), "[a]ny 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 the labor organization" (emphasis added).
[11] Agency Brief, Exhibit 2, p. 8 (June 19, 2014).
[12] Agency's Answer (September 9, 2011). *See also* Agency Brief (February 25, 2014).
[13] Agency Brief, p.2 (June 19, 2014).

positive and negatives associated with each full final IMPACT rating. Each staff member was provided with a full IMPACT guidebook unique to their evaluation group. The guidebooks were delivered to the employees' schools and were also available online via the DCPS website. Throughout the year, the IMPACT team visited schools to answer questions as well as to ensure that the IMPACT hotline was available to all staff members via email and/or telephone to answer questions and provide clarification.[14]

There were several different IMPACT grouping of school-based DCPS employees, each representing a different category of school-based personnel. Individualized groups were developed to reflect the varying responsibilities of employees. Employee was a Counselor for both the 2009-2010 and 2010-2011 school years, which was designated within Group 10 for the IMPACT evaluation. For the 2009-2010 school year, the IMPACT process for Group 10 employees consisted of three (3) assessment cycles: the first assessment cycle ("Cycle 1"), which ended on or around December 1st; second assessment cycle ("Cycle 2") which ended on or around March 1st; and the third assessment cycle ("Cycle 3") which ended on or around June 15th.[15] For the 2010-2011 school year, the IMPACT process for Group 10 employees consisted of two (2) assessment cycles: the first assessment cycle ("Cycle 1"), which ended on or around December 1st and the second assessment cycle ("Cycle 3") which ended on or around June 15th.[16] Group 10 employees were assessed on a total of three (3) IMPACT components, for the 2009-2010 and 2010-2011 school years, namely:

1) Counselor Standards(COUN) – comprised of 80% of Group 10 employees' scores;
2) Commitment to the School Community (CSC) – 10% of Group 10 employees' scores;
3) School Value-Added (SVA) – 10% of Group 10 employees' scores;
4) Core Professionalism – This component is scored differently from the others, and there is only a deduction if you receive a Slightly Below Standard rating. 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) Interacting with colleagues, students, families, and community members in a respect manner.

Agency asserts that pursuant to the IMPACT procedure, Employee was assessed during Cycles 1, 2, and 3 for the 2009-2010 school year and Cycles 1 and 3 for the 2010-2011 school year. Specifically, Agency submits that Employee received the following assessments:

1. 2009-2010 Cycle 1 Assessment and Conference completed by Principal David Markus on November 20, 2009 (deadline December 1st);[17]
2. 2009-2010 Cycle 2 Assessment and Conference completed by Principal David Markus on March 3, 2010 (deadline March 5th);[18]

[14] Agency Brief, p. 3 (June 19, 2014).
[15] Agency Brief, Exhibit 1 (February 25, 2014).
[16] *Id*., Exhibit 2.
[17] *Id*., Exhibit 3.

3. 2009-2010 Cycle 3 Assessment and Conference completed by Principal David Markus on June 2, 2010 (deadline June 15th);[19]
4. 2010-2011 Cycle 1 Assessment and Conference completed by Assistant Principal Pamela Ransome on December 1, 2010 (deadline December 1st);[20]
5. 2010-2011 Cycle 3 Assessment and Conference completed by Assistant Principal Deo Djossou on June 9, 2011 (deadline June 15th).[21]

School-based personnel assessed through IMPACT, ultimately received a final IMPACT score at the end of the school year of either:[22]

1) Ineffective = 100-174 points (immediate separation from school);
2) Minimally Effective = 175-249 points (given access to additional professional development);[23]
3) Effective = 250-349 points; and
4) Highly Effective = 350-400 points.

Just Cause Analysis

Chapter 5-E of District of Columbia Municipal Regulation ("DCMR") §§1306.4, 1306.5 gives the Superintendent the authority to set procedures for evaluating Agency's employees.[24] 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. In the instant matter, the IMPACT process detailed above is the evaluation procedure put in place by Agency for the 2009-2010 and 2010-2011 school years.

Employee received a final evaluation on the above referenced components at the end of the 2009- 2010 and 2010-2011school years, wherein, she received a "Minimally Effective" IMPACT rating. For the 2009-2010 school year, the IMPACT guidebook requires that a designated administrator assess an employee formally three times during the school year, with each assessment including a conference with the administrator.[25] For the 2010-2011 school year, the IMPACT guidebook requires that a designated administrator assess an employee formally two times during the school year, with each assessment including a conference with the

---

[18] *Id*., Exhibit 4.
[19] *Id*., Exhibit 5.
[20] Agency Answer, Tab 3 (September 26, 2011).
[21] *Id*., Tab 4.
[22] *Id*., Tab 2.
[23] IMPACT procedures provide that employees who receive a rating of "Minimally Effective" for two consecutive years are subject to separation. *See* Agency Answer (September 26, 2011).
[24] 5-E DCMR § 1306 provides in pertinent parts as follows:
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
[25] Employee Brief, Exhibit 1 (February 25, 2014).

administrator.[26] During the conference, each employee is given written feedback based on the scoring rubric. Each assessment cycle required an evaluation of the COUN, CSC, and SVA component, along with an overall SVA score.

Based on the guidelines provided by the IMPACT guidebook, the undersigned finds that Agency properly followed the IMPACT evaluation process. The record shows that Principal Markus performed an assessment with written feedback during conferences with Employee on November 20, 2009, March 4, 2010, and June 2, 2010.[27] The record also shows that Assistant Principal Ransome and Assistant Principal Djossou performed an assessment with written feedback during conferences with Employee on December 1, 2010, and June 9, 2011, respectively.[28]

Employee alleges that her 2010-2011 Cycle 3 assessment was conducted by Assistant Principal Phillip Morgan, and not Assistant Principal Djossou as stated by Agency. She also alleges that Agency falsified her Cycle 3 assessment by indicating that the incorrect assessor.[29] However, Employee has failed to provide any credible evidence to support this allegation outside of her allegations. Further, Employee does not dispute the content of the Cycle 3 evaluation or provide any evidence to show that this assessment was not done in accordance with IMPACT procedures.

Additionally, Employee's written assessments for the 2009-2010 and 2010-2011 school year, show that she was rated in the required COUN, CSC, SVA, and CP rubric components. Employee does not allege that she did not have the required conferences or assessments. While Employee argues that Agency did not follow proper procedures because she was never observed in person and one of her conferences was conducted over the phone, the guidelines did not require Agency to conduct a formal observation of Employee, only a formal assessment to be given during a conference with the assigned Administrator. Further, the IMPACT guidelines do not preclude an assessment or conference being conducted over the phone. Accordingly, I find that Agency properly conducted the IMPACT process and had just cause to terminate Employee after she was rated 'Minimally Effective' for the 2009-2010 and 2010-2011 school years.

In regards to Employee's argument that she was not advised of the job description she was being evaluated on and the nexus between her job duties and the IMPACT evaluation, the undersigned disagrees. Employee acknowledges that she received her IMPACT evaluation handbook, which the record shows describes the scoring rubric used for the corresponding IMPACT evaluations. Further, Employee had ample opportunity to request this information after any of her assessments during the 2009-2010 and 2010-2011 school years.

Additionally, in response to Employee's allegation that there is no supporting documentation to substantiate receiving negative point for the Core Professionalism category in her 2010-2011 IMPACT Final Report, the undersigned finds that even if the ten (10) points

[26] *Id*., Exhibit 2.
[27] Agency Brief, Exhibits 3-5 (February 26, 2014).
[28] Agency Answer, Tabs 3-4 (September 26, 2011).
[29] Employee Optional Brief (July 7, 2014).

subtracted were included in Employee's score, she would have yielded a score of two hundred forty-nine (249), which would have still placed her in the 'Minimally Effective' bracket.[30]

Further, the undersigned also disagrees with Employee's assertion that it was inevitable for her to get a lower IMPACT score because she was at a historically low performing school. The record shows that the IMPACT scoring rubric contained many components (COUN, CSC, and CP) that dealt directly with Employee's performance and only one category (SVA) that included a measure of the school's impact on student learning over the course of the school year as evidenced by the D.C. Comprehensive Assessment System ("CAS"), which only accounted for ten (10) percent of Employee's total score.[31]

Employee also alleges that her work performance was improperly evaluated and not the product of fair, knowledgeable, and impartial review of her work. She further claims that Agency failed to consider criteria essential for a fair and objective assessment of her performance. However, Employee does not argue that the evaluating administrators comments were untrue, but contends that she should have been given higher numerical scores or that they were based on personal opinions. Moreover, Employee does not proffer any evidence that directly contradicts the administrator's factual findings in her IMPACT evaluation. Employee also argues that she should have received higher scores in her 2010-2011 IMPACT evaluation.[32] However, Employee has not provided any *credible* evidence or documentation to support her arguments that she should have received a higher score (emphasis added).

Further, it should be noted that the D.C. Superior court in *Shaibu v. D.C. Public Schools*[33] explained that substantial evidence for a positive evaluation does not establish a lack of substantial evidence for a negative evaluation. The court held that "it would not be enough for [Employee] to proffer to OEA evidence that did not conflict with the factual basis of the [Principal's] evaluation but that would support a better overall evaluation."[34] The court further stated that if the factual basis of the "principal's evaluation were true, the evaluation was supported by substantial evidence." In addition, the Court in *Shaibu* held that "principals enjoy ***near total discretion in ranking their teachers***" when implementing performance evaluations (emphasis added).[35] The Court denied the employee's petition, finding that the "factual statements were far more specific than [the employee's] characterization suggests, and none of the evidence proffered to OEA by [the employee] directly controverted [the principal's] specific factual bases for his evaluation of [the employee]…." In this case, the undersigned finds that there is no evidence to corroborate that the factual basis of Agency's evaluation are not supported by substantial evidence or that Employee should have received higher scores in her IMPACT evaluation.

Accordingly, I find that Agency properly conducted the IMPACT process through its assessments and observations and therefore, had just cause to terminate Employee after she was rated 'Minimally Effective' for the 2009-2010 and 2010-2011 school year.

---

[30] Agency Answer, Tab 2 (September 26, 2011).
[31] *Id*., Tab 2, p. 1.
[32] Employee Brief, p. 3 (June 5, 2010).
[33] Case No. 2012 CA 003606 P (January 29, 2013).
[34] *Id.* at p. 6.
[35] *Id. Citing Washington Teachers' Union, Local # 6 v. Board of Education*, 109 F.3d 774, 780 (D.C. Cir. 1997).

Additionally, 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.[36] Further, because performance evaluations are "subjective and individualized in nature," 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."[37] Thus, I find that it was within the designated administrators discretion to rank and rate Employee's performance. Moreover, the undersigned Administrative Judge is not in the position to recommend that Employee receive a higher IMPACT rating since the undersigned is unfamiliar with the nature and details of Employee's position. Accordingly, I find that Employee was assessed under IMPACT by the required guidelines and the evaluators did not abuse their discretion in evaluating Employee's work performance. Accordingly, there is no credible reason to disturb Employee's IMPACT scores.

Employee additionally maintains that she was not given professional development training after receiving a minimally effective IMPACT rating and that a 'Developing' rating did not exist when she was at DCPS. Complaints of this nature are grievances, and do not fall within the purview of OEA's scope of review. Moreover, it is an established matter of public law that as of October 21, 1998, pursuant to the Omnibus Personnel Reform Amendment Act of 1998 (OPRAA), D.C. Law 12-124, OEA no longer has jurisdiction over grievance appeals. Employee's argument is best characterized as grievances and outside of OEA's jurisdiction to adjudicate. That is not to say that Employee may not press her claims elsewhere, but rather that OEA currently lacks the jurisdiction to hear Employee's other claims.

Based on the foregoing, I find that because Employee is a member of the WTU, she is subject to the terms of the CBA between WTU and Agency. I also find that OEA's jurisdiction in this matter concerning whether there was just cause for Agency's adverse action is limited by the terms of the WTU CBA. Further, because the undersigned finds that Agency adhered to the IMPACT process, I conclude that Agency had sufficient 'just cause' to terminate Employee, following her 'Minimally Effective' IMPACT rating for the 2009-2010 and 2010-2011 school years.

---

[36] *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).

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

ORDER

Based on the foregoing, it is hereby **ORDERED** that Agency's action of removing Employee is **UPHELD.**

FOR THE OFFICE:

STEPHANIE N. HARRIS, Esq.
Administrative Judge