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THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
JULIUS DANCY)	OEA Matter No. 1601-0066-07
Employee)	
)	
v.)	Date of Issuance: November 16, 2007
)	
)	Sheryl Sears, Esq.
)	Administrative Judge
DISTRICT OF COLUMBIA)	
PUBLIC SCHOOLS)	
Agency)	
_____)	

Julius Dancy, Employee, *Pro Se*
Harriet E. Segar, Esq., Representative

INITIAL DECISION

INTRODUCTION AND FINDINGS OF FACT

Employee was a Maintenance Worker at LaSalle Elementary School. On March 28, 2007, Johnnie Fairfax, Ph.D, Acting Executive Director of Human Resource Management, issued a letter notifying Employee that he would be separated from service on April 19, 2007. Agency based the action on allegations that Employee failed to complete his job duties and falsified the start time of his tour of duty. Agency charged Employee with “neglect of duty” and “dishonesty.”

On April 2, 2007, Employee filed an appeal with the Office of Employee appeals (“OEA” or “the Office”). Although Employee’s appeal was premature at the time that he filed it, he was separated and the appeal ripened. The appeal form includes the question “Have you filed an appeal, grievance, or complaint with your agency or with any other agency concerning this matter?” Employee responded, “Yes, I filed a grievance with my union - the Teamsters 639.”

This Judge ordered Employee to submit, in writing, a statement showing why this Office should exercise jurisdiction over his appeal if he has already filed a grievance through his Union. The

deadline for that submission was November 5, 2007. To date, Employee has not responded to that order. The record is now closed.

JURISDICTION

As will be explained in the “Analysis and Conclusion” section, the jurisdiction of this Office has not been established.

ISSUE

Whether this matter must be dismissed for lack of jurisdiction.

BURDEN OF PROOF

In accordance with OEA Rule 629.2, 46 D.C. Reg. 9297 (1999) “[t]he employee shall have the burden of proof as to issues of jurisdiction . . .”

ANALYSIS AND CONCLUSIONS

The D.C. Official Code § 1-606.03 provides for appeals to this Office:

(a) An employee may appeal a final agency decision affecting a performance rating which results in removal of the employee (pursuant to subchapter XIII-A of this chapter), an adverse action for cause that results in removal, reduction in force (pursuant to subchapter XXIV of this chapter), reduction in grade, placement on enforced leave, or suspension for 10 days or more (pursuant to subchapter XVI-A of this chapter) to the Office upon the record and pursuant to other rules and regulations which the Office may issue. Any appeal shall be filed within 30 days of the effective date of the appealed agency action.

D.C. Official Code § 1-616.52 (2007) provides for an employee to use the union grievance process in the alternative.

(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 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*.

(f) An employee shall be deemed to have exercised their 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).

In accordance with these provisions, an employee who is a member of a collective bargaining agreement through which he or she has access to a grievance procedure, may pursue that process or file an appeal with this Office, but not both.

Employee initiated a grievance through his Union. Then, he filed an appeal with this Office. Having first elected to challenge Agency's separation action by filing a grievance, Employee is precluded from pursuing an appeal before OEA. This Office does not have jurisdiction over this appeal and it must be dismissed.

ORDER

It is hereby ORDERED that this petition for appeal is dismissed for lack of jurisdiction.

FOR THE OFFICE:

SHERYL SEARS, ESQ.