THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
SANDRA IRICK,	)	
Employee	)	OEA Matter No.: 1601-0304-10
	)	
v.	)	Date of Issuance: October 19, 2012
	)	
DISTRICT OF COLUMBIA DEPARTMENT	)	
OF CORRECTIONS,	)	STEPHANIE N. HARRIS, Esq.
Agency	)	Administrative Judge
	)	

Sandra Irick, Employee *Pro-Se*
Mitchell J. Franks, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On April 30, 2010, Sandra Irick ("Employee") filed a Petition for Appeal with the Office of Employee Appeals ("OEA" or "Office") contesting the District of Columbia Department of Corrections' ("Agency") adverse action of removing her from service. In response to Employee's Petition for Appeal, Agency filed its Answer on May 24, 2010.

I was assigned this matter on July 10, 2012. After reviewing the case file and the documents of record, I issued an Order dated July 11, 2012, wherein I questioned whether OEA may exercise jurisdiction over the instant matter because of allegations that Employee filed an appeal of her removal through the negotiated grievance procedure of her Union's Collective Bargaining Agreement ("CBA"). Employee was ordered to submit a written brief, together with copies of cited statutes, regulations, and cases to address whether this matter should be dismissed for lack of jurisdiction on or by July 23, 2012. Employee requested an extension of time on July 23, 2012. The undersigned granted Employee's request and set a new brief submission deadline of August 7, 2012. Employee requested a second extension of time on August 7, 2012, which was granted by the undersigned, resulting in a new submission deadline of August 28, 2012. Employee's brief was received on August 29, 2012. Agency had the option to submit a brief, which was received on August 13, 2012. After reviewing the record, I have determined that no further proceedings in this matter are warranted. The record is now closed.

JURISDICTION

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

ISSUE

Whether this Office may exercise jurisdiction over this matter.

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.

FINDINGS OF FACTS, ANALYSIS, AND CONCLUSIONS OF LAW

According to a letter addressed to Employee, dated April 1, 2010 ("Termination Letter"), Employee was informed that the effective date of her termination was April 2, 2010. The Termination Letter also advised Employee of her right to appeal her termination "either through the negotiated grievance procedure set forth in the Collective bargaining Agreement between the Agency and the FOP, or appeal to [OEA]." The Termination Letter specifically stated that Employee could "elect only one (1) of the grievance procedures. Once you have selected a grievance procedure [it] is binding."[1]

Agency submitted documents showing that on April 13, 2010, Employee filed a grievance contesting her removal of service through her Union.[2] As was noted above, Employee filed her Petition for Appeal with OEA on April 30, 2010. In a statement accompanying her request for an extension of time, Employee acknowledges that she filed a grievance with her Union before she filed her Petition for Appeal.[3]

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[1] *See* Agency Answer, Tab 8 (May 24, 2010).
[2] *Id.*, Tab 9.
[3] *See* Employee's Statement and Request for Extension of Time (August 7, 2012).

Title 1, Chapter 6, Subchapter VI of the D.C. Official Code (2001), a portion of the CMPA, sets forth the law governing this Office. D.C. Official Code § 1-606.03 ("Appeal procedures") reads in pertinent part as follows:

> (a) An employee may appeal [to this Office] a final agency decision affecting a performance rating which results in removal of the employee . . ., an adverse action for cause that results in removal, reduction in grade, or suspension for 10 days or more . . ., or a reduction in force [RIF]. . . .

Additionally, D.C. Official Code § 1-616.52 (d)-(f), 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 for employees in a bargaining unit represented by a labor organization. If an employee does not pay dues or a service fee to the labor organization, he or she shall pay all reasonable costs to the labor organization incurred in representing such employee.
>
> (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)

Employee had concurrent avenues available for reviewing Agency's adverse action- file a grievance through her CBA or file an appeal with OEA. However, an aggrieved employee cannot simultaneously review a matter before OEA and through a negotiated grievance procedure.[4] Further, once an Employee selects an avenue of review, either through OEA or the Union's negotiated grievance procedure, then the possibility of review via the other route is no longer available.[5] I find that Employee elected to appeal her termination by filing a grievance under the CBA through her Union, prior to filing her Petition for Appeal with OEA, which caused a waiver of her rights to be heard by this Office.

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[4] *See* D.C. Official Code § 1-616.52(e) (2000).

[5] *See* D.C. Official Code § 1-616.52(f) (2000); *Dyrus Hines v. D.C. Public Schools*, OEA Matter No. J-0090-11 (June 6, 2011); *Raquel Beaifort v. Office of the Attorney General*, OEA Matter No. 1601-0051-11 (July 12, 2011); *Carla Richardson v. D.C. Department of mental Health*, OEA Matter No. 1601-0054-11 (August 12, 2011); *Stephen Whitfield v. D.C. Public Schools*, OEA Matter No. 1601-0016-12 (January 9, 2012).

Consequently, I further find that OEA lack jurisdiction over the instant matter. This Office has no authority to review issues beyond its jurisdiction.[6] Accordingly, I am unable to address the factual merits, if any, of this matter.

ORDER

Based on the foregoing, it is hereby **ORDERED** that this matter be **DISMISSED** for lack of jurisdiction.

FOR THE OFFICE:

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STEPHANIE N. HARRIS, Esq.
Administrative Judge

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