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**THE DISTRICT OF COLUMBIA**  
**BEFORE**  
**THE OFFICE OF EMPLOYEE APPEALS**

_____	)	
In the Matter of:	)	
	)	
DYRUS HINES,	)	
Employee	)	OEA Matter No. J-0090-11
	)	
v.	)	Date of Issuance: June 6, 2011
	)	
D.C. PUBLIC SCHOOLS,	)	MONICA DOHNJI, Esq.
Agency	)	Administrative Judge
_____	)	
Dyrus Hines, Employee, <i>pro se</i>		
Sara White, Esq., Agency Representative		

**INITIAL DECISION**

**INTRODUCTION AND PROCEDURAL BACKGROUND**

On March 24, 2011, Dyrus Hines (“Employee”) filed a petition for appeal with the Office of Employee Appeals (“OEA”) contesting the D.C. Public School’s (“Agency”) decision to terminate him. At the time of his termination, Employee was a Custodian at the Raymond Educational Center. Employee was terminated for receiving an “ineffective” rating under the **D.C. Public Schools’ Effectiveness Assessment System for School-Based Personnel**. On July 27, 2010, Employee filed a grievance through his union.<sup>1</sup> Agency was notified on March 28, 2011, of Employee’s petition for appeal and on April 28, 2011, Agency filed an answer to the appeal requesting that Employee’s appeal be dismissed for lack of jurisdiction.

This matter was assigned to me on or about June 02, 2011. While the termination notice<sup>2</sup> from Agency is dated July 23, 2010 and marked as “Received” on July 28, 2010, Employee noted in his petition for appeal that he received written notice of the final decision in June of 2010.<sup>3</sup> The effective date of Employee’s termination was July 30, 2010. Additionally, the notice advised Employee of his rights to file an appeal to his termination with OEA<sup>4</sup> or pursuant to the

<sup>1</sup> See Grievance Reporting Form (July, 27, 2010).

<sup>2</sup> Notice of “ineffective” IMPACT Rating and Termination (July, 23, 2010).

<sup>3</sup> See Petition for Appeal pg. 3, #20.

<sup>4</sup> The notice informed Employee of his rights to file an appeal with OEA within 30 days of his termination effective date. The notice goes on to provide Employee with OEA address, a copy of OEA rules and forms.

Collective Bargaining Agreement between the Agency and his Union, **but not both**. Because this matter could be decided on the basis of the above documents of record, no proceedings were conducted. The record is closed.

### JURISDICTION

The jurisdiction of this Office, pursuant to *D.C. Official Code, § 1-606.03 (2001)*, has not been established.

### ISSUE

Whether this appeal should be dismissed for lack of jurisdiction.

### ANALYSIS AND CONCLUSION

There is a question as to whether OEA has jurisdiction over this appeal. Employee has the burden of proof on issues of jurisdiction.<sup>5</sup> And Employee must meet this burden by a “preponderance of the evidence” which is defined as 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.”<sup>6</sup> “District government employee shall initiate an appeal by filing a petition for appeal with the OEA. The petition for appeal must be filed within 30 calendar days of the effective date of the action being appealed.”<sup>7</sup> The District of Columbia Court of Appeals has held that the time limit for filing an appeal with an administrative adjudicatory agency such as this Office is mandatory and jurisdictional in nature.<sup>8</sup> Also, while this Office has held that the statutory 30 days time limit for filing an appeal in this Office is mandatory and jurisdictional in nature,<sup>9</sup> there is an exception whereby, a late filing will be excused if an agency fails to provide the employee with “adequate notice of its decision and the right to contest the decision through an appeal.”<sup>10</sup> Here, Employee’s termination was effective July 30, 2010. He had 30 days from this date to file an appeal with OEA, which he didn’t. He filed his appeal on March 24, 2011, 236 days from the termination effective date. Because Agency complied with OEA Rule 605.1 when it terminated Employee, Employee’s appeal is untimely and does not fall within the exception to the mandatory 30 days limit for filing an appeal with OEA.

Additionally, in his petition for appeal, Employee stated that he filed a grievance regarding his removal with the International Brotherhood of Teamsters, Local Union 639 on July 27, 2010. D.C. Official Code (2001) §1-616.52 reads in pertinent part as follows:

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<sup>5</sup> OEA Rule 629.2, 46 D.C. Reg. 9317 (1999).

<sup>6</sup> OEA Rule 629.1

<sup>7</sup> DC Official Code 1-606.03

<sup>8</sup> See, e.g., *District of Columbia Public Employee Relations Board v. District of Columbia Metropolitan Police Department*, 593 A.2d 641, 643 (D.C. 1991); *Thomas v. District of Columbia Department of Employment Services*, 490 A.2d 1162, 1164 (D.C. 1985).

<sup>9</sup> *King v. Department of Human Services*, OEA Matter No. J-0187-99 (November 30, 1999) \_\_ D.C. Reg. \_\_ ( ).

<sup>10</sup> OEA Rule 605.1; See also *Rebello v. D.C. Public Schools*, OEA Matter No. 2401-0202-04, Opinion and Order on Petition for Review (June 27, 2008) citing *McLeod v. D.C. Public Schools*, OEA Matter No. J-0024-00 (May 5, 2003) \_\_ D.C. Reg. \_\_ ( ); *Jones v. D.C. Public Schools, Department of Transportation*, OEA Matter No. 1601-0077-09, Opinion and Order on Petition for Review (May 23, 2011).

(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.

(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).

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**. Employee elected to appeal his termination by filing a grievance under the collective bargaining agreement between Agency and his local union several months before he filed his petition for appeal with OEA. 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 these reasons, 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:

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MONICA DOHNJI, Esq.  
Administrative Judge