Minutes
D.C. OFFICE OF EMPLOYEE APPEALS (OEA) BOARD MEETING
Tuesday, May 10, 2016
Location: 1100 4th Street, SW, Suite 380E
Washington, DC 20024

Persons Present: Lasheka Brown (OEA General Counsel), Sheila Barfield (OEA Executive Director), Sommer Murphy (OEA Acting Deputy General Counsel), Sheree Price (OEA Board Interim Chair), A. Gilbert Douglass (OEA Board Member), Patricia Hobson Wilson (OEA Board Member), Vera Abbott (OEA Board Member), Abraham Davis (Member of the Public), and Yordanos Sium (Member of the Public).

I. Call to Order – Sheree Price called the meeting to order at 11:06 a.m.

II. Ascertainment of Quorum – There was a quorum of Board members present for the office to conduct business.

III. Adoption of Agenda – A. Gilbert Douglass moved to adopt the Agenda. Vera Abbott seconded the motion. The Agenda was adopted by the Board.

IV. Minutes from Previous Meeting – The March 29, 2016 meeting minutes were reviewed. There were no corrections. The minutes were accepted.

V. New Business

A. Public Comments on Petition for Review

1. Yordanos Sium provided that she was put back to work five days after her alleged accident. She also explained that Agency could not prove that she committed the accident because there were no license plates visible on the video recording. Therefore, she asked that the Board reinstate her.

B. Summary of Cases

1. **Thomas Pierre v. D.C. Public Schools, OEA Matter No. 1601-0186-12 –** On June 12, 2012, Employee received a notice of termination from Agency removing him because of a conviction of a "misdemeanor, when the conviction is based on conduct that affects adversely the employee's or agency's ability to perform effectively." On August 31, 2012, Employee filed a Petition for Appeal with the OEA. He argued that his conviction had no impact on his or Agency's performance. Employee contended that he received an evaluation score of "highly effective" at the time of his conviction. Agency filed its answer to Employee's Petition for Appeal on October 1, 2012. It explained that "Employee's conviction was based on conduct that would adversely affect his ability and the Agency's ability to perform effectively." Therefore, it requested that an evidentiary hearing be held in this case.

   On January 24, 2014, the OEA Administrative Judge ("AJ") issued an Order Scheduling a Status Conference on March 4, 2014. On March 11, 2014, the AJ issued an Order Rescheduling the Status Conference. The Status Conference was rescheduled for June 18, 2014.

In a Show Cause Order dated June 18, 2014, the AJ provided that Agency failed to appear at the conference. Therefore, he requested that Agency offer a Statement for Good Cause by June 25, 2014, for its failure to appear.

On June 25, 2014, Agency's counsel filed its Good Cause Statement. She provided that she attended the June 18, 2014 Status Conference. However, after waiting for thirty minutes, she left. Agency's counsel claimed that before she left, she and Employee's counsel agreed to a continuance of the Status Conference.

After another an August 4, 2014 status conference, the AJ issued an Order Requesting Briefs. Agency's brief was due on September 5, 2014, and Employee's reply was due on October 3, 2014. Agency failed to submit its brief. Therefore, a Show Cause Order was sent requesting both its brief and a Good Cause Statement for failing to meet the original filing deadline. Both filings were due by September 26, 2014. Agency failed to respond to the AJ's order; thus, he issued his Initial Decision on September 30, 2014. He provided that he was more than lenient with Agency's counsel's conduct of failing to meet the ordered deadlines. However, Agency still had not filed its brief nearly one month after the deadline. The AJ held that Agency failed to exercise due diligence and take reasonable steps to defend its action against Employee. Hence, he ordered that Employee be reinstated to his position with back pay and benefits.

On November 4, 2014, Agency filed a Petition for Review with the OEA Board. Agency's counsel contends that she failed to file its brief on September 5, 2014, because she was out of the office due to a family emergency. She claims that she informed Employee's counsel that she would file her brief by September 10, 2014. Agency's Counsel asserts that while she intended to file the brief by September 10th, she fell behind due to family emergencies and illnesses. Moreover, she provides that she did not receive the AJ's Show Cause Order in a timely fashion and only had one day to respond. Additionally, Agency's counsel submits that she was out of the office for Rosh Hashana, a Jewish holiday. Agency's counsel provides on Petition for Review that the AJ was not aware of any of the issues she raised as reasons she failed to comply with his orders. Thus, she considers her reasons new and material evidence and requests that the Board remand the matter to the AJ to consider the case on its merits.

Employee filed a response to Agency's Petition for Review on December 19, 2014. He argues that Agency offered no grounds to grant its Petition for Review. Employee implies that Agency did not make good use of her time to file her brief by the deadline. Additionally, he explains that Agency failed to actually file a Motion for an Extension of Time to file her brief and simply emailed the AJ to inform him that she would file it by September 10th. However, Employee explains that Agency failed to meet her own self-imposed deadline. Accordingly, he requests that the Board deny Agency's Petition for Review.

Nearly one year after filing its Petition for Review, Agency filed a Supplement to its Petition on July 30, 2015. It raises several arguments regarding the specifics of Employee's criminal charges and subsequent conviction. Agency then concludes its filing by stating that ". . . based on the Employee's conviction for indecent exposure[,] [it] is unwilling to reinstate the Employee."

2. **Carolyn Reynolds v. D.C. Public Schools, OEA Matter No. 1601-0133-11 –** Agency issued a final notice of removal to Employee on July 15, 2011. Her removal was effective on July 29, 2011. The notice provided that Employee was being removed from her position because she received a "Minimally Effective" rating under IMPACT, Agency's performance evaluation system, for both the 2009-2010 and 2010-2011 school years.

   Prior to conducting an evidentiary hearing, OEA Administrative Judge ("AJ") Quander ordered the parties to submit Pre-hearing Statements regarding Employee's IMPACT evaluations. Agency made the same arguments it presented in its Answer to Employee's Petition for Appeal. Employee argued that prior to her termination, she sustained a workplace injury for which she requested a reasonable accommodation. She claimed that she was removed from her position as a result of her injury. Moreover, she alleged that Agency never provided to her, or her union, any documentation stating that if she received two consecutive "Minimally Effective" ratings, then she would be terminated. Employee also contended that Agency lacked any documentary evidence that she signed to prove that she was aware of the IMPACT removal terms. Finally, Employee asserted that Agency failed to provide feedback and development plans before removing her from her position. Therefore, she requested that she be reinstated with back pay and benefits.

   A new AJ was assigned to this matter after Judge Quander left the employ of OEA. Administrative Judge Lim was assigned the case on January 27, 2014. He held a Status Conference on March 10, 2014. On March 11, 2014, AJ Lim issued a Post-Status Conference Order which provided that both parties were finalizing their witness lists and engaging in settlement talks. As a result, he ordered the parties to submit status reports on their settlement negotiations.

   From March until August 2014, the parties provided periodic settlement status reports. However, on August 19, 2014, AJ Lim issued an order requesting briefs on whether the case should be dismissed because Employee received worker's compensation benefits since her termination.

   Employee submitted her brief. In it, she specifically requested that the AJ allow her to present evidence regarding her IMPACT evaluation. Employee also asked that a hearing be rescheduled to allow her the opportunity to present evidence that Agency lacked cause to remove her through IMPACT.

   The AJ issued his Initial Decision on October 1, 2014. He held that Agency had just cause to remove Employee because it adhered to the evaluation process. Additionally, the AJ found that Employee did not prove that the Principal's comments in her evaluation were untrue, and she failed to provide any evidence that directly contradicted the Principal's factual findings. As for Employee's argument that she should have been allowed to present her proof at a hearing, the AJ ruled that a hearing is only warranted if she offered evidence that directly contradicted the statements provided by the Principal.

   Employee filed a Petition for Review with the OEA Board on November 12, 2014. She asserts that Judge Lim dismissed her appeal without permitting her the opportunity to demonstrate that her evaluation was a pre-text to her termination. She also argues that Agency engaged in disparate treatment through its failure to provide her with a reasonable accommodation for her injury. Employee provides that she

was not allowed to present her defense during the evidentiary hearing, in accordance with the law. Accordingly, she requests that the matter be remanded and rescheduled for a hearing.

3. **Cedric Crawley v. Department of Youth Rehabilitation Services, OEA Matter No. 2401-0011-14 –** On September 6, 2013, Agency issued a final Reduction-in-force ("RIF") notice to Employee removing him from his position. Employee filed a Petition for Appeal with the Office of Employee Appeals ("OEA") on October 24, 2013. He argued that he should not have been terminated because he had more seniority than the other Program Analysts within Agency. Employee also asserted that he was targeted for the RIF action because he was the leader of a labor committee.

   Agency filed its Answer to Employee's Petition for Appeal on December 11, 2013. It contended that it provided Employee with thirty days' notice of the RIF. Additionally, Agency explained that because Employee was in a single-person competitive level, it did not need to provide him with one round of lateral competition. Moreover, it provided that Employee's claims regarding him being targeted were baseless and lacked merit. Therefore, it requested that Employee's appeal be dismissed.

   The AJ issued her Initial Decision in this matter on October 8, 2014. She held that Employee was in a single-person competitive level. Therefore, Agency was not required to provide her with one round of lateral competition in accordance with D.C. Official Code § 1-624.08(e). As for the thirty-day notice, the AJ found that Agency only provided twenty nine days' notice. Accordingly, she ordered that Agency provide one day of back pay and benefits to Employee for the error.

   Employee disagreed with the Initial Decision and filed a Petition for Review with the OEA Board on November 12, 2014. He makes many of the same arguments presented to the AJ on Petition for Appeal. Additionally, Employee argues that Agency did not provide proper notice for the RIF action and that the AJ cited to the wrong statutory language in her analysis of one round of lateral competition. Moreover, Employee claims that OEA does have jurisdiction to address his claims that Agency violated the Collective Bargaining Agreement. Thus, he requested that the Board grant his Petition for Review.

   On December 8, 2014, Agency filed a Response to Employee's Petition. It asserts that the AJ accurately ruled that one round of lateral competition was not required in this matter. Furthermore, Agency agreed with the AJ regarding its procedural error of not providing Employee with the requisite thirty days' notice. Accordingly, it conceded that it should pay the one day of back pay and benefits to Employee. As for Employee's argument regarding the CBA, Agency explained that singular claims regarding CBA violations fall under the Public Employee's Relations Board's ("PERB") jurisdiction and not OEA's, as the AJ ruled. Thus, it asked that Employee's Petition for Review be denied.

4. **Yordanos Sium v. Office of State Superintendent of Education, OEA Matter No. 1601-0135-13 –** Agency issued a final notice of removal on April 12, 2011. The notice provided that Employee was terminated for "neglect of duty – failure to follow instructions or observe precautions regarding safety: failure to carry out assigned

tasks; careless or negligent work habits." Agency alleged that Employee was involved in an accident while driving a school bus.

Before the AJ issued her Initial Decision, the AJ requested that each party submit briefs addressing whether Agency's decision to terminate Employee was in accordance with District statutes, laws, and regulations and whether the penalty of termination was appropriate. In its brief, Agency provided that when initially speaking with the investigator regarding the accident, Employee denied ever hitting the car. According to Agency, it was not until she was informed that there was a witness and a video recording of the accident that Employee changed her story and admitted to committing the accident. It noted that this was Employee's second, preventable accident within a twelve-month period. Agency explained that the investigator concluded that Employee failed to report a collision; backed up the bus without assistance from the attendant; fled the scene; and lied about the accident until presented with evidence that it took place. As a result, it reasoned that Employee failed to follow the policies and procedures for handling a collision, and it had cause to remove her. Moreover, Agency asserted that removal was within the range of penalties for neglect of duty. Therefore, it contended that Employee's Petition for Appeal should be denied.

In her brief, Employee noted that she was cleared to return to work by Agency after the accident. Therefore, she was entrusted with the safety of students and District personnel. Moreover, she claimed that Agency took more than the required ninety days to terminate her after the accident. Additionally, Employee opined that there was no forensic test of paint samples which confirmed the collision of the bus and vehicle. Further, she provided that Agency did not perform a drug or alcohol testing on her after the accident. Thus, Employee contended that she did not neglect her duties. As for the penalty, Employee provided that the range of penalty for this offense was reprimand to removal. However, Agency did not prove that it selected the appropriate penalty.

The AJ issued her Initial Decision on October 10, 2014. She held that Employee was negligent in her duties because she aware of, but failed to report, the accident and did not follow the accident policy as provided in Agency's Policy and Procedure Manual. The AJ went on to find that after watching the video of the accident, any reasonable person would have felt the impact from the collision. However, Employee did not get off the school bus to assess the damage; she instead left the scene.

As for Employee's claim that she was cleared to return to work, the AJ reasoned that just because she returned to her normal duties pending an official decision, does not mean that Employee was cleared of the accident. Similarly, the AJ held that Employee's ninety-day rule argument lacked merit. She noted that if Agency was indeed held to a ninety-day rule, the accident occurred on January 5, 2011, and Agency issued its proposed notice of termination on March 28, 2011. Therefore, it was within the ninety-day period. Finally, the AJ ruled that because removal was within the range of penalty for neglect of duty, Agency's removal of Employee was appropriate.

On November 13, 2014, Employee filed a Petition for Review with the OEA Board. She argues that the AJ did not examine the photographs and video of the accident to test their evidentiary value through a hearing. Moreover, she asserts that she did not follow Agency's policy for reporting an accident because she was unaware that the

accident occurred. Additionally, Employee contends that absent mathematical formulas, the AJ could not determine that she could have felt the impact of the accident. Further, she claims that Agency failed to provide a clearance certificate when she was allowed to return to work after ten days. Therefore, Employee requests that the matter be remanded for the AJ to conduct an evidentiary hearing or alternatively, that Employee be reinstated to her position with back pay and benefits.

5. **Michael Roney v. Department of Transportation, OEA Matter No. 1601-0057-12** - On January 10, 2012, Agency removed Employee from his position for "any on-duty or employment-related act or omission that an employee knew or should reasonably have known is a violation of law" and "any on-duty or employment-related act or omission that interferes with the efficiency and integrity of government operations, to include neglect of duty." He appealed to OEA on February 3, 2012.

   After the parties filed their Petition for Appeal and response with OEA, the AJ held a Status Conference on March 28, 2014. Subsequently, a Post-Status Conference Order was issued requesting that the parties submit briefs addressing whether Agency had cause for the adverse action taken against Employee and if removal was the appropriate penalty. Agency's brief was due on April 25, 2014, and Employee's was due on May 23, 2014.

   Agency timely submitted its brief. However, Employee failed to provide a brief by the deadline. Additionally, no motion for an extension was filed by Employee. As a result, the AJ issued a Show Cause Order on June 2, 2014, requesting that Employee submit a good cause statement for failing to submit a response. The order noted that "failure to respond in a timely fashion to this order, or failure to establish good cause for your failure to appear at the Prehearing Conference, may result in the imposition of sanctions pursuant to OEA Rule 621. . . including dismissal of [your] appeal."

   On June 12, 2014, the AJ issued his Initial Decision in this matter. He provided that Employee failed to submit his brief and failed to respond to the Show Cause Order. Therefore, in accordance with OEA Rule 621, Employee's appeal was dismissed for failure to prosecute.

   Employee filed a Motion to Re-open the matter on March 15, 2016. He argues that he was represented by the President of AFGE Local 1975 at the Status Conference. Employee asserts that he understood that the brief would be filed with OEA by his Representative. However, it was not filed. Employee acknowledges that no Petition for Review was filed with the OEA Board or in Superior Court for the District of Columbia. Thus, the Initial Decision became final in this matter.

   On November 21, 2014, Employee filed a complaint with PERB. In his complaint, he alleged that his Representative committed an unfair labor practice and that he was deprived of his right to pursue relief at OEA. The PERB Board found that Employee established the unfair labor practice. Therefore, PERB ordered that the necessary steps be taken to reinstate Employee's appeal before OEA. Hence, Employee filed a Motion to Re-open the Matter before OEA.

   On March 24, 2016, Agency filed its Answer to Employee's motion. It argues that Employee has essentially filed a Petition for Review which should be dismissed because it is untimely. Moreover, Agency contends that Beins, Axelrod, P.C. did not enter its appearance at OEA as representatives for Employee. Therefore, the firm

cannot submit documents on behalf of Employee. Finally, Agency opines that the ruling at PERB has no bearing on the finality of OEA's Initial Decision. As a result, it requests that the Petition for Review be dismissed.

6. **Michael Gamboa v. Department of Youth Rehabilitation Services, OEA Matter No. J-0082-14 –** On September 6, 2013, Agency issued a written notice to Employee informing him that he was being separated from his position pursuant to a RIF. Employee filed a Petition for Appeal with OEA on June 6, 2014. In his appeal, Employee argued that he should have been offered a comparable position after being notified of the RIF. Employee also contended that Agency discriminated against him because of his age and his disability.

   The matter was assigned to an AJ for adjudication on June 13, 2014. On June 20, 2014, the AJ issued an Order directing Employee to submit a written brief addressing whether his appeal should be dismissed for lack of jurisdiction. Employee submitted a Memorandum in Support of Jurisdiction on July 8, 2014. He argued that OEA has jurisdiction over the instant appeal pursuant to D.C. Official Code § 1-606.03. Employee stated that he was not challenging the RIF action itself, but he instead submitted that Agency failed to afford him priority placement as required under Chapter 24 of the District Personnel Manal ("DPM").

   An Initial Decision ("ID") was issued on November 10, 2014. The AJ held that Employee failed to meet his burden of proof in establishing jurisdiction before this Office. Specifically, the AJ cited to OEA Rule 604.2, which requires that a Petition for Appeal be filed within thirty days after the effective date of the appealed agency action. According to the AJ, Employee's appeal was filed approximately nine months after the effective date of the RIF. As a result, Employee's Petition for Appeal was dismissed for lack of jurisdiction.

   Employee subsequently filed a Petition for Review on December 17, 2014. In his petition, he reiterates the same arguments that were presented in his July 8, 2014 Memorandum in Support of Jurisdiction. He asks the Board to grant his Petition for Review so that it can be remanded to the AJ for adjudication on the substantive arguments.

7. **Lynn Butler v. Metropolitan Police Department, OEA Matter No. 2401-0029-12 –** On September 14, 2011, Agency notified Employee that she was being separated from her position pursuant to a RIF. Employee filed a Petition for Appeal with OEA on November 10, 2011. In her appeal, Employee argued that MPD improperly conducted the RIF in violation of D.C. Municipal Regulation ("DCMR") §§ 2403, 2422, and 2423. Specifically, she stated that Agency failed to properly define the RIF competitive levels and the retention standing of affected employees. Employee also contended that Agency was required to engage in Impact and Implementation bargaining prior to the RIF under the terms of the Collective Bargaining Agreement between MPD and her union.

   Agency filed its answer to the Petition for Appeal on December 13, 2011. It denied all of the allegations that Employee presented in her appeal. An AJ was assigned to the matter on August 9, 2013. On November 18, 2013, the AJ held a Status Conference for the purpose of assessing the parties' arguments. Both Employee and Agency were ordered to submit legal briefs addressing whether the RIF should be analyzed under D.C. Official Code § 1-624.02 or D.C. Official Code § 1-624.08.

After reviewing the parties' submissions, the AJ determined that D.C. Official Code § 1-624.02 was the appropriate statute to utilize in evaluating the instant RIF. The parties were subsequently ordered to submit briefs addressing whether Agency separated Employee from service in accordance with all applicable rules, laws, and regulations.

The AJ issued an ID on October 28, 2014. He held that Agency provided Employee with the requisite thirty (30) days' written notice prior to the effective date of her termination. The AJ further stated that D.C. Official Code § 1-624.02(a)(2) was inapplicable in this case because Employee was the only Clerical Assistant in her competitive level and was, therefore, not entitled to one round of lateral competition. However, the AJ determined that Employee's RIF separation was unlawful because MPD failed to produce the D.C. City Administrator's signature for approval prior to implementing the RIF, which violated D.C. Personnel Regulation ("DPR") § 2406.4 and District Personnel Manual Instruction No. 24-1. As a result, the AJ reversed Agency's RIF action and ordered that Employee be reinstated to her last position of record with back pay and benefits.

Agency filed a Petition for Review with OEA's Board on December 2, 2014, arguing that the Initial Decision should be reversed on the ground that new and material evidence is available, that despite due diligence, was not available when the record was closed on October 28, 2014. According to Agency, the Realignment Approval Form ("RAF") that included the signature of the City Administrator, was not located until October 30, 2014, and reflects that it was signed on September 13, 2011. Agency states that it attempted, on several occasions, to locate the signed RAF prior to the issuance of the AJ's decision, but the document could not be located. In support thereof, Agency offers the affidavit of ("Norman"), who worked as a Human Resource Specialist for the Department of Human Resources ("DCHR") at the time of the 2011 RIF. Norman claims that Agency did, in fact, attempt to retrieve a copy of the RAF prior to the closing of the record. As such, Agency requests that the Board grant its Petition for Review and reverse the Initial Decision.

Employee filed an Answer to Agency's Petition for Review on January 6, 2015. She requests that Agency's Petition for Review be denied because it failed to satisfactorily authenticate the RAF that was submitted after the issuance of the AJ's Initial Decision. Employee also argues that Agency has failed to establish that it exercised due diligence in attempting to locate the RAF. Therefore, Employee asks that this Board uphold the AJ's decision and reinstate her to her previous position of record.

8. **Wanderline Benjamin-Banks v. Metropolitan Police Department, OEA Matter No. 2401-0027-12 –** On September 14, 2011, Agency notified Employee that was she was being separated from her position pursuant to a RIF. Employee filed a Petition for Appeal with OEA on November 10, 2011. In her appeal, Employee argued that Agency erred in conducting the RIF because it was not initiated for the purpose of a budget shortfall, realignment, or reorganization, as required under the applicable DCMR. She further contended that Agency failed to provide the affected employees with an opportunity to apply for other positions with MPD.

   Agency filed its answer on December 13, 2011, denying the allegations presented in Employee's Petition for Appeal. An AJ was assigned the case on August 9, 2013. On November 18, 2013, the AJ held a Status Conference for the purpose of assessing the

parties' arguments. Both Employee and Agency were ordered to submit legal briefs addressing whether the RIF should be analyzed under D.C. Official Code § 1-624.02 or D.C. Official Code § 1-624.08. After reviewing the briefs, the AJ determined that D.C. Official Code § 1-624.02 was the appropriate statute to utilize in evaluating Agency's RIF action. The parties were subsequently ordered to submit briefs addressing whether Agency separated Employee from service in accordance with all applicable rules, laws, and regulations.

The AJ issued an ID on October 28, 2014. He held that Agency provided Employee with thirty (30) days' written notice prior to the effective date of her termination, but stated that D.C. Official Code § 1-624.02(a)(2) was inapplicable in this case because Employee was the only Computer Programmer Analysis in her competitive level and was, therefore, not entitled to one round of lateral competition. However, the AJ determined that Employee's separation from service was unlawful because MPD failed to procure the D.C. City Administrator's signature for approval prior to implementing the RIF, in violation of DPR § 2406.4 and DPM Instruction No. 24-1. The AJ, therefore, reversed the RIF action and ordered Agency to reinstate Employee to her last position of record with back pay and benefits.

Agency filed a Petition for Review with OEA's Board on December 2, 2014. In its petition, Agency argues that the Initial Decision should be reversed because new and material evidence is now available that despite due diligence, was not available when the record was closed by the AJ. It contends that it exercised due diligence in an effort to produce the RAF with the City Administrator's signature for submission prior to the issuance of the Initial Decision. In support thereof, Agency submits the affidavit of Norman, who worked as a Human Resource Specialist for the DCHR at the time of the 2011 RIF. Norman claims that Agency attempted to retrieve a copy of the RAF prior to the issuance of the AJ's decision. As such, Agency requests that the Board grant its Petition for Review and reverse the Initial Decision.

Employee filed an Answer to Agency's Petition for Review on January 6, 2015. She requests that Agency's Petition for Review be denied because it failed to satisfactorily authenticate the Realignment Form that was submitted after the issuance of the AJ's Initial Decision. Employee argues that Agency failed to establish that due diligence was exercised in an effort to locate the RAF. Therefore, he asks that this Board uphold the AJ's decision and reinstate him to his previous position of record.

9. **Gina Vaughn v. Metropolitan Police Department, OEA Matter No. 1601-0020-12 –** On September 14, 2011, Agency notified Employee that she was being separated from her position pursuant to a RIF. Employee filed a Petition for Appeal with OEA on November 10, 2011. In her appeal, Employee argued that Agency improperly conducted the RIF because it was not initiated for the purpose of the budget, realignment, or reorganization as required under Title 6, § 2401 of the DCMR. She also contended that Agency failed to take steps to minimize the adverse impacts that the RIF would have on affected employees.

   Agency filed its answer to the Petition for Appeal on December 13, 2011. It denied the allegations presented in Employee's appeal and requested that an evidentiary hearing be held in this matter. An AJ was assigned to the case on August 2, 2013. On August 8, 2013, the AJ issued an order, scheduling a prehearing conference for the purpose of assessing the parties' arguments. The conference was rescheduled for

October 2, 2013, due to scheduling conflicts. The AJ subsequently ordered the parties to submit briefs addressing whether the RIF should be analyzed under D.C. Official Code § 1-624.02 or D.C. Official Code § 1-624.08. After reviewing the parties' submissions, the AJ determined that D.C. Official Code § 1-624.02 was the appropriate statute to utilize in evaluating the instant RIF. On October 22, 2014, the AJ issued an order requesting briefs that addressed whether Agency's RIF action was done in accordance with all applicable rules, laws, and regulations.

The AJ issued an ID on December 11, 2014. He held that Employee's separation from service was based on inaccurate documents. Specifically, the AJ noted that Employee's official position of record, as evidenced by her Standard Form 50 ("SF-50"), was a Computer Specialist, CS-334-12, Step 8. However, the September 14, 2011 RIF letter provided by Agency listed Employee's competitive level as DS-0034-12-10-N. The AJ, therefore, concluded that Employee was improperly separated from service from a position that she did not officially occupy. The RIF action was reversed, and Employee was ordered to be reinstated with back pay and benefits.

Agency filed a Petition for Review with OEA's Board on January 15, 2015. In its petition, Agency argues that the AJ should have afforded it an opportunity to provide a response regarding the discrepancies in Employee's RIF documents. According to Agency, Employee did not submit a brief or response brief as was directed in the AJ's October 22, 2014 order. Thus, it was unable to respond to any of Employee's arguments or the discrepancies that were raised by the AJ in the Initial Decision. Agency posits that if it had been given an opportunity to respond, it could present evidence to prove that any differences between the retention register and Employee's SF-50 constituted a harmless error. It further contends that the AJ's failure to allow a response to the "discrepancy issue" should result in the Initial Decision being reversed. In the alternative, Agency requests that the matter be remanded for further proceedings.

Employee filed an Opposition to Agency's Petition for Review on February 19, 2015. She contends that Agency committed a reversible error when it included her in the incorrect competitive level than was designated by her position description. According to Employee, Agency should have allowed her to compete in the DS-0334-12-10-N level, and not the DS-0334-12-07 level. Next, Employee submits that her termination was improper because the Administrative Order that authorized the 2011 RIF did not identify her position number as one that would be eliminated. Employee, therefore, asks this Board to uphold the Initial Decision and find that Agency committed reversible error in separating her from service. In the alternative, she asks that this matter be remanded to the AJ for the purpose of correcting the mistake of fact and to rule on the additional facts and evidence presented.

C. Deliberations - After the summaries were provided, Vera Abbott moved that the meeting be closed for deliberations. Patricia Hobson Wilson seconded the motion. All Board members voted in favor of closing the meeting. Sheree Price stated that, in accordance with D.C. Official Code § 2-575(b)(13), the meeting was closed for deliberations.

D. Open Portion of Meeting Resumed

E. Final Votes –Sheree Price provided that the Board considered all of the matters. The following represents the final votes for each case:

1. Thomas Pierre v. D.C. Public Schools

MEMBER	GRANTED	DENIED	REMANDED	DISMISSED
Sheree Price		X		
Vera Abbott		X		
A. Gilbert Douglass, Jr.	X			
Patricia Hobson Wilson		X		

Three Board Members voted in favor of denying Agency's Petition for Review. Therefore, the petition was denied.

2. Carolyn Reynolds v. D.C. Public Schools

MEMBER	GRANTED	DENIED	REMANDED	DISMISSED
Sheree Price		X		
Vera Abbott		X		
A. Gilbert Douglass, Jr.		X		
Patricia Hobson Wilson		X		

Four Board Members voted in favor of denying Employee's Petition for Review. Therefore, the petition was denied.

3. Cedric Crawley v. Department of Youth Rehabilitation Services

MEMBER	GRANTED	DENIED	REMANDED	DISMISSED
Sheree Price		X		
Vera Abbott		X		
A. Gilbert Douglass, Jr.		X		
Patricia Hobson Wilson		X		

Four Board Members voted in favor of denying Employee's Petition for Review. Therefore, the petition was denied.

4. Yordanos Sium v. Office of State Superintendent of Education

MEMBER	GRANTED	DENIED	REMANDED	DISMISSED
Sheree Price		X		
Vera Abbott	X			
A. Gilbert Douglass, Jr.		X		
Patricia Hobson Wilson		X		

Three Members voted in favor of denying Employee's Petition for Review. Therefore, the petition was denied.

5. Michael Roney v. Department of Transportation

MEMBER	GRANTED	DENIED	REMANDED	DISMISSED
Sheree Price				X
Vera Abbott				X
A. Gilbert Douglass, Jr.				X
Patricia Hobson Wilson				X

Four Board Members voted in favor of dismissing Employee's Petition for Review. Therefore, the petition was dismissed.

6. Michael Gamboa v. Department of Youth Rehabilitation Services

MEMBER	GRANTED	DENIED	REMANDED	DISMISSED
Sheree Price		X		
Vera Abbott		X		
A. Gilbert Douglass, Jr.		X		
Patricia Hobson Wilson		X		

Four Board Members voted in favor of denying Employee's Petition for Review. Therefore, the petition was denied.

7. Lynn Butler v. Metropolitan Police Department (Agency's Petition for Review)

MEMBER	GRANTED	DENIED	REMANDED	DISMISSED
Sheree Price			X	
Vera Abbott			X	
A. Gilbert Douglass, Jr.			X	
Patricia Hobson Wilson			X	

Four Board Members voted in favor of remanding Agency's Petition for Review. Therefore, the petition was remanded for further determinations.

Lynn Butler v. Metropolitan Police Department (Employee's Limited Petition for Review)

MEMBER	GRANTED	DENIED	REMANDED	DISMISSED
Sheree Price		X		
Vera Abbott		X		
A. Gilbert Douglass, Jr.		X		
Patricia Hobson Wilson		X		

Four Board Members voted in favor of denying Employee's Limited Petition for Review. Therefore, the petition was denied.

8. Wanderline Benjamin-Banks v. Metropolitan Police Department (Agency's Petition for Review)

MEMBER	GRANTED	DENIED	REMANDED	DISMISSED
Sheree Price			X	
Vera Abbott			X	
A. Gilbert Douglass, Jr.			X	
Patricia Hobson Wilson			X	

Four Board Members voted in favor of remanding Agency's Petition for Review. Therefore, the petition was remanded for further determinations.

Wanderline Benjamin-Banks v. Metropolitan Police Department (Employee's Limited Petition for Review)

MEMBER	GRANTED	DENIED	REMANDED	DISMISSED
Sheree Price		X		
Vera Abbott		X		
A. Gilbert Douglass, Jr.		X		
Patricia Hobson Wilson		X		

Four Board Members voted in favor of denying Employee's Limited Petition for Review. Therefore, the petition was denied.

9. Gina Vaughn v. Metropolitan Police Department

MEMBER	GRANTED	DENIED	REMANDED	DISMISSED
Sheree Price			X	
Vera Abbott			X	
A. Gilbert Douglass, Jr.			X	
Patricia Hobson Wilson			X	

Four Board Members voted in favor of remanding the matter for further findings. Therefore, the matter is remanded.

F. Public Comments – There were no public comments offered.

VI. Adjournment – A. Gilbert Douglass moved that the meeting be adjourned; Patricia Hobson Wilson seconded the motion. All members voted affirmatively to adjourn the meeting. Sheree Price adjourned the meeting at 12:37 p.m.

Respectfully Submitted,
Lasheka Brown
OEA General Counsel