THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
SYLVIA Y. MACKEL	)	
Employee	)	
	)	OEA Matter No. 2401-0248-97
	)	
v.	)	Date of Issuance: April 28, 2004
	)	
D.C. PUBLIC SCHOOLS	)	
Agency	)	
	)	

GENERAL COUNSEL'S
ORDER
ON COMPLIANCE

On August 30, 1996, Agency notified Employee, an English Teacher, that she would be separated from service pursuant to a reduction-in-force (RIF). The effective date of her separation was September 30, 1996. Employee subsequently filed an appeal with the Office of Employee Appeals (OEA).

On December 11, 2001, the Administrative Judge assigned to this appeal issued an Initial Decision in which he reversed Agency's RIF action and ordered Agency to return Employee to her position of record with all back pay and benefits due her. Either party to the proceeding had 35 days from the issuance of the Initial Decision to file a petition for review with this Office's Board. *See* OEA Rule 634.1, 46 D.C. Reg. 9297, 9319 (1999). Neither party filed such a petition, and thus, the Initial Decision became a final decision of this Office on January 15, 2002. *See* OEA Rule 633.1, *Id.*

Thereafter, either party had 30 days to file a petition for review of the Office's final decision in the Superior Court of the District of Columbia. *See* Agency Review Rule 1. Neither party filed a petition for review in court. Because the Office's final decision was not appealed to court, Agency had 30 calendar days from the date the decision became final on January 15, 2002 to comply with the decision of this Office, which gave Agency until February 14, 2002 to comply. *See* OEA Rule 636.1, 46 D.C. Reg. at 9321.

On March 18, 2002, Employee filed a Motion to Enforce the Final Decision in which she stated that Agency had not yet complied with the terms of the final decision. On May 2, 2002, Agency submitted to the Administrative Judge a copy of a May 1, 2002 letter addressed to Employee. The letter informed Employee that she was being reinstated to duty effective May 2, 2002. The letter went on to state that in order for Agency to compute the back pay and benefits due her, she must submit certain documentation to Agency. Based on this letter, the Administrative Judge issued an Addendum Decision on Compliance in which he concluded that Agency was in compliance with the Office's final decision, and therefore, dismissed Employee's compliance motion.

Employee subsequently filed a Petition for Review of the Addendum Decision on Compliance, arguing that the decision should be reversed because Agency had not fully complied with the terms of the Office's final decision. According to Employee, Agency had returned her to work but had failed to afford her the back pay and benefits due her even though she had submitted the documentation that Agency requested. In an Opinion and Order on Petition for Review issued on October 15, 2003, the OEA Board remanded the matter to the Administrative Judge to determine whether Agency had in fact complied with his Order.

On remand, the Administrative Judge issued an Order to Agency to Comply with Final

Decision, which gave Agency until November 18, 2003 to submit either (1) a copy of a check made out to Employee or her attorney for the full amount of back pay and benefits due Employee or (2) any other document evidencing such payment. The Administrative Judge warned Agency that failure to comply with the terms of his Order would result in the matter being certified to the Office of the General Counsel for further action. Agency did not respond to the Order or contact the Administrative Judge by the stated deadline. Further, on November 21, 2003, Employee's attorney informed the Administrative Judge that neither she nor Employee had received a check for the full amount of back pay and benefits due Employee. Therefore, on November 24, 2003, the Administrative Judge issued a Second Addendum Decision on Compliance in which he certified the matter to the General Counsel. *See* OEA Rule 636.8, 46 D.C. Reg. at 9322.

According to OEA Rule 636.8, *Id.*, once an Administrative Judge has certified a matter to the Office of the General Counsel, the General Counsel is required to order the agency to comply with the Office's final decision. Therefore, Agency is hereby ordered to submit the following to the Office of the General Counsel by the close of business on **July 16, 2004**:

> Documents verifying that Agency has complied with the final decision of this Office. Such documentation must demonstrate that it granted Employee all pay and benefits due her as a result of its unlawful RIF. Failure to comply with this Order may result in further enforcement proceedings in the District of Columbia Superior Court.

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