

ORDER ON MOTION FOR PARTIAL DISMISSAL

IN THE MATTER OF THE APPEAL OF:

COREY S. PAZ, Appellant,

vs.

DEPARTMENT OF SAFETY, DENVER SHERIFF'S DEPARTMENT
and the City and County of Denver, a municipal corporation, Agency.

The Agency has moved to dismiss a claim under the Collective Bargaining Agreement (CBA) in the above appeal. The Appellant has timely responded to the motion.

In January 2009, the Agency terminated Appellant's employment as a Deputy Sheriff. This is Appellant's appeal of that action. In his Prehearing Statement, Appellant asserts that the termination violated rights granted him under the CBA between the City and the Fraternal Order of Police.

The Agency seeks dismissal for lack of jurisdiction of any claim based upon the CBA, arguing that the CBA grievance procedure is the sole means of resolving disputes under the agreement. Appellant responds that he is not alleging a violation of the CBA as a jurisdictional basis. He argues instead that the CBA is a relevant piece of evidence on the issue of the propriety of dismissal as a part of the entire context of his employment.

A hearing officer has no jurisdiction to hear disputes arising under a collective bargaining agreement. See In re Sullivan, CSB 60-07 (2/1/08). However, "implicit in [the jurisdiction of the hearing officer] is the authority to hear and decide all evidence relevant to that dismissal." In re Diaz, CSA 72-06 (CSB 9/20/07). Here, the appeal and prehearing statement do not attempt to raise a claim under the CBA, but challenge the Agency's action as improper under the Career Service Rules. Appellant may present any evidence relevant to that issue, including departmental policies and contract rights negotiated under a collective bargaining agreement.

ORDER

Based on the foregoing findings and conclusions, the Agency's partial motion to dismiss is DENIED.

Dated this 29th day of April, 2009.


Valerie McNaughton
Career Service Hearing Officer