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

In the matters of :	
FRED LATTIMORE	OEA MATTER NO. 2401-0074-03
DARNELL WHEELER	OEA MATTER NO. 2401-0072-03
WALDO JOHNSON	OEA MATTER NO. 2401-0070-03
LORI MCDONALD	OEA MATTER NO. 2401-0069-03
Employees	DATE OF ISSUANCE: May 11, 2006
v.	SHERYL SEARS, ESQ.
DEPARTMENT OF MENTAL	ADMINISTRATIVE JUDGE
HEALTH	
Agency	

Thelma Chichester-Brown, Esq., Agency Representative  
Lewis Norman, Employee Representative

**INITIAL DECISION**

INTRODUCTION

The above-named employees filed petitions for appeal challenging a reduction-in-force (RIF) as follows: Fred Lattimore was separated from the position of Electrician on February 28, 2003, and filed a petition on March 28, 2003. Darnell Wheeler was separated from the position of Maintenance Mechanic on February 28, 2003, and also filed on March 28, 2003. Waldo Johnson, who filed an appeal on March 27, 2003, was separated from the position of Supply Management Officer on February 28, 2003. Lori McDonald was separated from the position of Management Analyst, DS 11, Step 4 on February 28, 2003. McDonald was reinstated, on July 28, 2003, to the position of Staff Assistant DS 9, Step 9 after being selected for placement through Agency's reemployment priority program for employees adversely affected by reduction-in-force. McDonald filed an appeal on March 27, 2003.

The employees, with the exception of Mr. Johnson, who had a medical appointment, appeared along with their representative, Lewis Norman, for a pre-hearing conference on June 2, 2004, along with Thelma Chichester-Brown, the agency representative. By order of this Judge, these appeals were consolidated. The parties presented oral argument at the pre-hearing conference and submitted written briefs and documentary evidence which are a part of the record. The record is now closed.

### JURISDICTION

The Office has jurisdiction in these matters pursuant to D.C. Official Code § 1-606-03 (2001).

### ISSUES

- I. Whether Agency acted in accordance with applicable laws, rules and regulation in separating Employees pursuant to a reduction in force.
  - A. Whether Agency gave each employee a round of lateral competition.
  - B. Whether Agency gave each employee 30 days advance notice.

### FINDINGS OF FACT AND ANALYSIS AND CONCLUSIONS

According to the D.C. Official Code § 1-624.08 (2001), which sets forth the standards for review of a RIF appeal, an employee can challenge a RIF as follows:

Neither the establishment of a competitive area smaller than an agency, nor the determination that a specific position is to be abolished, nor separation pursuant to this section shall be subject to review except as follows--

(1) an employee may file with the Office of Employee Appeals an appeal contesting that separation procedures of subsections (d) and (f) were not properly applied.

d) An employee affected by the abolishment of a position pursuant to this section who, but for this section would be entitled to compete for retention, shall be entitled to 1 *round of lateral competition* pursuant to Chapter 24 of the District of Columbia Personnel Manual, which shall be limited to positions in the employee's competitive level . . .

(f) Each employee selected for separation pursuant to this section shall be given *written notice of at least 30 days* before the effective date of his or her separation. (Emphasis added).

In accordance with these provisions, the only facts and legal conclusions that are relevant to this appeal are those that go to establish whether the appellants received a "round of lateral competition" and "written notice of at least 30 days" before the effective dates of their separations.

On January 24, 2003, Agency issued a letter to each of the employees giving official advance notice of the reduction in force. No employee named in this appeal presented any argument or evidence to support a finding that he or she received untimely notice of the RIF. Employee Lattimore's position was designated, for purpose of the RIF, as a career service position in tenure group 1, competitive level RW-2805-10-02-N. Employee Johnson's position was designated as a career service position in tenure group 1, competitive level DS-2003-13-00-M. Employee Wheeler's position was designated as a career service position in tenure group 1, competitive level RW-4749-09-04-N. Employee McDonald's position was designated as a career service position in tenure group 1, competitive level DS-0343-11-06-N. All of the employees' positions were in the competitive area of the Department of Mental Health, St. Elizabeth's Hospital (S.E.H). None of the employees presented any argument or evidence to support a finding that his or her position was incorrectly placed in the competitive level for the purpose of the RIF.

Employees set forth, during the course of this appeal, several arguments seeking to establish that Agency acted unlawfully in several personnel matters in the years preceding the RIF. Employees urge that this Office find that, because their personnel status had already been illegally impacted by the time of the RIF, the RIF itself was unlawful. Employees presented extensive discovery requests to Agency seeking to prove the prior unlawful acts. However, by the order of this Judge, Agency was excused from producing most of the evidence as it was determined not to be relevant to the issues that are dispositive of this appeal.

Employees claim that, when Agency was transformed from the Commission on Mental Health to the Department of Mental Health, no official action was taken to officially assign them to their positions. Employees contend that, therefore, Agency was precluded from listing them on a retention register for any competitive area of the Department of Mental Health for the purpose of a RIF. Agency maintains that Employees were properly assigned to their positions and properly separated by RIF.

Employees claim that Agency did not perform timely performance evaluations during the course of their employment. Theoretically, this deprived some who might have gained additional years in their service computation dates pursuant to an "Outstanding" rating of that opportunity. Agency neither admitted nor denied this claim.

Employees also claim that their position descriptions were altered just before the RIF to include duties that they did not perform and challenged Agency's reliance upon the revised position descriptions of which they claim to have been notified as shortly as one day after the revisions. Agency maintains that officials facilitating the RIF properly relied upon Employees' current position descriptions and performance ratings in determining their competitive levels and areas.

Those employees who were hired before October 1, 1987, claim that they were entitled to exemption from the RIF. However, Employees cited no law, rule or regulation to support this position. Employees also allege that Agency did not submit a reorganization plan for approval to the Mayor, the city's Chief Financial Officer or the D.C. Council before conducting the RIF. Agency maintains that the RIF was properly authorized. Agency counters that proper authority was established for the RIF pursuant to the "Mental Health Establishment Act of 2002." Agency also contends that this Office does not have jurisdiction to review Agency's authority to conduct a RIF.

Employees, by their challenges, raised several matters that are both irrelevant to the appeal and outside of the jurisdiction of this Office. The Office of Employee Appeals was established by the D.C. Comprehensive Merit Personnel Act of 1978 (CMPA), effective March 3, 1979, D.C. Law 2-139, D.C. Code § 1-601.01 *et seq.* and has only that jurisdiction conferred upon it by law. Those actions that employees of the District of Columbia government may appeal to the Office are listed at D.C. Code § 1-606.03. Effective October 21, 1998, the Omnibus Personnel Reform Amendment Act of 1998 (OPRAA) D.C. Law 12-124, amended some sections of the CMPA. Those revisions include limiting the jurisdiction of OEA. Section 101(d) of OPRAA amended § 1-606.03 of the Code provides as follows:

- (a) An employee may appeal a final agency decision effecting 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*. (Emphasis added.)

While a reduction in force is clearly within the jurisdiction of this Office, grievances, which historically were within its purview, no longer are.


Therefore, the matters of Employees' official assignment to their positions, performance evaluations and position descriptions are not within the jurisdictional scope of the Office and may not be addressed by way of this appeal. Even if Employees had challenged those matters through the grievance process, they would not have reached this level of review. This Office has long held that "pre-RIF" conditions are outside of the scope of its review authority when considering an appeal from a RIF. See *Starold Celistan, et al. v. D.C. Department of Employment Services*, OEA Matter Nos. 2401-0059-03, et al., (November 29, 2004), \_\_\_ D.C. Reg. \_\_\_ and *Linda D. Quattelbaum, et al. v. D.C. Department of Employment Services*, OEA Matter No. 2401-0028-05, et al. (March 24, 2006), \_\_\_ D.C. Reg. \_\_\_.

Those challenges by which Employees claim exemption from the RIF and allege the failure of the agency to gain proper authorization are also outside of the scope of this Office's lawful consideration. The questions before this Office are whether Employees received a proper round of lateral competition and sufficient advance notice of the RIF. According to the record, Agency complied with these requirements. Agency acted in accordance with applicable laws, rules and regulations in separating Employees pursuant to a reduction in force. Therefore, the RIF must be sustained.

ORDER

It is hereby ORDERED that Agency's action separating Employees by reduction in force is UPHOLD.

FOR THE OFFICE:

  
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SHERYL SEARS, ESQ.  
ADMINISTRATIVE JUDGE