THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
FRANCINE THOMAS,	)	
Employee	)	OEA Matter No. 2401-0010-10
	)	
v.	)	Date of Issuance: December 13, 2011
	)	
DISTRICT OF COLUMBIA	)	
PUBLIC SCHOOLS,	)	
Agency	)	ERIC T. ROBINSON, Esq.
	)	Senior Administrative Judge
	)	

Francine Thomas, Employee *Pro-Se*
Bobbie Hoye, Esq., and Harriet Segar, Esq., Agency Representatives

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On October 5, 2009, Francine Thomas ("Employee") filed a petition for appeal with the Office of Employee Appeals ("OEA" or "the Office") contesting the District of Columbia Public Schools ("DCPS" or "the Agency") action of abolishing her position through a Reduction-In-Force ("RIF"). The effective date of the RIF was November 2, 2009. At the time her position was abolished, Employee's official position of record within the Agency was Registrar at Coolidge Senior High School. According to DCPS, Employee was serving in a single person competitive level when her position was abolished through the RIF.

I was assigned this matter on or around October 17, 2011. Thereafter, a prehearing conference was convened in order to assess the parties' arguments. The Prehearing Conference was held on November 14, 2011. After considering the position of the parties as stated during this conference, I then issued an Order dated November 15, 2011, wherein I required both parties to address whether the Agency properly conducted the RIF in this matter. The Agency was required to respond to this order on or before November 23, 2011. Employee's responsive brief was due on or before December 2, 2011. To date, I have not received a response from Employee. After reviewing the documents of record, I have determined that an evidentiary hearing is not warranted in this matter. The record is now closed.

JURISDICTION

The Office has jurisdiction in this matter pursuant to D.C. Official Code § 1-606.03 (2001).

ISSUE

Whether Agency's action of separating Employee from service pursuant to a RIF was done in accordance with all applicable laws, rules, or regulations.

BURDEN OF PROOF

OEA Rule 629.1, 46 D.C. Reg. 9317 (1999) states:

> The burden of proof with regard to material issues of fact shall be by a preponderance of the evidence. "Preponderance of the evidence" shall mean:
>
> > 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.

OEA Rule 629.3 *id.* states:

> For appeals filed on or after October 21, 1998, the Agency shall have the burden of proof, except for issues of jurisdiction.

FINDING OF FACTS, ANALYSIS, AND CONCLUSIONS

The following findings of facts, analysis, and conclusions of law are based on the documentary evidence presented by the parties during the course of Employee's appeal process with this Office. The Agency contends that it followed all applicable rules and regulations with respect to the instant matter. I find that in a RIF matter, I am guided primarily by D.C. Official Code § 1-624.08, which states in pertinent part that:

> (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 one round of lateral competition... which shall be limited to positions in the employee's competitive level.
>
> (e) 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.
>
> (f) 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 that:

(1) An employee may file a complaint contesting a determination or a separation pursuant to subchapter XV of this chapter or § 2-1403.03; and

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

According to the preceding statute, I find that a District of Columbia government employee whose position was abolished pursuant to a RIF may only contest before this Office:

1. That s/he did not receive written notice thirty (30) days prior to the effective date of her separation from service; and/or

2. That s/he was not afforded one round of lateral competition within her competitive level.

I find that the entire unit in which Employee's position was located was abolished after a RIF had been properly structured and a timely 30-day legal notification was properly served. Employee did not submit her final legal brief in this matter. Employee was afforded a fair opportunity to address DCPS's contentions in this matter but opted instead to remain silent. I further find that all other issue(s) that Employee raised during the pendency of this matter to be irrelevant.

According to *Anjuwan v. D.C. Department of Public Works,* 729 A.2d. 883 (12-11-98), the OEA's authority over RIF matters is narrowly prescribed. The Court explained that the OEA does not have jurisdiction to determine whether the RIF at the Agency was *bona-fide* or violated any law, other than the RIF regulations themselves. Further, it is an established matter of public law, that as of October 21, 1998, pursuant to the Omnibus Personnel Reform Amendment Act of 1998 (OPRAA), D.C. Law 12-124, the OEA no longer has jurisdiction over grievance appeals. Based on the above discussion, Employee has failed to proffer any credible evidence that would indicate that the RIF was improperly conducted and implemented. Further, Employee's other ancillary arguments are best characterized as grievances and outside of the OEA's jurisdiction to adjudicate. That is not to say that Employee may not press her claims elsewhere, but rather that the OEA currently lacks the jurisdiction to hear Employee's other claims. Based on the foregoing, I find that the Agency's action of abolishing Employee's position was done in accordance with D.C. Official Code § 1-624.08 (d) and (e) and that any other issue(s) are outside of my authority to review in the instant matter.

ORDER

It is hereby ORDERED that Agency's action of abolishing Employee's position through a Reduction-In-Force is UPHELD.

FOR THE OFFICE:

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ERIC T. ROBINSON, ESQ.
ADMINISTRATIVE JUDGE