THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	
Maurice Linder Employee	OEA Matter No. 2401-0221-09
v.	Date of Issuance: October 20, 2010
Office of Public Education Facilities Modernization Agency	Senior Administrative Judge Joseph E. Lim, Esq.

Maurice Linder, Employee pro se
Charles Brown, Jr., Esq., Agency Representative

INITIAL DECISION

INTRODUCTION

On August 20, 2009, Employee, a Plumber Worker, RW-4206-7, in the Career Service, filed a petition for appeal from Agency's final decision separating him from Government service pursuant to a modified reduction-in-force (RIF).

This matter was assigned to me on September 22, 2010. I conducted a Prehearing Conference on October 18, 2010. Since the matter could be decided based on the documentary evidence and the parties' positions as set forth at the conference, no further proceedings were conducted. The record is closed.

JURISDICTION

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

ISSUE

Whether Agency's action separating Employee from service as a result of the RIF was in accordance with applicable law, rule or regulation.

FINDINGS OF FACT

The following facts are not subject to genuine dispute:

1. On September 21, 2009, the effective date of his RIF, Employee had occupied the position of Plumber Worker, RW-4206-7, in the Career Service. Pursuant to § 2412 of the RIF regulations, Agency established a retention register for Employee's competitive level.

2. Employee's Retention Register shows that his RIF service computation date is October 6, 1985. Because every position in the four-person competitive level was eliminated, Employee was terminated.

3. Employee received the requisite 30-day notice prior to the effective date of his separation.

4. At the conference, Employee alleged that he was an outstanding employee for many years.

ANALYSIS AND CONCLUSIONS

D.C. Official Code § 1-606.03 (2001) gives this Office the authority to review, *inter alia*, appeals from separations pursuant to a RIF. Subchapter XXIV of the Code sets forth the law governing RIF's. Section 1-624.08 of subchapter XXIV pertains to RIF's for "the fiscal year ending September 30, 2000, and each subsequent fiscal year. . . ." Chapter 24 of the DPM, § 2410.4, 47 D.C. Reg. 2430 (2000), defines "competitive level" as:

> All positions in the competitive area … in the same grade (or occupational level), and classification series and which are sufficiently alike in qualification requirements, duties, responsibilities, and working conditions so that the incumbent of one (1) position could successfully perform the duties and responsibilities of any of the other positions, without any loss of productivity beyond that normally expected in the orientation of any new but fully qualified employee.

Section 2412 of the RIF regulations, 47 D.C. Reg. at 2431, requires an agency to establish a "retention register" for each competitive level, and provides that the retention register "shall document the final action taken, and the effective date of that action, for each employee released from his or her competitive level." Generally, employees in a competitive level who are separated as a result of a RIF are separated in inverse order of their standing on the retention register. An employee's standing is determined by his/her RIF service computation date (RIF-SCD), which is usually the date on which the employee began D.C. Government service. However, an employee's standing on the retention register can be enhanced by: 1) an "Outstanding" performance rating for the rating year immediately preceding the RIF (DPM § 2416, 47 D.C. Reg. at 2433); 2) Veteran's preference (DPM § 2417, 47 D.C. Reg. at 2434); and/or 3) D.C. residency preference (DPM § 2418, *id.*).

Regarding the lateral competition requirement, the record shows that everyone in Employee's competitive level was subjected to the RIF. Therefore, I conclude that the statutory provision of Code

§ 1-624.08(e), according Employee one round of lateral competition, as well as the related RIF provisions of 5 D.C. Municipal Regulations 1503.3, are both inapplicable, and that Agency is not required to go through the rating and ranking process described in that chapter relative to abolishing Employee's position. See *Leona Cabiness v. Department of Consumer and Regulatory Affairs,* OEA Matter No. 2401-0156-99 (January 30, 2003), __ D.C. Reg. __; *Robert T. Mills v. D.C. Public Schools*, OEA Matter No. 2401-0109-02 (March 20, 2003), __ D.C. Reg. __; *Deborah J. Bryant v. D.C. Department of Corrections,* OEA Matter No. 2401-0086-01 (July 14, 2003), __ D.C. Reg. __; and *R. James Fagelson v. Department of Consumer and Regulatory Affairs,* OEA Matter No. 2401-0137-99 (December 3, 2001), __ D.C. Reg. __.

Further, Section 1-624.08(d) states in part that:

> An employee affected by the abolishment of a position pursuant to this section . . . shall be entitled to one round of lateral competition pursuant to Chapter 24 of the District of Columbia Personnel Manual [DPM],[1] which shall be limited to positions in the employee's competitive level.

Section 1-624.08(e) states that:

> 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.

D.C. Official Code § 1-624.08(f) reads 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 action shall be subject to review except that . . . (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.

§ 1-624.08(f)(2) reads as follows: "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."

Thus, an employee whose position was abolished as a result of a RIF may only contest the following before this Office: 1) that he/she was not afforded one round of lateral competition within his/her competitive level; and/or 2) that he/she was not given 30 days' notice prior to the effective date of his/her separation.

Employee argued that he was an outstanding employee for more than 20 years. As the

[1] Chapter 24 of the DPM contains the regulations implementing the RIF law.

deciding Administrative Judge, I note that none of Employee's arguments negate the legality of the RIF action. As discussed above, § 1-624.08(f)(2) limits the grounds upon which employee may contest his RIF, and his arguments are not among them.

Based on the above cited statute, Employee's stated grounds for appealing his RIF are legally insufficient to overturn his RIF. Here, it is undisputed that Employee received his round of lateral competition within his competitive level; and that he was given 30 days' notice prior to the effective date of his separation. Based on the foregoing, I must uphold Agency's action of abolishing Employee's position through a RIF.

ORDER

It is hereby ORDERED that Agency's action separating Employee pursuant to a RIF is UPHELD.

FOR THE OFFICE:

Joseph E. Lim, Esq.
Senior Administrative Judge