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THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
EVELYN SLIGH ,)	OEA Matter No.: 2401-0014-10
Employee)	
v.)	Date of Issuance: December 30, 2011
DISTRICT OF COLUMBIA)	
PUBLIC SCHOOLS,)	
Agency)	Sommer J. Murphy, Esq.
_____)	Administrative Judge
Mark Murphy Esq., Employee Representative	
Sara White, Esq., Agency Representative	

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

October 6, 2009, Evelyn Sligh (“Employee”) filed a petition for appeal with the Office of Employee Appeals (“the OEA” or “the Office”) contesting the District of Columbia School System’s (“Agency”) action of terminating her employment through a Reduction-in-Force (“RIF”). The effective date of the RIF was November 2, 2009. Employee’s position of record at the time her position was abolished was a RW-Custodian. Employee was serving in Career Service status at the time she was terminated.

I was assigned this matter on or around **September of 2011**. On November 7, 2011, I held a Status Conference for the purpose of assessing the parties’ arguments regarding the RIF. After examining the parties’ arguments and reviewing the record, I ordered the parties to submit briefs on the issue of whether Agency, in conducting the instant RIF, was done so in accordance with applicable District laws. Both parties submitted timely responses to the order. Although Employee filed a grievance with the Teamster Local 639 Union on October 15, 2009, the Union elected not to pursue the grievance, advised her, along with other employees affected by the RIF, to file appeals with this Office. 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 OF LAW

On or around September of 2009, the District of Columbia School System's (former) Chancellor, Michelle Rhee, determined that Agency needed to conduct a RIF for the 2010 fiscal year as a result of budgetary restraints.¹ According to Agency, the RIF was conducted in order to "eliminate positions at schools that [could] not be supported by final school based budgets for the 2010 fiscal year."² Employee received a total of 12.5 points on her Competitive Level Documentation Form ("CLDF"), and was therefore ranked the lowest in her respective competitive area.

Employee took exception to being terminated as the result of RIF and filed a petition for appeal with the OEA. Employee requests that this Office conduct an evidentiary hearing to determine the accuracy of the information contained within the CLDF which served as the basis for Employee's termination. Specifically, Employee argues that Agency has provided insufficient evidence to support the allegations contained within the CLDF, thus warranting an evidentiary hearing for the purpose of determining the veracity of such allegations.³ According to Employee, the harmful comments contained within the CLDF: 1) are in direct conflict with the positive recommendations provided by Employee's fellow staff members concerning her work ethic; and 2)

¹ See Mayoral Order 2007-186 (August 10, 2007).

² Agency Brief, Attachment A (December 5, 2011).

³ Employee Brief at p. 4 (December 19, 2001).

virtually usurp the multiple years of seniority she had over other employees within her competitive level.⁴

Agency submits that it conducted in the RIF in accordance with the District of Columbia Municipal Regulations and the D.C. Official Code by affording Employee one round of lateral competition and thirty (30) days written notice prior to the effective date of her termination. Agency further maintains that it utilized the proper competitive factors in implementing the RIF and that the lowest ranked RW Custodian, Employee, was terminated as a result of lateral competition.

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.

Accordingly, the issues to be decided in this matter under the aforementioned statute are: 1) whether the employee was afforded one round of lateral competition within his/her competitive level; and 2) whether an employee received thirty (30) days written notice prior to the effective date of their separation from service.

Title 5, DCMR 1503.1 *et al.* provides guidance pertaining to the implementation of the RIF. Specifically, Section 1503.2 states the following:

If a decision must be made between employees in the same competitive area and competitive level, the following factors, in support of the purposes, programs, and needs of the organizational unit comprising the competitive area, with

⁴*Id.* at. p. 6-7.

respect to each employee, shall be considered in determining which position shall be abolished:

- (a) Significant relevant contributions, accomplishments, or performance;
- (b) Relevant supplemental professional experiences as demonstrated on the job;
- (c) Office or school needs, including: curriculum, specialized education, degrees, licenses or areas of expertise; and
- (d) Length of service.

When Agency implemented the RIF, it gave the following weights to each of the aforementioned factors:

- (a) Office or school needs, including: curriculum, specialized education, degrees, licenses or areas of expertise - (75%)
- (b) Significant relevant contributions, accomplishments, or performance – (10%)
- (c) Relevant supplemental professional experiences as demonstrated on the job – (10%)
- (d) Length of service – (5%)⁵

With respect to this Office's ability to hold an evidentiary hearing on the veracity of the statements contained within Employee's CLDF, D.C. Official Code § 1-624.04 (2001) provides that:

“An employee who has received a specific notice that he or she has been identified for separation from his or her position through a reduction-in-force action may file an appeal with the Office of Employee Appeals if he or she believes that his or her agency has incorrectly applied the provisions of this subchapter or the rules and regulations issued pursuant to this subchapter....”

The OEA's jurisdiction in appeals resulting from Reductions-in-Force is narrowly prescribed. In general, Section 1-624.04 of the D.C. Code only allows this Office to examine a challenge to an agency's application of the provisions governing RIFs. This is not to say that Employee's arguments with respect to the points assigned to each area of her CLDF are without

⁵ It should be noted that OEA has consistently held that DCPS is allowed discretion to accord different weights to the factors enumerated in 1503.2. Thus, Agency is not required to assign equal values to each of the factors. See *White v. DCPS*, OEA Matter No. 2401-0014-10 (December 30, 2001); *Britton v. DCPS*, OEA Matter No. 2401-0179-09 (May 24, 2010).

merit; however, a hearing on the underlying facts and circumstances surrounding the computation of such documents, in this case, is outside the purview of this Office's jurisdiction.

Based on a review of the documents submitted throughout the course of this appeal, including the CLDF submitted by Agency, I find that Employee was afforded one round of lateral competition to which he was entitled under D.C. Official Code § 1-624.08.

Title 5, §1506 of the DCMR provides the notice requirements that must be given to an employee affected by a RIF. Section 1506.1 states that "an employee selected for separation shall be given specific written notice at least thirty (30) days prior to the effective date of the separation. The notice shall state specifically what action is taken, the effective date of the action, and other necessary information regarding the employee's status and appeal rights."

The notice of termination letter was dated October 2, 2009. The letter further stated that the effective date of the RIF was November 2, 2009. Employee therefore received thirty (30) days written notice prior to the effective date of her termination.

Accordingly, I find the Agency complied with D.C. Official Code § 1-624.08. Agency provided Employee with one round of competition and gave Employee thirty (30) days written notice of her termination. Therefore, Agency properly implemented the RIF which resulted in Employee's termination.

ORDER

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

FOR THE OFFICE:

SOMMER J. MURPHY, ESQ.
ADMINISTRATIVE JUDGE