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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
STEVEN JONES,)	
Employee)	OEA Matter No. 2401-0282-09
)	
v.)	Date of Issuance: August 2, 2011
)	
DISTRICT DEPARTMENT OF)	
TRANSPORTATION,)	MONICA DOHNJI, Esq.
Agency)	Administrative Judge
_____)	
Clifford Lowery, Employee Representative)	
Melissa Williams, Esq., Agency Representative)	

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On September 21, 2009, Steven Jones (“Employee”) filed a petition for appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the District Department of Transportation’s (“Agency”) action of abolishing his position through a Reduction-In-Force (“RIF”). The effective date of the RIF was August 21, 2009. At the time his position was abolished, Employee’s official position of record within the Agency was a Masonry Worker. This matter was assigned to me on or around June 5, 2011. Thereafter, I scheduled a Prehearing Conference in order to assess the parties’ arguments, and to determine whether an Evidentiary Hearing was necessary. The conference was held as scheduled and after considering the parties’ position as stated during this conference, I then issued an Order dated June 28, 2011, wherein, I required the parties to address whether the RIF was properly conducted in this matter. Agency complied, but Employee did not. After considering the parties’ arguments as presented in their briefs and/or Prehearing Statements, I decided that an Evidentiary Hearing was not required. And since this matter could be decided based upon the documents of record, and the recited positions of the respective parties, no additional proceedings were conducted. 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.

FINDING OF FACTS, ANALYSIS AND CONCLUSION

The following findings of facts, analysis, and conclusion of law are based on the documentary and oral evidence presented by the parties during the course of Employee's appeal process with OEA. Employee argues that the RIF conducted by Agency was not approved by the mayor and that the competitive level used in conducting the RIF is too narrow.¹ Agency contends that it followed all applicable rules and regulations with respect to the instant matter. D.C. Official Code § 1-606.03 (2001) gives this Office the authority to review, *inter alia*, appeals from separations pursuant to a RIF. I find that in a RIF, 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 he/she did not receive written notice thirty (30) days prior to the effective date of his/her separation from service; and/or

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

In instituting the instant RIF, Agency met the procedural requirements listed above, and Employee does not contest this. Furthermore, Chapter 24 of the D.C. Personnel Manual § 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,

¹ However, in his Prehearing Statement to this Office dated June 28, 2011, Employee's representative conceded that Agency had approval to conduct the instant RIF.

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.

Regarding the lateral competition requirement, there were eleven (11) positions in Employee’s competitive level. Agency maintained that the RIF was conducted in full compliance with 5 D.C. Municipal Regulations §1503.3, which provides that employee shall receive one (1) round of lateral competition. Agency further asserted that in preparing the Retention Register, it identified all competing employees in their respective competitive levels and service areas to determine their retention standing in compliance with 25 DPM §2408.1. Agency also noted that Employee finished the eighth (8) highest in the RIF retention standing after the round of competition was completed.

Street and Building Maintenance (Field Ops Branch) was identified as Employee’s competitive area and WS-3603-08-03-N Masonry Worker as his competitive level.² There were eleven employees in this competitive level and eight of them, including Employee were laid off as a result of the RIF. Also, Employee received his RIF notice on July 17, 2009, and his RIF effective date was August 21, 2009. It is therefore undisputed that Employee received his round of lateral competition within his competitive level; and was given 30 days’ notice prior to the effective date of his suspension.

Based on the foregoing, I conclude that 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 OEA is precluded from addressing any other issue(s) in this matter.

ORDER

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

FOR THE OFFICE:

MONICA DOHNJI, Esq.
Administrative Judge

² See *AGENCY ANSWER TO EMPLOYEE’S PETITION FOR APPEAL*, Exhibits 1 and 2.