THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
LINDA D. QUATTLEBAUM,	)	OEA Matter No. 2401-0028-05
DIANNE PAYE	)	2401-0029-05
MONIQUE SMITH	)	2401-0030-05
THEODORA BUTLER	)	2401-0031-05
BERNADETTE LEE	)	2401-0032-05
ARETHA HOLLAND	)	2401-0033-05
NORLETTA JONES	)	2401-0034-05
MICHAEL NANCE,	)	2401-0035-05
Employees	)	
	)	
	)	Date of Issuance: November 13, 2008
	)	
	)	
D.C. DEPARTMENT OF	)	
EMPLOYMENT SERVICES,	)	
Agency	)	
	)	

OPINION AND ORDER
ON
PETITION FOR REVIEW

Linda Quattlebaum, Dianne Payne, Norletta Jones, and Michael Nance were Unemployment Compensation Claims Examiners at the D.C. Department of Employment Services ("Agency"). Monique Smith served as a Contact Representative. Theodora Butler and Aretha Holland both worked as Manpower Development Specialists; and

Bernadette Lee was a Claims Examiner with Agency.[1] On January 3, 2005, they received notices from Agency advising them that due to a reduction-in-force ("RIF") their positions would be abolished effective February 11, 2005.[2]

On March 10, 2005, Employees filed Petitions for Appeal with the Office of Employee Appeals ("OEA"). They alleged that Agency violated the D.C. Personnel Manual; that errors were made when computing their service dates; and that they were RIFed for personal reasons. As a result, they requested to be reinstated, to receive back pay and have their benefits restored, and to receive damages for emotional distress.[3]

Agency filed its Response to Employees' Petitions for Appeal on April 26, 2005, and May 6, 2005. After reviewing its 2005 budget, Agency determined that a reduction in personnel was necessary. Therefore, it submitted a request to the Mayor to effectuate a RIF for forty positions; the Mayor approved Agency's request. Agency provided that there were forty employees within Employees' competitive levels, and although Employees claim that errors were made when computing their service dates, they offered no proof.[4] It was Agency's belief that Employees offered no persuasive basis for disturbing the RIF actions taken against them. Therefore, it requested that their Petitions for Appeal be dismissed.[5]

On March 24, 2005, the Administrative Judge ("AJ") issued his Initial Decision. He held that although Employees failed to raise this as an issue in their Petitions for

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[1] All employees listed will be collectively known as ("Employees") in this Opinion and Order.
[2] *Petition for Appeal*, p. 7 (March 10, 2005).
[3] *Id.* at 3.
[4] Agency provided the Retention Register listing all employees within Employees' competitive levels. The service dates and resident preferences are listed for each employee to show how the RIF was decided. *Agency's Response to Employee's Petition for Appeal*, Tab C, p. 6 (May 6, 2005).
[5] *Id.*, Tab B (May 6, 2005).

Appeal, they were afforded one round of lateral competition within their competitive levels. He also found that Agency provided them with thirty-day notices that their positions would be abolished. The AJ held that Employees raised all pre-RIF allegations in their petitions, and those issues are outside of the scope of OEA's jurisdiction. Therefore, he upheld the RIF action taken against Employees and granted Agency's Motion to Dismiss.[6]

Employees disagreed with the Initial Decision and filed Petitions for Review on April 28, 2006. They argued that OEA's jurisdiction extends beyond determining whether Agency provided a thirty-day written notice and one round of lateral competition. They also provided that all employees were not listed on the Retention Register and that those with less seniority were allowed to remain in their positions. Finally, Employees argued that the AJ should have compelled their discovery request on these issues as provided in *Levitt v. District of Columbia Office of Employee Appeals,* 869 A.2d 364 (D.C. 2005). Accordingly, Employees requested a reversal of the AJ's Initial Decision.[7]

In an attempt to clearly define OEA's authority, D.C. Official Code § 1-624.08(d), (e), and (f) establishes the circumstances under which the OEA may hear RIFs on appeal.

> "(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 pursuant to Chapter 24 of the District of Columbia Personnel Manual, which shall be limited

[6] *Initial Decision,* p. 5-7 (March 24, 2006).
[7] *Petition for Review,* p. 5-7 (April 28, 2006).

> to positions in the employee's competitive level.
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> (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.
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> (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:
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> (1) An employee may file a complaint contesting a determination or 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."

Contrary to what Employees argued in their Petitions for Review, this Office is only authorized to review RIF cases where an employee claims the Agency did not provide one round of lateral competition, or where an employee was not given a 30-day written notice prior to their separation. Employees do not assert that they failed to receive written notice 30 days prior to the effective RIF date. Furthermore, they do not contend that Agency failed to provide one round of lateral competition. They take issue with the outcome of the competition, claiming that all employees were not included within their competitive levels. However, they offered no names of these additional employees or evidence to support their allegations.

As for Employees' argument that the AJ should have compelled discovery, OEA Rule 618.7 provides that "discovery matters before the Office are intended to be of a simplified nature. Discovery procedures shall be established by the Administrative Judge as appropriate under the circumstance. . . ." Therefore, the AJ has discretion to make his

own determination regarding discovery requests. However, it is clear from the record that the AJ allowed Employees' request for production of documents. Agency objected to some of the requests, but the documents within the record satisfactorily proved that Agency afforded Employees one round of lateral competition.[8]

Employees cite to the *Levitt* case to bolster their argument that the AJ should have compelled discovery. The Court in *Levitt* provided that Agency clearly took action *before* it RIFed employee by transferring him to another agency with a newly established position; changing his status from career service to excepted service; and then abolishing the newly established position and terminating Levitt. The Court of Appeals ruled that this was a clear pre-text to the RIF action. It, therefore, remanded the case to OEA and requested that appropriate discovery and a hearing be conducted.

This case is distinguishable from *Levitt* because there is no clear pre-text to imposing the RIF against Employees. In the current case, Agency provides clear evidence that it enforced the RIF action against Employees because of its budget cuts. Employees offered no evidence to prove otherwise. In *Levitt,* there were obvious steps taken to terminate Employee under the guise of a RIF. Additionally, in this case the record showed that Agency submitted applications to other agencies in an attempt to secure positions for Employees within those agencies.[9]

Finally, the issues raised by Employees that they were fired for personal reasons and because they filed grievances do not fall under OEA's purview. OEA does not have the authority to consider grievance matters. This Board is charged with determining any

[8] *Agency's Response to Employee's Petition for Appeal,* Tab C (May 6, 2005).
[9] *Id.*

wrongdoing on Agency's part in effectuating the RIF action; we have found none. Accordingly, we deny Employees' Petitions for Review.

ORDER

Accordingly, it is hereby **ORDERED** that Employees' Petitions for Review are **DENIED**.

FOR THE BOARD:

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Sherri Beatty-Arthur, Chair

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Barbara D. Morgan

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Richard F. Johns

The Initial Decision in this matter shall become a final decision of the Office of Employee Appeals 5 days after the issuance date of this order. An appeal from a final decision of the Office of Employee Appeals may be taken to the Superior Court of the District of Columbia within 30 days after formal notice of the decision or order sought to be reviewed.