**THE DISTRICT OF COLUMBIA**

**BEFORE**

**THE OFFICE OF EMPLOYEE APPEALS**

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| In the Matter of: | |
| | OEA Matter No. 2401-0179-09 |
| TIMOTHY BRITTON | |
| Employee | Date of Issuance: May 24, 2010 |
| v. | Rohulamin Quander, Esq. |
| | Senior Administrative Judge |
| D.C. PUBLIC SCHOOLS | |
| Agency | |

Timothy Britton, *pro se*, Employee
Sara White, Esq., Agency Representative

INITIAL DECISION

Background

On August 3, 2009, Employee filed an appeal challenging Agency's decision to separate him from his position as a RW pay plan Custodian, effective August 28, 2009, as a component of an Agency-wide Reduction in Force (the "RIF"). Employee challenged the RIF, noting in his appeal that, based upon his nine (9) years of service, he should be reinstated or another suitable position be located, to which he might be assigned.

Agency filed its Answer on October 1, 2009, and asserted that the RIF which abolished Employee's position during the 2009-2010 school year was conducted as a component of reducing the amount Agency staff in the non-instructional component, all part of an Agency-wide reorganization, mostly driven by a combination of budgetary constraints with reduced expenditures and the closure of several schools, pursuant to Title 5 of District of Columbia Municipal Regulations (the "DCMR"), Chapter 15. Agency underscored that it closed 23 schools during the 2007-2008 school year, and that it has continued to close more schools in the subsequent 2008-2009, and 2009-2010 school years.

I was assigned this matter on April 1, 2010. Thereafter, I convened a Prehearing conference on May 12, 2010, at which time I received and assessed the parties' respective arguments. After considering the parties' arguments, I determined that an evidentiary hearing was not required. 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 the Employee's appeal process with this Office. I find that in a RIF matter that 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.

Title 5 § 1503 of DCMR governs the procedures to be followed in the implementing of RIFs for fiscal year 2000, and subsequent fiscal years, as follows:

> Section 1503.1: An employee who encumbers a position which is abolished shall be separated in accordance with this chapter notwithstanding date of hire or prior status in any other position.
>
> Section 1503.2: 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 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.

Title 5 § 1506 identified the type of notice to be given as a result of a RIF, as follows:

> Section 1506.1: 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 specific 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.
>
> Section 1506.2: An employee may also be given a written general notice prior to a separation due to a reduction-in-force but such general notice is not required. The general notice may be used when it is not yet determined what individual action, if any, will be taken.

Agency submitted a detailed chart, outlining and reflecting a school-by-school RIF in custodial staff. The *competitive areas* for the RIF were defined by schools where the number of positions for custodial staff or for non-instructional staff for the 2008-2009 school year exceeded the number of positions available for the 2009-2010 school year. Employee worked at Francis School, which was reflected on the chart.

The *competitive levels* for the RIF were defined as follows:

1) Custodial staff on the RW pay plan;
2) Supervisory custodians and Custodial Foremen on the SW pay plan; and
3) Non-instructional staff on the DS or EG pay plan grades 4, 5, 6, and 7.

The *competitive factors* for the RIF, with the relative weight, were as follows:

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| 1) Relevant significant contributions, accomplishments or performance | 50% |
| 2) Relevant supplemental professional experience as demonstrated on the job | 30% |
| 3) Office of School Needs | 10% |
| 4) Length of Service | 10% |

Agency asserted that the RIF was conducted in full compliance with Title 5 DCMR, Chapter 15, which included that the Employee received the one (1) round of lateral competition to which he was entitled, by application of the standard enumerated by the Competitive Level Documentation Form (the "CLDF"), plus the required written notice of at least thirty (30) days written notice prior to the effective date of his separation.

Based upon the foregoing, I find that the Agency's action of abolishing Employee's position was done in accordance with the requirements of *D.C. Official Code* § 1-624.08 (d) and (e) and the directives of Title 5 § 1503 of DCMR, and therefore must be upheld.

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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ROHULAMIN QUANDER, ESQ.
Senior Administrative Judge