THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
ARMER GASTON, SR.	)	
SHERMAN JACKSON	)	
VALERIE A. HOLT	)	
Employees	)	
	)	OEA Matter Nos.: 1601-0024-07
	)	1601-0025-07
v.	)	1601-0026-07
	)	Date of Issuance: July 22, 2009
DISTRICT OF COLUMBIA PUBLIC	)	
SCHOOLS	)	
Agency	)	
	)	

OPINION AND ORDER
ON
PETITION FOR REVIEW

Armer Gaston, Sherman Jackson, and Valerie Holt ("Employees") worked for the District of Columbia Public Schools ("Agency"). Employee Gaston was a Business Manager at Bunker Hill Elementary School; Employee Jackson was a Business Manager at Lucy Diggs Slow Elementary School; and Employee Holt was a Business Manager at Randle Highlands Elementary School.

On November 9, 2006 Employees received a letter from Agency stating that they would be separated from service effective December 8, 2006. The letters of separation went on to inform Employees that they were not being separated as the result of an adverse action but rather as a necessity to "equitably distribute resources across the district to align those resources with student enrollment." Agency called this realignment process "reconciliation." The letters concluded by advising Employees that they could appeal their termination to the Office of Employee Appeals ("OEA").

Employees timely filed a Petition for Appeal with OEA. Because Agency had neither terminated Employees pursuant to an adverse action for cause nor had it utilized the reduction-in-force procedures, the Administrative Judge had to determine whether Agency's action was otherwise proper.

In an Initial Decision issued July 2, 2007, the Administrative Judge held that Agency "ha[d] engaged in an improper and unpermitted termination of employment." He stated that "[n]o cause for separation was presented to support Employees' respective separations…." However, according to the Administrative Judge, "Agency's argument that the position[s] [were] abolished due to budgetary reasons, is indicative that its action was, in reality, a reduction-in-force (RIF), but was handled in a manner that was not compliant with existing RIF regulations and procedures." The Administrative Judge concluded by stating that "Agency's action in removing the three affected Employee [sic] was either an improper RIF or an adverse action taken without cause. In either event, and because of Agency's non compliance with mandatory regulations and procedures, Agency's actions were improper and must be reversed." Thus, the Administrative Judge reversed Agency's termination action and ordered Agency to reinstate Employees.

Thereafter, Agency filed a Petition for Review. Agency asks us to reverse the Initial Decision because 1) the decision of the Administrative Judge is based on an erroneous interpretation of statute, regulation, or policy; 2) the findings of the Administrative Judge are not based on substantial evidence; and 3) the Initial Decision did not address all material issues of law and fact properly raised in the appeal. Specifically Agency claims that this Office lacked jurisdiction to consider these appeals and that if jurisdiction had been properly established, then the Administrative Judge should have conducted an evidentiary hearing. Lastly, according to Agency, the Administrative Judge failed to give any weight to Agency's claim that its actions were necessary to be in compliance with the Anti-Deficiency Act.

Under the D.C. Government Comprehensive Merit Personnel Act, District of Columbia government employees may appeal a final agency decision affecting: 1) an adverse action for cause that results in removal, reduction in grade or suspension for ten days or more; or 2) a reduction-in-force. In each case Employees' termination letters stated that they were being separated from service effective one month later. The letters referenced the fact that budgetary constraints were compelling Agency to take this action and that Employees could appeal the termination to this Office. Furthermore, Agency stated that Employees had been placed on a retention register. Most RIFs are conducted for budgetary reasons. During the normal course of a RIF, an employee is given thirty days notice of the impending action and retention criteria is devised. It appears to us that the language used in the notice, the time frame of the notice, and the reason Agency gave for terminating Employees are all consistent with a RIF. By law, this Office has jurisdiction over RIFs. Therefore, Employees' claims were properly before this Office.

Agency believes that the Administrative Judge should have conducted an evidentiary hearing to determine whether or not the separations were for cause. It is within the discretion of an administrative judge to determine whether an evidentiary hearing is necessary. In this case, Agency stated in the termination letters that Employees' separation was not the result of any adverse action. Contrary to Agency's belief, there was no need to take evidence on that issue for Agency had already conceded that point.

Agency's last argument is that the Administrative Judge failed to give any weight to Agency's claim that its actions were necessary to be in compliance with the Anti-Deficiency Act. The Administrative Judge did in fact address Agency's concerns. Such concerns, however, does not negate the fact that Agency was required to follow the proper procedures when it terminated Employees. For the foregoing reasons, we are compelled to uphold the Initial Decision and deny Agency's Petition for Review.

ORDER

Accordingly, it is hereby **ORDERED** that Agency's Petition for Review is **DENIED.**

FOR THE BOARD:

_____
Sherri Beatty-Arthur, Chair

_____
Barbara D. Morgan

_____
Richard F. Johns

_____
Hilary Cairns

_____
Clarence Labor, Jr.

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.