

Notice: This decision may be formally revised before it is published in the *District of Columbia Register* and the Office of Employee Appeals’ website. Parties should promptly notify the Office Manager of any formal errors so that this Office can correct them before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

**THE DISTRICT OF COLUMBIA**

**BEFORE**

**THE OFFICE OF EMPLOYEE APPEALS**

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In the Matter of:	)	
	)	OEA Matter No.: 2401-0090-17
DAVETTE BULTER,	)	
Employee	)	
	)	Date of Issuance: April 9, 2019
v.	)	
	)	
DISTRICT OF COLUMBIA	)	
PUBLIC SCHOOLS,	)	
Agency	)	
_____	)	

OPINION AND ORDER  
ON  
PETITION FOR REVIEW

Davette Butler (“Employee”) worked as a Registrar with D.C. Public Schools (“Agency”). On May 22, 2017, Employee received a notice from Agency that she would be removed from her position due to a Reduction-in-Force (“RIF”). The effective date of her removal was August 4, 2017. Employee contested the RIF action and filed a Petition for Appeal with the Office of Employee Appeals (“OEA”) on August 30, 2017. She argued that Agency violated D.C. Official Code § 1-623.45(b) by failing to provide her with job protection because of an injury she sustained while on duty.<sup>1</sup>

Agency filed its answer on October 2, 2017. It explained that Employee was the only Registrar at Miner Elementary School; thus, she was not entitled to one round of lateral

<sup>1</sup> *Petition for Appeal* (August 30, 2017).

competition under D.C. Municipal Regulation (“DCMR”) § 1503.3. Agency also stated that Employee was given at least thirty days’ written notice prior to the effective date of the RIF. Therefore, it posited that the RIF action complied with District law.<sup>2</sup>

Prior to issuing her Initial Decision, the OEA Administrative Judge (“AJ”) ordered that Agency submit all supporting documentation regarding the administration of the RIF.<sup>3</sup> In response, Agency submitted several documents related to its implementation of the RIF, but its brief did not include the Administrative Order which authorized the RIF.<sup>4</sup>

The AJ issued her Initial Decision on August 27, 2018. She held that Mayor’s Order 2007-186 granted Agency’s Chancellor the authority to make personnel decisions, including RIFs. However, she noted that Agency failed to provide an Administrative Order, or the equivalent, from the Chancellor approving the RIF. Additionally, she found that the notice to Employee regarding the RIF did not constitute the equivalent of an administrative order to prove that the RIF action was authorized. As a result, the AJ concluded that the RIF action was invalid because Agency failed to prove that the RIF was properly approved and authorized under the applicable regulations. Consequently, she reversed Agency’s RIF action and ordered it to reinstate Employee with all back pay and benefits lost as a result of her separation from service.<sup>5</sup>

On October 2, 2018, Agency filed a Petition for Review with OEA’s Board. It states that the Initial Decision was based on an erroneous interpretation of statute, regulation, or policy; the findings of the AJ were not based on substantial evidence; and that the Initial Decision failed to address all material issues of law and fact properly raised on appeal. Specifically, Agency asserts that an Administrative Order was not required to conduct the instant RIF. Further, it claims that

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<sup>2</sup> *Agency Answer to Petition for Appeal* (October 2, 2017).

<sup>3</sup> *Order for Supplemental Briefs* (July 5, 2018).

<sup>4</sup> *Agency Response to the July 5, 2018 Order* (July 24, 2018).

<sup>5</sup> *Initial Decision* (August 27, 2018).

the affidavit of Agency's Director of Strategic Staffing, Michael Defabbo, supports the conclusion that the Chancellor verbally authorized the RIF in a series of management meetings. Lastly, Agency explains that it set up meetings with school principals to explain the RIF process; conducted tutorial sessions regarding the RIF; prepared Competitive Level Documentation Forms for each employee subject to competition; and issued notices to all employees that explained the basis for the RIF. Accordingly, Agency requests that this Board reverse the AJ's Initial Decision.<sup>6</sup>

Employee filed a response on November 1, 2018. She contends that OEA may not exercise jurisdiction over Agency's Petition for Review because it was not filed within thirty-five days as required by D.C. Official Code § 1-606.03. Employee also posits that the AJ did not err in finding that Agency failed to produce the documentation which properly authorized the RIF. Lastly, she disagrees with Agency's argument that the absence of the Administrative Order constituted a harmless error. Therefore, Employee requests that Agency's petition be dismissed.<sup>7</sup>

On November 5, 2018, Agency filed a Motion to Voluntarily Withdraw its Petition for Review. As a result, it asks that this Board dismiss the petition.<sup>8</sup> In light of Agency's request to voluntarily withdraw its petition, the Petition for Review is dismissed.

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<sup>6</sup> *Initial Decision* (October 2, 2018).

<sup>7</sup> *Employee Answer to Petition for Review* (November 1, 2018).

<sup>8</sup> *Agency Motion to Voluntarily Withdraw Petition for Review* (November 1, 2018).

**ORDER**

Accordingly, it is hereby ordered that Agency's Petition for Review is **DISMISSED**.

**FOR THE BOARD:**

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Clarence Labor, Chair

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Vera M. Abbott

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Patricia Hobson Wilson

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Jelani Freeman

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Peter Rosenstein

Either party may appeal this decision on Petition for Review to the Superior Court of the District of Columbia. To file a Petition for Review with the Superior Court, the petitioning party should consult Superior Court Civil Procedure Rules, XV. Agency Review, Rule 1.