THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
NATHANIEL MOONE,	)	OEA Matter No. 2401-0054-10
Employee	)	
	)	Date of Issuance: May 31, 2013
	)	
D.C. PUBLIC SCHOOLS,	)	
Agency	)	
	)	

OPINION AND ORDER
ON
PETITION FOR REVIEW

Nathaniel Moone ("Employee") worked as a Social Studies Teacher with the D.C. Public Schools ("Agency"). On October 2, 2009, Agency notified Employee that he was being separated from his position pursuant to a reduction-in-force ("RIF"). The effective date of the RIF was November 2, 2009.[1]

Employee challenged the RIF by filing a Petition for Appeal with the Office of Employee Appeals ("OEA") on October 21, 2009. He asserted that there was a total disregard for professionalism when Agency conducted the RIF; he never received an unsatisfactory rating of his job performance; and his tenure was not a consideration. Therefore, he requested reinstatement to his position.[2]

In its answer to Employee's Petition for Appeal, Agency explained that it conducted the

[1] *Petition for Appeal*, p. 7 (October 21, 2009).
[2] *Id.*, 3-5.

RIF pursuant to D.C. Official Code § 1-624.02 and Title 5, Chapter 15 of the District of Columbia Municipal Regulations ("DCMR"). It argued that pursuant to 5 DCMR § 1501, Ron Brown Middle School ("Ron Brown") was determined to be a competitive area, and under 5 DCMR § 1502, the ET-15 Social Studies Teacher position was the competitive level subject to the RIF. Accordingly, Employee was provided one round of lateral competition where the principle of Ron Brown rated each employee through the use of Competitive Level Documentation Forms ("CLDF"), as defined in 5 DCMR § 1503.2.[3] After discovering that Employee was ranked the lowest in his competitive level, Agency provided him a written, thirty-day notice that his position was being eliminated. Therefore, it believed the RIF action was proper.

Prior to issuing the Initial Decision, the OEA Administrative Judge ("AJ") ordered the parties to submit Pre-Hearing Statements and held a Pre-Hearing Conference on December 28, 2011. In its Pre-hearing Statement, Agency reiterated its position and requested that the appeal be dismissed for failure to state a claim in which relief could be granted.[4] Employee provided in his Pre-hearing Statement that Agency did not properly follow the RIF procedures under D.C. Official Code § 1-624.02; it did not conduct one round of lateral competition; and it did not provide the proper notice of his separation. [5]

The Initial Decision was issued on March 28, 2012. The AJ found that although the RIF was authorized pursuant to D.C. Official Code § 1-624.02**,** D.C. Official Code § 1-624.08 was the applicable statute.[6] He ruled that Agency considered all of the factors under DCMR § 1503.

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[3] Agency explained that when conducting the RIF, its Office of Human Resources computed Employee's length of service, including credit for District residency, veteran's preference and prior outstanding performance rating. *Agency's Answer to Employee's Petition for Appeal,* p. 2 (December 17, 2009).
[4] *District of Columbia Public Schools' Pre-hearing Statement,* p. 4 (December 23, 2011).
[5] *Employee's Pre-hearing Conference Statement,* p. 2 (December 21, 2011).
[6] The AJ held that according to *Washington Teachers' Union, Local #6 v. District of Columbia Public Schools,* 960 A.2d 1123 (D.C. 2009), D.C. Official Code § 1-624.08 or the "Abolishment Act" was the applicable statute because

2 when it conducted the RIF, but it failed to submit documentary evidence to prove that Employee timely received the RIF notice.[7] The AJ explained that Agency committed a procedural error in conducting the RIF when it provided Employee fifteen days' notice that he was being separated from his position. Accordingly, Agency's RIF action was upheld, but it was ordered to reimburse Employee fifteen days' pay and benefits.

On May 15, 2012, Employee filed a request for additional time to file a Petition for Review with the OEA Board. In it, he provides that although the time for filing the Petition for Review has lapsed, consideration of his request should be given because he informed his union that Agency did not comply with the AJ's Orders, but he was told that the union could no longer represent him. Employee subsequently sought legal counsel, but he was unable to provide the necessary information to his attorney before the filing deadline. Ultimately, he believes that the validity of the RIF process was ignored.[8]

The Initial Decision was issued on March 28, 2012. In accordance with OEA Rule 632.1, "the initial decision shall become final thirty-five (35) calendar days after issuance." Further, OEA Rule 632.2 provides the conditions upon which an Initial Decision will not become final. It states that "the initial decision shall not become final if any party files a petition for review or if the Board reopens the case on its own motion within thirty-five (35) calendar days after issuance of the initial decision." Because neither party filed a Petition for Review within 35 calendar days, the Initial Decision became final on May 2, 2012. Therefore, Employee's Petition for Review filed on May 15, 2012, was untimely.[9]

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the RIF was conducted for budgetary reasons, and the statute's 'notwithstanding' language is used to override conflicting provisions of any other section. *Initial Decision*, p. 2-4 (March 28, 2012).

[7] The AJ held that Agency had the burden proving that it provided the proper notice to Employee.

[8] *Petition for Review* (May 15, 2012).

[9] It should be noted that a formal Petition for Review was not filed in this case. Employee's submission was a request for additional time to file a Petition for Review. It has been one year since this request was made and no formal petition has been lodged. Because Employee presented some arguments in his request for an extension, we

Although Employee's argument for the late filing is compelling, OEA and the D.C. Court of Appeals have consistently held that time limits for filing appeals are mandatory in nature.[10] Specifically, the D.C. Court of Appeals reasoned that because the time limits for filing appeals with administrative adjudicative agencies are mandatory and jurisdictional, it obviates any need for a showing of prejudice.[11] In accordance with OEA Rule 628.2, Employee has the burden of proving issues of jurisdiction including the timeliness of his filing. Because Employee failed to prove that his appeal was timely filed with OEA, we must deny his petition.

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will consider it as his Petition for Review. The specific arguments he raised were that Agency violated the notification requirements of a RIF, and he questioned the competitive level utilized by Agency.

[10] *District of Columbia Public Employee Relations Board v. District of Columbia Metropolitan Police Department*, 593 A.2d 641, 643 (D.C. 1991); *Thomas v. District of Columbia Department of Employment Services*, 490 A.2d 1162, 1164 (D.C. 1985); *Alfred Gurley v. D.C. Public Schools,* OEA Matter No. 1601-0008-05, *Opinion and Order on Petition for Review* (April 14, 2008); *James Davis v. Department of Human Services,* OEA Matter No. 1601-0091-02, *Opinion and Order on Petition for Review* (October 18, 2006); *Damond Smith v. Office of the Chief Financial Officer,* OEA Matter No. J-0063-09, *Opinion and Order on Petition for Review* (December 6, 2010); *Jason Codling v. Office of the Chief Technology Officer,* OEA Matter No. J-0151-09, *Opinion and Order on Petition for Review* (December 6, 2010); and *Annie Keitt v. D.C. Public Schools, Division of Transportation,* OEA Matter No. J-0082-09, *Opinion and Order on Petition for Review* (January 26, 2011).

[11] *District of Columbia Public Employee Relations Board v. District of Columbia Metropolitan Police Department*, 593 A.2d 641, 643 (D.C. 1991); *Thomas v. District of Columbia Department of Employment Services*, 490 A.2d 1162, 1164 (D.C. 1985); *Zollicoffer v. D.C. Public Schools,* 735 A.2d 944, 945-946 (D.C. 1999); and *Gibson v. Public Employee Relations Board,* 785 A.2d 1238, 1241 (D.C. 2001).

ORDER

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

FOR THE BOARD:

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William Persina, Chair

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Sheree L. Price, Vice Chair

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Vera M. Abbott

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Necola Y. Shaw

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A. Gilbert Douglass

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.