THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
JEROME COOPER,	)	
Employee	)	OEA Matter No. 2401-0238-09
	)	
v.	)	Date of Issuance: February 24, 2011
	)	
DISTRICT OF COLUMBIA	)	
PUBLIC SCHOOLS,	)	
Agency	)	ERIC T. ROBINSON, Esq.
	)	Administrative Judge
	)	

Mark Murphy, Esq., Employee Representative
Sara White, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On August 27, 2009, Jerome Cooper ("Employee") filed a petition for appeal with the Office of Employee Appeals ("OEA" or "the Office") contesting the District of Columbia Public Schools ("DCPS" or "the Agency") action of abolishing his position through a Reduction-In-Force ("RIF"). The effective date of the RIF was August 28, 2009. At the time his position was abolished, Employee's official position of record within the Agency was Custodian at Watkins Elementary School ("Watkins"). According to an affidavit by Peter Weber, who has served as Special Director to then Chancellor Michelle Rhee and has also served as Interim Director of Human Resources at DCPS, Employee was ranked the lowest out of four positions at Watkins on the Competitive Level Documentation Forms ("CLDF") utilized in the instant matter. Furthermore, only the three highest rated custodians survived the instant RIF at Watkins.

I was assigned this matter on or around November 10, 2010. Thereafter, a prehearing conference was convened in order to assess the parties' arguments. I then issued an Order dated December 10, 2010, wherein I required the Employee to address whether the Agency properly conducted the RIF in this matter. After considering the parties argument and the documents of record, I have decided that an evidentiary hearing is 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. Agency contends that it followed all applicable rules and regulations with respect to the instant matter. 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.

The District of Columbia Municipal Regulations ("DCMR") provides further guidance regarding what factors DCPS may utilize during a RIF when choosing which employees to retain within a competitive level and area. Of note, 5 DCMR 1503.2 *et al* provides in relevant part:

> 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.

The Agency, when it instituted the instant RIF, did not accord equal weight to the four factors outlined within 5 DCMR 1503.2. The Agency weighed the factors as follows:

> (a) Significant relevant contributions, accomplishments, or performance - 50%.
>
> (b) Relevant supplemental professional experiences as demonstrated on the job – 30%

(c) Office or school needs, including: curriculum specialized education, degrees, licenses or areas of expertise – 10%

(d) Length of Service – 10%

Lateral Competition

Employee argues that his service computation date on the CLDF was improperly calculated and that he was not properly credited for his years of creditable service. According to the CLDF submitted by DCPS in this matter, Employee's service computation date was 2001. Of note, the service computation date for the next lowest rated custodian on the CLDF was 2000. This custodian position survived the instant RIF. According to an in-depth review of Employee's tenure with the District government conducted by Jana N. Woods-Jefferson, Director, Recruitment and Compensation, Office of Human Resources, DCPS, Agency admits that Employee's service computation date is actually May 1991. *See* Agency letter dated January 10, 2011.

According to the CLDF, Employee received a total score of 27 while the next lowest ranked Custodian ("E3") received a total score of 32. Both Employee and E3 scored 6 on the Years Score. However, the two highest ranked custodians received 10 and 8 as Years Score. Their service computation date was 1990 and 1989 respectively. I find that Employee's Year's score should reflect his May 1991, service computation date as admitted to by Woods-Jefferson. I further find that Agency erred when it credited Employee's years score with only 6. I further find that Employee's Years score should be 9. However, that only brings Employee's Years Score to 30. Regrettably, I find that this is not enough to disturb the instant RIF since Employee is still the lowest ranked custodian.

Budgetary Constraints

On another note, DCPS argued that it based the instant RIF on its good faith belief that it was facing budgetary constraints necessitating this onerous action. Employee argues that the budgetary constraints cited by the Agency are contrived and that I should reverse this action because the underlying basis for the RIF does not exist. According to *Anjuwan v. D.C. Department of Public Works*, 729 A.2d. 883 (12-11-98), the OEA's authority over RIF matters is narrowly prescribed. The Court explained that the OEA does not have jurisdiction to determine whether the RIF at the Agency was *bona-fide* or violated any law, other than the RIF regulations themselves. Further, it is an established matter of public law, that as of October 21, 1998, pursuant to the Omnibus Personnel Reform Amendment Act of 1998 (OPRAA), D.C. Law 12-124, the OEA no longer has jurisdiction over grievance appeals. I find that given the instant circumstances, it is outside of my authority to decide whether there was in fact a *bona –fide* budget shortage. That is not say that Employee may not press his claims elsewhere, but rather that the OEA currently lacks the jurisdiction to hear Employee's other claims.

Conclusion

Based on the foregoing, I find that Employee's position was abolished, after Employee

properly received one round of lateral competition and a timely 30-day legal notification was properly served[1]. I conclude that the Agency's action of abolishing Employee's position was done in accordance with D.C. Official Code § 1-624.08 (d) and (e) and that the OEA is precluded from addressing any other issue(s) in this matter.

ORDER

It is hereby ORDERED that Agency's action of abolishing Employee's position through a Reduction-In-Force is UPHELD.

FOR THE OFFICE:

_____
ERIC T. ROBINSON, ESQ.
ADMINISTRATIVE JUDGE

[1] Employee did not argue that he did not receive the RIF notice at least 30 days prior to the effective date of the RIF.