THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
DEIRDRE COUNCIL ELLIS,	)	OEA Matter No. 2401-0052-11
Employee	)	
	)	
v.	)	Date of Issuance: July 21, 2015
	)	
D.C. PUBLIC SCHOOLS,	)	
Agency	)	
	)	

OPINION AND ORDER
ON
PETITION FOR REVIEW

Deirdre Council Ellis ("Employee") worked as a Compliance Specialist with the D.C. Public Schools ("Agency"). On October 22, 2010, Agency notified Employee that she was being separated from her position pursuant to a reduction-in-force ("RIF"). The effective date of the RIF was November 21, 2010.[1]

Employee challenged the RIF by filing a Petition for Appeal with the Office of Employee Appeals ("OEA") on December 21, 2010. She argued that the RIF's procedures and process were flawed and that Agency discriminated against her. Employee also believed that the RIF was a pre-text to terminate her without cause. Lastly, Employee stated that Agency's RIF was not based on her Compliance Specialist position. Therefore, she requested reinstatement or to

[1] *Petition for Appeal,* p. 7 (December 21, 2010).

settle the matter.[2]

In its response to the Petition for Appeal, Agency denied Employee's contentions and provided that its action was in accordance with D.C. Official Code § 1-624.02 and Title 5, Chapter 15 of the District of Columbia Municipal Regulations ("DCMR"). It asserted that the RIF was based on a reorganization, a curtailment of work, and for budgetary reasons.[3] Agency explained that pursuant to 5 DCMR § 1503.2, the NPU was the competitive area and the Compliance Specialist position was the competitive level subject to the RIF. However, because Employee's entire competitive level was eliminated, she was not provided one round of lateral competition. As a result, Agency provided Employee a written, thirty-day notice that her position was being eliminated. Thus, it believed that the RIF action was proper and requested that the appeal be dismissed for failure to state a claim.[4]

After the matter was assigned to the OEA Administrative Judge ("AJ"), she scheduled a Pre-hearing Conference and ordered the parties to submit Pre-hearing Statements.[5] In Employee's Pre-hearing Statement, she provided that Agency did not provide her a thirty day notice prior to the effective RIF date. She contended that pursuant to D.C. Official Code § 1-624.08, Agency needed an authorized Agency Head to identify the positions to be abolished, but it did not have one as of October 22, 2010.[6] Moreover, Employee argued that D.C. Official Code § 1-624.02 was inapplicable to the RIF. She explained that Agency was obligated to follow the

[2] Employee also contested the compensation that she received from Agency. She explained that Agency detailed her to a Placement Specialist position, but did not compensate her for pay in accordance with the detailed position. *Id.*, p. 3-4.
[3] It explained that Employee's position was within the Office of Special Education's Non-Public Unit ("NPU"), and NPU struggled with its functions. Agency provided that in order to reduce administrative complaints, it outsourced the NPU's functions to contractors. It also eliminated all non-management staff positions.
[4] Furthermore, Agency provided that OEA lacked jurisdiction to consider Employee's discrimination complaints. *District of Columbia Public Schools' Answer to Employee's Petition for Appeal* (January 24, 2011).
[5] *Order Convening a Pre-hearing Conference* (February 7, 2013).
[6] She explained that Michelle Rhee, the former Chancellor of Agency, had resigned prior to the issuance of the RIF notice.

adverse action procedures under its collective bargaining agreement with the Council of School Officers.[7]

Thereafter, the AJ ordered the parties to address Employee's assertion that she was separated based on a Compliance Specialist position but was working on detail as a Placement Specialist; whether the RIF was proper in accordance with her detailed position; whether she was properly placed in the correct competitive level; and to submit documentation indicative of Employee's position at the time of the RIF. Furthermore, Agency was ordered to provide Employee's latest Standard Form 50 ("SF-50"); to explain why D.C. Official Code § 1-624.02 was the applicable statute; and to submit documentation showing that the Compliance Specialist Position and the Placement Specialist Position were eliminated via the RIF.[8]

In response to the AJ's Order, Employee reiterated arguments previously submitted.[9] Meanwhile, Agency's brief explained that its use of D.C. Official Code § 1-624.02 and 5 DCMR 1503 was proper. It reasoned the Chancellor had authority to authorize the RIF, and she

[7] Employee also contested, *inter alia,* Agency's assertion that the RIF was for budgetary reasons. She argued that Agency received an increase in its operating budget. Furthermore, Employee provided that although Agency transferred her work to a contractor, there was still a need for the functions of her position. Employee provided that there were managers who were hired after her separation date. She contended that Agency failed to retain a retention roster for the employees who were affected by the RIF; failed to implement a system for recruiting affected employees; argued that the information provided in her CLDF was not accurate; claimed that Agency engaged in unfair labor practices and discrimination; contended that Agency violated the Fair Labor Relations Act; and alleged that Agency targeted the NPU because all of the employees were black and over the age of forty. *Employee's Brief in Support of Appeal* (March 8, 2013).

Agency's Pre-hearing Statement reiterated its previous arguments and provided that OEA is limited to determining whether it followed D.C. Official Code § 1-624.02, 5 DCMR §§ 1503 and 1506. *District of Columbia Public Schools' Brief,* p. 8 (March 11, 2013).

[8] Agency was also ordered to submit a response to a March 11, 2013 Order wherein the AJ consolidated several cases. In that Order, she required Agency to provide additional documentation showing the effective date of the former Chancellor's resignation. Agency also needed to identify the Agency Head as of October 22, 2010 and to address Employee's contention that it violated D.C. Official Code § 1-624.08. *Post Pre-hearing Conference Order* (March 22, 2013). In response, Agency provided that Michelle Rhee was the Agency Head on October 22, 2010, and she previously authorized the RIF on October 8, 2010. *Agency's Additional Submission in Response to March 22, 2013 Order* (February 10, 2014).

[9] *Employee's Brief in Support of Appeal* (April 29, 2013).

implemented it pursuant to D.C. Official Code § 1-624.02.[10] Agency also submitted that even if Employee was subjected to the RIF based on the Placement Specialist position, she would have still been separated because the entire competitive levels for the Compliance Specialist and Placement Specialist positions were eliminated.[11]

The Initial Decision was issued on February 11, 2014. 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 to govern the RIF.[12] As a result, she ruled that D.C. Official Code § 1-624.08 limited her review of the appeal to determining whether Employee received a written, thirty-day notice prior to the effective date of her separation and one round of lateral competition within her competitive level. The AJ found that while Employee alleged that she had been detailed, her position of record was Compliance Specialist, and there was no evidence in the record to support her contention regarding the Placement Specialist Position. Thus, because the entire Compliance Specialist competitive level was abolished, the AJ found that Agency was not required to provide one round of lateral completion to Employee. She also found that Agency provided Employee the required thirty-day notice.[13] Accordingly, Agency's RIF action was upheld.[14]

Employee filed a Petition for Review with the OEA Board on March 18, 2014. She

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[10] Agency argued that .C. Official Code § 1-624.08 and D.C. Official Code § 1-624.02 are not interchangeable.
[11] *District of Columbia Public Schools' Statement of Good Cause and Post Pre-hearing Conference Brief* (April 30, 2013).
[12] The AJ cited the District of Columbia Court of Appeals' position in *Washington Teachers' Union, Local #6 v. District of Columbia Public Schools,* 960 A.2d 1123 (D.C. 2009) and reasoned that D.C. Official Code § 1-624.08 or the "Abolishment Act" was the applicable statute because 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 (February 11, 2014).
[13] As for Employee's other claims, the AJ held that OEA could not address whether the RIF was bona fide; OEA lacked jurisdiction to consider post-RIF activity, and therefore, could not address her concerns regarding other employee's performing her duties after the RIF; OEA lacked jurisdiction to consider grievances; OEA lacked jurisdiction to consider discrimination allegations; and OEA lacked jurisdiction to consider claims regarding the District of Columbia Privatization Act. *Id.,* 13-16.
[14] *Id*. at 16.

provides that Agency has the burden of proving all procedural requirements. Additionally, she claimed that Agency conducted the RIF in accordance with D.C. Official Code § 1-624.02, while the AJ determined that the RIF was conducted under different procedures.[15]

In accordance with OEA Rule 633.3, a Petition for Review must present one of the following arguments for it to be granted:

> The petition for review shall set forth objections to the initial decision supported by reference to the record. The Board may grant a petition for review when the petition establishes that:
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> (a) New and material evidence is available that, despite due diligence, was not available when the record closed;
>
> (b) The decision of the Administrative Judge is based on an erroneous interpretation of statute, regulation or policy;
>
> (c) The findings of the Administrative Judge are not based on substantial evidence; or
>
> (d) The initial decision did not address all material issues of law and fact properly raised in the appeal.

Employee's Petition for Review fails to raise any of the four objections listed. There was no evidence accompanying Employee's Petition for Review; therefore, OEA Rule 633.3(a) is not applicable. Employee does not present any statutes, regulations, or policies in her Petition for Review to trigger OEA Rule 633.3(b). Similarly, Employee makes no substantial evidence arguments, nor does she take a position that the AJ failed to address any material issues of law and fact. Instead, she provides that she would provide supplemental documentation within fifteen days of her curtly written Petition for Review. Employee never filed any supplemental documentation. Moreover, Employee's petition failed to offer any objections to the Initial Decision that were supported by reference to the record. This is a mandatory requirement for Petitions for Review filed before the OEA Board. Employee wholly failed to comply with this

[15] *Petition for Review of Initial Appeal* (March 18, 2014).

requirement by merely offering a few sentences why she sought review of the Initial Decision. Accordingly, we must deny Employee's Petition for Review.

ORDER

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

FOR THE BOARD:

_____
William Persina, Chair

_____
Sheree L. Price, Vice Chair

_____
Vera M. Abbott

_____
A. Gilbert Douglass

_____
Patricia Hobson Wilson

This decision of the Office of Employee Appeals shall become the final decision 5 days after the issuance date of this order. 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.