THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
THEODORE MAYBERRY,	)	
Employee	)	OEA Matter No. 2401-0283-09
	)	
v.	)	Date of Issuance: October 7, 2011
	)	
DISTRICT DEPARTMENT OF TRANSPORTATION,	)	
Agency	)	ERIC T. ROBINSON, Esq.
	)	Administrative Judge

Clifford Lowery, Union Representative
Melissa Williams, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On September 21, 2009, Theodore Mayberry ("Employee") filed a petition for appeal with the Office of Employee Appeals ("OEA" or "the Office") contesting the District Department of Transportation ("DDOT" or "the Agency") action of abolishing his position through a Reduction-In-Force ("RIF"). According to the Retention Register created in anticipation of the instant RIF, Employee's last position of record with DDOT was Masonry Worker. I was assigned this matter on or around June 6, 2011. A Prehearing Conference was held on June 30, 2011. After considering the parties' respective arguments I determined that no further in-person proceedings were warranted in this matter. I then issued an Order dated July 1, 2011, wherein the parties were required to submit their final legal briefs in this matter. The Agency has complied with this order. To date, Employee has not submitted his final legal brief. 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.

DDOT contends that the abolishment of Employee's last position of record pursuant to a RIF was conducted within the bounds of the law. In defending its action before this Office, Agency relies on D.C. Official Code § 1-624.08 §§ (d), (e) and (f). Agency contends that the OEA review of a RIF matter begins and ends with the aforementioned statute and that the OEA lacks authority to examine any other aspects of a RIF.

With respect to D.C. Official Code § 1-624.08 (e), Agency contends that Employee was given 30 days written notice informing him that his position was going to be abolished pursuant to the instant RIF. Included within Agency's Answer at Exhibit 1 is a copy of the aforementioned notice provided to Employee ("RIF Notice"). The RIF Notice is dated July 17, 2009, and I note that Employee signed the RIF Notice on that same date, acknowledging his receipt. According to the RIF Notice, Employee's position was abolished effective on August 21, 2009.

In accordance with D.C. Official Code § 1-624.08 (d), Agency argues that a District government employee, whose position has been abolished, is generally entitled to one round of lateral competition for positions within their competitive area and level that survive the RIF.

Agency submits as evidence the retention register it utilized in effectuating the instant RIF. *See* Agency's Answer at Exhibit 2. Agency contends that the Employee was properly afforded one round of lateral completion before his position was abolished through the RIF.

I find that in the instant matter, I am guided solely by D.C. Official Code § 1-624.08, which provides 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 s/he did not receive written notice thirty (30) days prior to the effective date of his/her separation from service; and/or

2. That s/he was not afforded one round of lateral competition within his/her competitive level.

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. 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)[1].

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

[1] Employee did not submit his final legal brief in this matter. I find that Employee was afforded a fair opportunity to address DDOT's contentions in this matter but opted instead to remain silent. I further find that all other issue(s) that Employee raised during the pendency of this matter to be irrelevant.

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. Based on the above discussion, Employee has failed to proffer any credible evidence that would indicate that the RIF was improperly conducted and implemented. Employee's other ancillary arguments are best characterized as grievances and outside of the OEA's jurisdiction to adjudicate. 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. Based on the foregoing, I conclude that the Agency's action of abolishing Employee's position was done in accordance with all applicable laws, rules and regulations.

ORDER

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

FOR THE OFFICE:

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ERIC T. ROBINSON, ESQ.
ADMINISTRATIVE JUDGE