**THE DISTRICT OF COLUMBIA**

**BEFORE**

**THE OFFICE OF EMPLOYEE APPEALS**

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| In the Matter of: | ) | |
| | ) | |
| Lawrence Nwankwo | ) | OEA Matter No. 2401-0203-09R14 |
| Employee | ) | |
| | ) | Date of Issuance: July 24, 2015 |
| v. | ) | |
| | ) | Joseph E. Lim, Esq. |
| D.C. Department of Transportation | ) | Senior Administrative Judge |
| Agency | ) | |
| | ) | |

James Kestell, Esq., Employee Representative
Chery Staples, Esq., Agency Representative

## INITIAL DECISION ON REMAND

### INTRODUCTION AND PROCEDURAL BACKGROUND

On August 13, 2009, Lawrence Nwankwo ("Employee") filed a petition for appeal with the Office of Employee Appeals ("OEA" or "the Office") contesting the District Department of Transportation's ("DDOT" or "the Agency") decision to abolish his position through a Reduction-In-Force ("RIF"). Employee's RIF notice was dated July 17, 2009, with an effective date of August 21, 2009. At the time his position was abolished, Employee's official position of record within Agency was General Engineer, DS-801-13. On October 1, 2009, Agency filed an Answer to Employee's Petition for Appeal.

This matter was initially assigned to Judge Lois Hochhauser, who held a conference on August 24, 2010. After this matter was reassigned to me, I held a Prehearing Conference on March 23, 2011, and issued an Initial Decision ("ID") on November 23, 2011, wherein I upheld the RIF. On appeal, the OEA Board upheld the ID on March 21, 2013.[1] Employee appealed, and on May 12, 2014, Judge Thomas Motley of the Superior Court of the District of Columbia issued an Order Granting Petitioner's Request to Vacate OEA Determination and Remanding This Matter for Further Proceedings.[2] The Order required OEA to hold an evidentiary hearing to address non-frivolous issues raised by Employee. I held an evidentiary hearing on April 28, 2015, and closed the record at its conclusion.

[1] *Nwanko v. DC Dept. of Transportation*, OEA Matter No. 2401-0203-09, *Opinion and Order on Petition for Review* (March 21, 2013).
[2] *Nwanko v. DC OEA*, Case No. 2013 CA 2876 (D.C. Super. Ct. May 12, 2014).

## JURISDICTION

This 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 the instant RIF was done in accordance with all applicable laws, rules, or regulations.

## BURDEN OF PROOF

OEA Rule 628.1, 59 DCR 2129 (March 16, 2012) 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 628.2 *id.* states:

For appeals filed on or after October 21, 1998, the Agency shall have the burden of proof, except for issues of jurisdiction.

### ***Employee's Position***[3]

In his Petition for Appeal, Employee states that Agency used incorrect information for his competitive level and that the RIF was conducted by preference. He claims that the RIF was a pretext to replace him with another employee who was previously brought into his division. Employee argues that Agency did not offer any justification why it chose a lesser competitive status, and that Employee's Form 50s were inaccurate. Employee alleges that Agency improperly applied D.C. Official Code §1-624.08 because he was not afforded one round of lateral competition when they used inaccurate Form 50s to construct his retention register.

### ***Agency's Position***[4]

Agency submits that it properly conducted the instant RIF pursuant to Chapter 24 of the District of Columbia Personnel Manual ("DPM") and D.C. Official Code §1-624.08, which requires Agency to provide Employee with one round of lateral competition and thirty (30) days

[3] Employee's closing argument, Transcript pgs. 218-224.
[4] Agency's closing argument, Transcript pgs. 208-217.

notice prior to the effective date of separation. Agency contends that all the information in Employee's retention register and other RIF documents are accurate, and that Employee's Form 50s did not taint these RIF documents. Agency asserts that because Employee was the only individual who occupied his competitive level as evidenced in the Retention Register, the statutory provision affording him one round of lateral competition was inapplicable.

Agency asserts that on July 17, 2009, it served Employee with official written notification of his separation effective August 21, 2009, which provided him with more than thirty (30) days written notification prior to the effective date of the instant RIF.

In response to Employee's argument that Agency got another employee to perform his duties, Agency contends that the instant RIF was conducted due to lack of funds and realignment, not lack of work. Agency notes that the other employee was taken in months before the RIF to replace an employee who retired, and not to get rid of Employee. Agency also asserts that Employee's arguments regarding unsubstantiated financial need for the RIF and alleged animosity between Employee and his superiors are outside of OEA's jurisdiction, which is limited to one round of lateral competition and thirty (30) days written notification prior to the effective date of separation.

EVIDENCE:

1. Lewis Norman (Transcript p. 15-128)

Lewis Norman testified about his thirty-five years of experience in personnel and position classification in the federal and District of Columbia government. In 2009, Norman was the coordinator for realignments and RIFs under the personnel authority of the mayor. He has testified as an expert on RIF matters in D.C. Superior Court, Federal Court, and before the Merit Systems Protection Board. This court deemed him an expert on RIF matters.[5]

Norman described the RIF process and stated that Employee's position series and pay grade in the RIF documents have been verified as accurate and that the process complied with the appropriate regulations. An employee's salary is considered only when a RIF is conducted for budgetary reasons. He described how Agency came up with Employee's retention register.[6] The sources used for the RIF documents are the employees' official employee records.

Norman clarified that in Employee's position code of DS 901-13-09-N, the DS stood for District schedule, the 901 was the occupational series, the 13 is the pay grade, the 09 is the competitive level number is a numerical designation unrelated to pay, and the N stood for non-supervisory. The position code was established by the Department of Human Resources when the position was created, well before the instant RIF. Tenure group one consists of career employees; tenure group two are career probationary; and tenure group three consists of term and temporary

[5] Employee had no objections to Norman being designated an expert witness.
[6] Agency Exhibit 2.

employees. Norman testified that had there been other engineers in his competitive area, Employee would have competed only with engineers in his pay grade.

Full-time employees are not placed in the same register as part-timers. At will employees are not subject to a RIF as they are simply terminated. He explained how the Competitive Level Documentation Form ("CLDF") scores are computed to come up with the service computation date. Since Employee was the only pay grade 13 engineer in his competitive area of Transportation Policy and Planning, Plan Review and Compliance Division, his name was the only one listed.

Norman had examined the documents in this RIF and determined that they were accurate. He also added that even if there were some mistakes in the scores, Employee's position would still be eliminated as he was the only one in his retention register and did not have to compete with other employees.

Based on the RIF documents in this matter, Norman testified that in his expert opinion the RIF conducted in this matter was conducted for Fiscal Year 2010 budgetary challenges as well as the Agency's need for realignment in its staffing.[7] He opined that in his expert opinion, the Abolishment Act was triggered by this RIF.

When shown Employee's computer-generated Form 50s[8], Norman admitted that at times there were errors regarding the legal authority and the name and location of the position's organization. For example, in Agency Exhibit 7, the legal authority in Employee's Form 50 with an effective date of October 14, 2007, indicated "DPM Chapter 31B Def Termination & Non Pay" even though it is undisputed that Employee was not terminated during this period of time. At times, Employee's position was described as "engineer" and at other times, it was described as "general engineer." However, the occupational series remained consistent and unchanged.

Nonetheless, Norman opined that in the essential documents regarding this particular RIF, especially the retention register, none of these errors had any effect on the RIF and that Agency had followed all the RIF regulations. In fact, Norman stated definitively that all the information in the Employee's retention register is a hundred percent accurate.

2. Employee (Transcript p. 129-128)

Employee testified that he started as a Special Assistant for Agency in 2000 before becoming a General Engineer in March 2002, and then Engineer in 2006. During the time that he was employed, his division was the Transportation Policy Planning Administration. He stated that his May 15, 2009, Form 50 indicated that his unit was the District Department of Transportation,

[7] Employee indicated that he had no objections to Norman being considered by the Court as an expert on personnel and RIF matters.
[8] Agency Exhibits 4-7. A Form 50, Notification of Personnel Action, is a standard form used by the D.C. Government to document personnel actions involving its employees.

Office of Director, Transportation Policy Planning Administration ("TPPA") Plan Review Branch,[9] while a second Form 50 dated May 15, 2009, indicated that his unit was the District Department of Transportation, Office of Director, Policy Planning & Sustainability Administration Plan Review Branch.[10] Employee stressed that he never worked at the Policy Planning & Sustainability Administration Plan Review Branch as it did not exist on May 15, 2009.

Employee also pointed out his September 17, 2006, Form 50 indicated that his position was Engineer for the Office of Information Technology even though he never worked there.[11] He also stated that his August 21, 2009, Form 50 stated that his position was General Engineer even though his position was Engineer.[12] He pointed other similar mistakes in his other Form 50s.[13] However, none of these Form 50s had signatures. Under cross-examination, Employee admitted that all the information on his retention register was correct and that a General Engineer has the same occupational series and grade as an Engineer.

Employee alleged that Agency brought on Transportation Specialist Jeffrey Jennings to do his job. However, Employee could not explain how the February 20, 2009, memorandum proved his allegation.[14] He argued that management had no right to bring Jennings into his division after someone had retired. He also stated that he was falsely accused by his Chief of Staff Stephen Amos of falsifying his time sheet when he was actually driving a truck during the March 2009 snow storm. He asserted that his immediate supervisor, Ann Simpson-Mason, gave him excellent work reviews but Administrator Karina Ricks gave him an undeserved satisfactory rating when he deserved outstanding because of the big jobs he did.

Employee received his RIF notice by mail three days after its issue date. He alleges that the RIF was just a pretext by Agency and Ms. Ricks to get rid of him.[15] Employee believes this happened because he complained to Ms. Ricks when he was not interviewed for a job he applied for. However, Employee admitted that the RIF was agency-wide, Ricks did not head the entire Agency, and that other people were also separated because of the RIF.

## FINDINGS OF FACT

These findings of fact are based on my assessment of the witnesses' credibility and consistency, the authenticity of the documents, and the logical inference drawn from the evidence.

1. I find that the RIF was conducted both for budgetary reasons as well as staff realignment

[9] Employee Exhibit 1.
[10] Employee Exhibit 2.
[11] Employee Exhibit 3b.
[12] Employee Exhibit 5.
[13] *Id.*
[14] Employee Exhibit 4.
[15] Transcript, p. 193.

reasons, thereby triggering the Abolishment Act as will be discussed in the analysis.

2. I find that the RIF was not conducted as a pretext to terminate Employee's employment.

3. I find that the error in some of Employee's Form 50s did not affect the accuracy of his RIF documents. In addition, I do not credit Employee's exhibits regarding his Form 50s with any credibility as they bore no required signatures to be effective.

4. I find that Employee's official position of record was General Engineer, and that this title is essentially the same or equivalent to Engineer, as they share the same competitive level, tenure group, and type of service.

5. I find the information on Employee's RIF documents, especially his retention register, to be accurate based on the undisputed fact that his title, competitive level, tenure group, type of service, and RIF service computation date were accurate.

6. I find that Employee was correctly the sole position on his retention register and could not compete with any other employee in his competitive level.

7. I find that Agency has satisfied the requirement that Employee received his required round of lateral competition.

8. Based on his own testimony, I find that Employee received the July 17, 2009, RIF Notice, about three days later on July 20, 2009, and the RIF effective date was August 21, 2009. I thus find that Employee received his required thirty (30) day notice of the RIF before its effective date.

## ANALYSIS AND CONCLUSIONS OF LAW

### *Analysis of RIF Regulations*

In a June 9, 2009 Administrative Order, Agency was granted authorization to conduct the instant RIF due to lack of funds and agency realignment pursuant to D.C. Official Code § 1-624.01 *et seq.*; and Title 6 of the District of Columbia Municipal Regulations ("DCMR"), Chapter 24.[16]

Based on the expert opinion of Lewis Norman and for the reasons explained below, the undersigned finds that D.C. Official Code § 1-624.08 ("Abolishment Act" or "the Act") is the more applicable statute to govern this RIF.[17]

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[16] Agency Exhibit 1.

[17] D.C. Official Code § 1-624.02 states in relevant part that:

> (a) Reduction-in-force procedures shall apply to the Career and Educational Services… and shall include:

Section § 1-624.08 states in pertinent part that:

> (a) ***Notwithstanding*** *any other provision of law, regulation, or collective bargaining agreement either in effect or to be negotiated while this legislation is in effect* for the fiscal year ending September 30, 2000, and *each subsequent fiscal year*, each agency head is authorized, within the agency head's discretion, to identify positions for abolishment (emphasis added).
>
> (b) Prior to February 1 of each fiscal year, each personnel authority (other than a personnel authority of an agency which is subject to a management reform plan under subtitle B of title XI of the Balanced Budget Act of 1997) shall make a final determination that a position within the personnel authority is to be abolished.
>
> (c) ***Notwithstanding*** *any rights or procedures established by any other provision of this subchapter*, any District government employee, regardless of date of hire, who encumbers a position identified for abolishment shall be separated without competition or assignment rights, except as provided in this section (emphasis added).
>
> (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 pursuant to Chapter 24 of the District of Columbia Personnel Manual, 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,

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(1) A prescribed order of separation based on tenure of appointment, length of service including creditable federal and military service, District residency, veterans preference, and relative work performance;
(2) One round of lateral competition limited to positions within the employee's competitive level;
(3) Priority reemployment consideration for employees separated;
(4) Consideration of job sharing and reduced hours; and
(5) Employee appeal rights.

> 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*** (emphasis added).

In *Mezile v. D.C. Department on Disability Services*, the D.C. Superior Court found that "the language of § 1-624.08 is unclear as to whether it replaced § 1-624.02 entirely, or if the government can only use it during times of fiscal emergency."[18] The Court also found that both laws were current and that the government triggers the use of the applicable statute by using "specific language and procedures."[19]

However, the Court of Appeals took a different position. In *Washington Teachers' Union*, DCPS conducted a 2004 RIF "to ensure balanced budgets, rather than deficits in Fiscal Years 2004 and 2005."[20] The Court of Appeals found that the 2004 RIF conducted for budgetary reasons, triggered the Abolishment Act instead of "the regular RIF procedures found in D.C. Code § 1-624.02."[21] The Court stated that the "ordinary and plain meaning of the words used in § 1-624.08(c) appears to leave no doubt about the inapplicability of § 1-624.02 to the 2004 RIF."[22]

The Abolishment Act applies to *positions abolished for fiscal year 2000 and subsequent fiscal years* (emphasis added). The legislation pertaining to the Act was enacted specifically for the purpose of addressing budgetary issues resulting in a RIF.[23] The Act provides that, "notwithstanding any rights or procedures established by any other provision of this subchapter," which indicates that it supersedes any other RIF regulations. The use of the term 'notwithstanding' carries special significance in statutes and is used to "override conflicting provisions of any other section."[24] Further, "it is well established that the use of such a 'notwithstanding clause' clearly signals the drafter's intention that the provisions of the 'notwithstanding' section override conflicting provisions of any other sections."[25]

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[18] *Mezile v. District of Columbia Department on Disability Services*, No. 2010 CA 004111 (D.C. Super. Ct. February 2, 2012).
[19] *Id.* at p. 5.
[20] *Washington Teachers' Union, Local # 6 v. District of Columbia Public Schools*, 960 A.2d 1123, 1125 (D.C. 2008).
[21] *Id.*
[22] *Id.*
[23] *Id.*
[24] *Burton v. Office of Employee Appeals*, 30 A.3d 789 (D.C. 2011).
[25] *Id.*

The Abolishment Act was enacted after § 1-624.02, and thus, is a more streamlined statute for use during times of fiscal emergency.[26] Moreover, the persuasive language of § 1-624.08, including the term 'notwithstanding', suggests that this is the more applicable statutory provision to conduct RIFs resulting from budgetary constraints. Accordingly, the undersigned is primarily guided by § 1-624.08 for RIFs authorized due to budgetary restrictions. Under this section, an employee whose position was terminated may only contest before this Office:

1. That he or she did not receive written notice thirty (30) days prior to the effective date of his or her separation from service; and/or

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

***Lateral Competition***

Pursuant to D.C. Official Code §1-624.08, employees separated due to a RIF are entitled to one round of lateral competition within their competitive level. According to DPM §§ 2410.2, 2410.4, employees who have the same job title, series, and grade are placed in the same competitive level. A separate Retention Register is created for each competitive level within a competitive area. The Retention Register "shall document the final action taken, and the effective date of that action, for each employee released from his or her competitive level."[27] Generally, employees in a competitive level who are separated as a result of a RIF are separated in inverse order of their standing on the Retention Register.[28] An employee's standing is determined by several factors, including tenure group and RIF service computation date.[29] The finalized Retention Register provided by Agency shows that Employee was the only General Engineer in his competitive level.[30]

Pursuant to DPM §2409, each Agency shall generally constitute a single competitive area and lesser competitive areas ("LCA") may be established by the approving personnel authority. Additionally, DPM §2409.4 also states that an LCA may be established where they are no smaller than a major subdivision of an agency or an organizational segment that is clearly identifiable and distinguished from others in the agency in terms of mission, operation, function, and staff. In this case, the Director of the Department of Human Resources ("DCHR") approved Agency's RIF request and the designation of LCAs, including Employee's Transportation Policy and Planning, Plan Review and Compliance Division.[31]

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[26] *See Mezile v. D.C. Department on Disability Services*, No. 2010 CA 004111 (D.C. Super. Ct. February 2, 2012).
[27] DPM §2412.3.
[28] DPM §2420.3.
[29] DPM §§ 2413, 2415.
[30] Agency Exhibit 2.
[31] *Id*.

Employee argues that his competitive level was not properly established. According to DPM § 2410.1, "each personnel authority ***shall determine the positions which comprise the competitive level***" (emphasis added). Additionally, DPM § 2410.4 denotes that a competitive level shall consist of positions in the same grade (or occupational level), classification series, and sufficiently alike in qualification requirements, duties, responsibilities, and working conditions. DPM § 2410.2 also states that "assignment to a competitive level shall be based upon the employee's position of record."

The record shows that Employee was placed into a competitive level according to his job title, General Engineer. The undersigned also notes that Employee does not argue that his position of record, General Engineer, and pay grade, were incorrect. The personnel authority, in this case, the Agency head, had the authority to establish lesser competitive levels, including Employee's competitive level, which was established based on his position of record. Thus, the undersigned finds that Employee was placed in the proper competitive level authorized in the RIF, by the approving personnel authority, based on his position of record, grade, and classification.

Further, this Office has consistently held that when an employee *holds the only position in his competitive level or when an entire competitive level is abolished* pursuant to a RIF, D.C. Official Code § 1-624.08(d), which affords Employee one round of lateral competition, as well as the related RIF provisions of DPM §2420.3, are both inapplicable (emphasis added).[32] Based on the documents of record, the undersigned finds that Employee was the sole person in his competitive level, which was abolished. Accordingly, because Employee was the only person in his abolished competitive level, the undersigned finds that no further lateral competition efforts were required and that Agency was in compliance with the requirements of the law.

***Thirty (30) Days Written Notice***

DPM § 2422 provides the notice requirements that must be given to an employee affected by a RIF. Specifically, DPM § 2422.1 states that "[a]n employee selected for release from his or her competitive level … shall be entitled to written notice at least thirty (30) full days before the effective date of the employee's release." The specific notice shall state specifically what action is to be taken, the effective date of the action, and other necessary information regarding the employee's status and appeal rights.[33] Additionally, D.C. Official Code § 1-624.08(e), which governs RIFs, provides that an Agency *shall* give an employee thirty (30) days notice *after* such employee has been *selected* for separation pursuant to a RIF (emphasis added).

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[32] *Perkins v. District Department of Transportation*, OEA Matter No. 2401-0288-09 (October 24, 2011); *Allen v. Department of Health*, OEA Matter No. 2401-0233-09 (March 25, 2011); *Wigglesworth v. D.C. Department of Employment Services*, OEA Matter No. 2401-0007-05 (June 11, 2008); *Fink v. D.C. Public Schools*, OEA Matter No. 2401-0142-04 (June 5, 2006); *Sivolella v. D.C. Public Schools*, OEA Matter No. 2401-0193-04 (December 23, 2005).

[33] *See* 6-B DCMR §2423.

Agency's RIF Notice was dated July 17, 2009, with an effective date of August 21, 2009. The RIF Notice stated that Employee's position was eliminated as part of a RIF and provided Employee with information about his appeal rights. The record shows that Employee was not at work at that time and thus received his RIF notice by mail about three days later.[34] Further, Employee has not contested that he did not receive thirty (30) days notice. Thus, the undersigned finds that Employee was given the required thirty (30) days written notice prior to the effective date of the RIF.

***RIF Rationale***

Employee also argues that Agency's assertion regarding the necessity or financial need for the RIF was unsubstantiated. DPM §2406.2 states in relevant part that a RIF Administrative Order is required to identify the competitive area of the RIF, the positions to be abolished (by position number, title, series, grade, and organizational location), and state the reasons for the RIF. In the instant case, the RIF Authorization Order was approved by DCHR on July 16, 2009, and designates the competitive areas, positions to be abolished, and the reasons given for the RIF, which included budgetary challenges and agency realignment.[35] Thus, the undersigned finds that Agency provided a sufficient reason for the RIF as required by DPM §2406.2.

Further, in *Anjuwan v. D.C. Department of Public Works,*[36] the D.C. Court of Appeals ruled that OEA lacked authority to determine whether an Agency's RIF was bona fide and held that OEA's authority over RIF matters is narrowly prescribed. The Court of Appeals explained that as long as a RIF is "justified by a shortage of funds at the agency level, the agency has discretion to implement the RIF…"[37] The Court also noted that OEA does not have the "authority to second guess the mayor's decision about the shortage of funds…[or] management decisions about which position should be abolished in implementing the RIF."[38]

OEA has interpreted the ruling in *Anjuwan* to include that this Office has no jurisdiction over the issue of an agency's claim of budgetary shortfall, nor can OEA entertain an employees' claim regarding how an agency elects to use its monetary resources for personnel services. In this case, how Agency elected to spend its funds on personnel services or how Agency elected to reorganize internally was a management decision, over which neither OEA nor this Administrative Judge has any control.[39]

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[34] *See* Agency Answer, Tab 9 (December 5, 2012).
[35] Agency Exhibit 1.
[36] 729 A.2d 883 (December 11, 1998).
[37] 792 A.2d 883, 885.
[38] *Id*.
[39] *Gatson v. DCPS*, OEA Matter No. 2401-0166-09 (June 23, 2010).

***Alleged Post-RIF Activity***

Additionally, Employee alleges that another employee took over his job after the RIF and that his superior, Ms. Ricks, conducted or orchestrated the RIF simply to get rid of him. However, Employee has not provided any credible evidence to show that he was the only employee separated via the instant RIF. The documents of record reflect that there were several positions subject to the instant RIF and that the RIF was conducted throughout the entire Agency, not just Employee's particular division. Employee also admits that Ms. Ricks had authority only over his division, not over the entire Agency. Thus, I do not find Employee's claims to be credible and there is nothing in the record to corroborate these assertions. Moreover, this Office has previously held that it lacks jurisdiction to entertain any post-RIF activity which may have occurred at Agency.[40]

***Grievances***

Additionally, 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, OEA no longer has jurisdiction over grievance appeals. This Office has also held that the primary responsibility for managing and disciplining Agency's work force is a matter entrusted to the Agency, not to OEA.[41] Further, Employee's other ancillary arguments are best characterized as grievances and outside of OEA's jurisdiction to adjudicate. That is not to say that Employee may not press his claims elsewhere, but rather that OEA currently lacks the jurisdiction to hear Employee's other claims.

CONCLUSION

Based on the foregoing, the undersigned finds that Employee was properly separated via the instant RIF after he was properly placed in a single-person competitive level and was given thirty (30) days written notice prior to the effective date of the RIF. The undersigned therefore concludes that Agency's action of abolishing Employee's position was done in accordance with D.C. Official Code § 1-624.08.

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[40] *Williamson v. DCPS*, OEA Matter No. 2401-0089-04 (January 5, 2005); *Cabaniss v. Department of Consumer and Regulatory Affairs*, OEA Matter No. 2401-0156-99 (January 30, 2003).

[41] *See Huntley v. Metropolitan Police Dep't*, OEA Matter No. 1601-0111-91, *Opinion and Order on Petition for Review* (March 18, 1994); and *Hutchinson v. District of Columbia Fire Dep't*, OEA Matter No. 1601-0119-90, *Opinion and Order on Petition for Review* (July 2, 1994); *See also Stokes v. District of Columbia*, 502 A.2d 1006, 1009 (D.C. 1985) (OEA's review is limited to determining if "managerial discretion has been legitimately invoked and properly exercised").

ORDER

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

FOR THE OFFICE:

JOSEPH E. LIM, ESQ.
Senior Administrative Judge