THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	
JERELYN JONES, Employee	
v.	OEA Matter No.: 2401-0053-10R13
D.C. PUBLIC SCHOOLS, Agency	Date of Issuance: February 16, 2016

OPINION AND ORDER
ON
REMAND

Jerelyn Jones ("Employee") worked as a Special Education Teacher with D.C. Public Schools ("Agency" or "DCPS"). On October 2, 2009, Agency notified Employee that she was being separated from her position pursuant to a Reduction-in-Force ("RIF"). The effective date of the termination was November 2, 2009.[1]

Employee filed a Petition for Appeal with the Office of Employee Appeals ("OEA") on October 21, 2009. In her appeal, Employee argued that she was not given proper notice of her separation and that Agency failed to follow the proper RIF procedures. Employee therefore requested to be reinstated to her previous position. Alternatively, Employee requested that Agency compensate her for its improper actions.[2]

[1] *Petition for Appeal*, p. 9 (October 21, 2009).
[2] *Id*. at 3.

Agency filed an Answer to Employee's Petition for Appeal on December 17, 2009, arguing that it conducted the RIF in accordance with D.C. Official Code § 1-624.02 and Title 5, Chapter 15 of the District of Columbia Municipal Regulations ("DCMR"). According to Agency, Employee was provided with one round of lateral competition within the proper competitive area and competitive level.[3] Agency further stated that it provided Employee with thirty (30) days' written notice that her position was being abolished pursuant to the RIF.

On December 28, 2011, the Administrative Judge ("AJ") ordered the parties to submit written briefs addressing whether Employee's separation from service should be upheld.[4] Agency submitted its legal brief on January 26, 2012. Employee did not submit a response to the AJ's order. On January 27, 2012, the AJ issued an Initial Decision ("ID"), dismissing Employee's Petition for Appeal for failure to prosecute.[5]

Employee filed a Petition for Review and Request for Reinstatement with OEA's Board on March 2, 2012. Counsel for Employee stated that his failure to respond to the AJ's order was an oversight.[6] Counsel further requested that the Board reinstate Employee's case to allow time to conduct discovery and to substantiate any claims raised in previous filings. Agency submitted a response to Employee's Petition for Review on April 9, 2012.[7] Agency reiterated that its RIF action was proper and requested that Employee's Petition for Review be denied.

[3] Pursuant to 5 DCMR § 1501, Woodson Senior High ("Woodson") was identified as a competitive area. Pursuant to 5 DCMR §1502, Special Education Teacher was the competitive level that was subject to the 2009 RIF.
[4] *Post-Conference Order* (December 28, 2011).
[5] *Initial Decision*, p. 2-3 (January 27, 2012).
[6] *Petition for Review and Request for Reinstatement*, p. 2- 6 (March 2, 2012).
[7] *District of Columbia Public Schools' Response to Employee's Petition for Review and Request for Reinstatement* (April 9, 2012).

The Board issued an Opinion and Order on Petition for Review on April 30, 2013. It held that the AJ's decision to dismiss the Petition for Appeal was not warranted because the AJ did not allow Employee to present a statement of good cause before issuing his Initial Decision.[8] The Board subsequently remanded this matter to the AJ to consider the case on its merits.[9]

The AJ issued an Initial Decision on June 16, 2014. He held that Agency should have utilized D.C. Official Code §1-624.08 instead of D.C. Official Code §1-624.02 when conducting the 2009 RIF. In analyzing Agency's actions under §1-624.08, the AJ determined that Employee was afforded one round of lateral competition within the appropriate competitive area and level.[10] The AJ further held that Employee received thirty (30) days' written notice prior to the effective date of her termination.

Employee presented several other arguments in her brief, all of which were addressed by the AJ in his Initial Decision. First, the AJ denied Employee's request for an evidentiary hearing because she did not specifically dispute any of the statements provided by the school principal in her Competitive Level Documentation Form ("CLDF").[11] Next, the AJ concluded that Employee's pre-RIF arguments were outside the scope of OEA's jurisdiction.[12] Employee's claims of Agency's alleged violations of the American with Disabilities Act were also determined to be outside of this Office's purview. The AJ noted that Employee failed to substantiate her claim that two additional Special Education Teachers should have been included in her competitive level when Agency conducted the RIF.[13] Lastly, the AJ cited to OEA Rule 617.6 in determining that Employee should not have been granted an additional

[8] *Opinion and Order on Petition for Review*, p. 4 (April 30, 2013).
[9] *Id*. at 6.
[10] *Initial Decision*, p. 15 (June 16, 2014).
[11] *Id*. at 10.
[12] *Id*. at 11. Employee contended that Agency improperly excessed her position at her former school, Birney Elementary School.
[13] *Id*. at 14.

opportunity to conduct discovery; she had several years to engage in discovery, since filing a Petition for Appeal in 2009.[14] Accordingly, the AJ upheld Agency's RIF action.

Employee disagreed with the AJ's decision and filed a Petition for Review with OEA's Board on July 21, 2014. Employee argues that new and material evidence is available that was not available when the record was closed. According to Employee, Agency has engaged in wrongful employment practices to remove former high-level employees in the last four (4) years.[15] She also asserts that the AJ erroneously analyzed the instant RIF under D.C. Official Code §1-624.08 instead of §1-624.02. Employee believes that Agency abused its discretion in placing her in the incorrect competitive area and level at Woodson High School and that the Initial Decision was not based on substantial evidence.[16]

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

> 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;
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> (b) The decision of the Administrative Judge is based on an erroneous interpretation of statute, regulation or policy;
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> (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.

Applicable Code Section

Employee argues that the AJ should have used D.C. Code §1-624.02 in analyzing the RIF. However, the Board finds that Employee's argument lacks merit. In his Initial Decision, the AJ offered a

[14] *Id*.
[15] *Petition for Review and Request for Additional Time* (July 21, 2014).
[16] *Id*., p. 2-3.

thorough analysis of why §1-624.08, and not §1-624.02 was the correct statute to be used for Agency's 2009 RIF.

The D.C. Superior Court in *Sheila Gill and Rhonda Robinson v. District of Columbia Office of Employee Appeals and District of Columbia Public Schools* affirmed OEA's holding and ruled that although Agency conducted the RIF pursuant to D.C. Official Code §1-624.02, D.C. Official Code §1-624.08 was the appropriate statute for the 2009 RIF.[17] The Court upheld OEA's assessment that, in accordance with *Washington Teachers' Union v. District of Columbia Public Schools,* a RIF authorized for budgetary reasons triggers D.C. Official Code §1-624.08.[18] Specifically, the Court found that DCPS' budget for the 2010 fiscal year was insufficient to support the number of positions that existed in 2009. Principals were given the authority to eliminate positions within competitive levels based on the budget reductions. The Court, therefore, held that D.C. Official Code §1-624.08 was triggered because the RIF was authorized for budgetary reasons.[19] Moreover, the D.C. Superior Court in *Webster Rogers, Jr. v. District of Columbia Public Schools* reiterated that OEA was correct in relying on the precedent set in *Washington Teachers' Union* in determining that the Abolishment Act, rather than D.C. Code § 1-624.02, should govern the RIF action.[20] Based on the holdings in *Rogers*, *Gill*, and *Robinson*, this Board finds that the AJ correctly determined that D.C. § 1-624.08 was the appropriate statute to govern the instant RIF.

[17] 2012 CA5844 and 5883 (MPA) (D.C. Super. Ct. October 23, 2013).
[18] 960 A.2d 1123, 1132 (D.C. 2008).
[19] The Court noted that a September 10, 2009 Memorandum from Chancellor Michelle Rhee cited that the reason for the 2009 RIFs were due to budget constraints, requiring the elimination of positions at schools that the 2010 budget could not support. It went on to note that D.C. Official Code §1-624.08 placed restrictions on what employees could appeal. However, D.C. Official Code §1-624.02 did not present restrictions. Thus, in accordance with D.C. Official Code §1-624.08, OEA was authorized to consider if there was one round of lateral competition and if employee was provided a thirty-day notice.
[20] 2012 CA 006364 P(MPA) (D.C. Super. Ct. Dec. 9, 2013).

Lateral Competition

Employee contends that Agency placed her in the incorrect competitive area and level; thus, DCPS abused its discretion in conducting the 2009 RIF. Regarding the establishment of a competitive level, District Personnel Manual ("DPM") § 2410.1 provides that each personnel authority shall determine the positions comprising the competitive levels that employees compete for retention. Additionally, DPM §§ 2410.2 and 2410.3 state that assignment to a competitive level "shall be based upon the employee's position of record," which is the position from which the employee receives pay. DPM § 2410.4 further states that a competitive level shall consist of all positions which are sufficiently alike in qualification requirements, duties, responsibilities, and working conditions so that the incumbent of one position could successfully perform the duties and responsibilities of any of the other positions.

Here, the AJ determined that the competitive area in which Employee competed was Woodson Senior High School. Employee's competitive level was ET-15 Special Education Teacher. According to Employee, Agency erred because it "incorrectly dumped her in the wrong competitive level."[21] However, Employee has not provided any evidence to corroborate or support this assertion. The Board finds that Employee's arguments regarding Agency's alleged abuse of discretion lacks merit and that the AJ correctly held that she was placed in the correct competitive area and level during the 2009 RIF.[22]

Notice Requirement

Under DPM § 2422, Agency is required to provide written notice to affected employees at least thirty (30) days prior to the effective date of the RIF. In this case, it is undisputed that Employee received her RIF notice on October 2, 2009, and the RIF effective date was November 2, 2009.

[21] *Petition for Review and Request for Additional Time* (July 21, 2014).
[22] In her Petition for Review, Employee does not contest Agency's decision to excess her during the previous school year. Employee also fails to provide any evidence in support of her assertion that new and material evidence is now available that was not available at the time the June 16, 2014 Initial Decision was issued.

Accordingly, Employee was given the required thirty (30) days' written notice prior to the effective date of the RIF as required under the applicable regulation.

Substantial Evidence

According to OEA Rule 633.3, the Board may grant a Petition for Review when the AJ's decisions are not based on substantial evidence. Substantial evidence is defined as evidence that a reasonable mind could accept as adequate to support a conclusion.[23] In *Baumgartner v. Police and Firemen's Retirement and Relief Board*, the D.C. Court of Appeals held that if administrative findings are supported by substantial evidence, then it must be accepted even if there is substantial evidence in the record to support a contrary finding.[24]

In this case, the AJ has provided an in-depth analysis of Agency's RIF action. The AJ's conclusions flowed rationally from the evidence presented by the parties, and there is no credible evidence in the record to prove that the AJ abused his discretion. The Board, therefore, finds that the Initial Decision was based on substantial evidence.

Conclusion

Based on the foregoing, this Board concludes that Agency properly RIFed Employee in accordance with all applicable statutes, laws, and regulations. Employee was afforded one round of lateral competition and received thirty (30) days' written notice prior to the effective date of her separation from service. The Board further finds that the AJ's decision was based on substantial evidence, and there is no evidence to support a finding that his decision was based on an erroneous interpretation of statute. Accordingly, Employee's Petition for Review must be denied.

[23] *Mills v. District of Columbia Department of Employment Services*, 838 A.2d 325 (D.C. 2003); *Black v. District of Columbia Department of Employment Services*, 801 A.2d 983 (D.C. 2002).
[24] 527 A.2d 313 (D.C. 1987).

ORDER

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

FOR THE BOARD:

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Sheree L. Price, Vice Chair

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Vera M. Abbott

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A. Gilbert Douglass

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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.