THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
DAVID BUTLER	)	
Employee	)	
	)	OEA Matter No.: 2401-0189-09
v.	)	
	)	Date of Issuance: October 3, 2011
D.C. PUBLIC SCHOOLS	)	
Agency	)	
	)	

OPINION AND ORDER
ON
PETITION FOR REVIEW

David Butler ("Employee") was an SW-1/9 Custodial Foreman with the D.C. Public Schools ("Agency"). He had been employed with Agency for 17 years and was assigned to Transition Academy.

By letter dated July 28, 2009, Agency informed Employee that his position was being abolished pursuant to a reduction-in-force ("RIF"). The letter identified the competitive area within which Employee's position was located as Transition Academy. The competitive level was identified as SW Custodians. The letter went on to provide that the RIF would take effect on August 28, 2009, and that Employee would be

separated from government service on that same day. Employee was further advised that he could appeal this action to the Office of Employee Appeals ("OEA").

On August 6, 2009, Employee filed a Petition for Appeal with OEA. In his petition Employee alleged that the RIF was improper as it pertained to him. Specifically, he argued that had he not been transferred from another school to Transition Academy, he would not have lost his job; that the reasons Agency gave for conducting the RIF were false; that Agency improperly determined the length of service factor; that Agency failed to consider the amount of seniority he had; and that Agency's interpretation of the applicable RIF statutes was incorrect. For these reasons, Employee asked that the RIF be overturned and that he be returned to work.

In an Initial Decision issued October 1, 2010, the Administrative Judge upheld Agency's RIF action. Based on the applicable law, the Administrative Judge determined that an "employee whose position was abolished pursuant to a RIF 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."[1]

Employee did not dispute the amount of notice given to him by Agency. Moreover, the documents submitted by Agency revealed that, for the purposes of the RIF, Employee's competitive level was comprised of his position and one other custodial position. Having only two persons within that competitive level, the Administrative Judge determined that

[1] *Initial Decision* at page 3.

"Employee received one round of lateral competition."[2] Therefore, the Administrative Judge upheld the RIF.

Thereafter, Employee timely filed a Petition for Review. Employee states therein that "[t]he findings of [the] Administrative Judge are not based on substantial evidence… [and] [t]he initial decision did not address all material issues of law and fact properly raised in the appeal."[3] Specifically, Employee believes that certain information referenced in the Initial Decision is not correct and that Agency should have given him more credit for his 17 years of service when it determined that his position would be abolished instead of the other custodial position within his competitive level.

The information cited in the Initial Decision that Employee believes is incorrect is not determinative to the outcome of this case. Therefore, it's immaterial. As for Employee's length of service, Agency determined that it would give that factor only ten percent. The other relevant, and weightier factors, were the relevant significant contributions, accomplishments or performance (50%); relevant supplemental professional experience as demonstrated on the job (30%); and office or school needs (10%). While it may be unfortunate for Employee his 17 years of service was given only 10%, we do not believe that Agency abused its discretion or violated any law, rule or regulation when it calculated the length of service factor in that manner. As such, we must affirm the Initial Decision and deny Employee's Petition for Review.

[2] *Id*. at page 8.
[3] *Petition for Review* at page 1.

ORDER

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

FOR THE BOARD:

_____
Clarence Labor, Jr., Chair

_____
Barbara D. Morgan

_____
Richard F. Johns

The Initial Decision in this matter shall become a final decision of the Office of Employee Appeals 5 days after the issuance date of this order. An appeal from a final decision of the Office of Employee Appeals may be taken to the Superior Court of the District of Columbia within 30 days after formal notice of the decision or order sought to be reviewed.