

THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
Michael Lane,)	OEA Matter No. 2401-0105-15
Employee)	
)	Date of Issuance: April 14, 2016
v.)	
)	Joseph E. Lim, Esq.
Department of General Services,)	Senior Administrative Judge
Agency)	
_____)	
Donald Temple, Esq., Employee Representative)	
C. Vaughn Adams, Esq., Agency Representative)	

INITIAL DECISION

INTRODUCTION

On July 15, 2015, Michael Lane (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA”) contesting the Department of General Services’ (the “Agency”) final decision to separate him from government service pursuant to a Reduction-in-Force (“RIF”). This matter was assigned to me on October 7, 2015. After continuances requested by the parties and an attempt at mediation, I conducted a Prehearing Conference on January 6, 2016, at which time I ordered the parties to brief the statutes applicable to this RIF. The parties have complied. 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 separating Employee pursuant to a RIF was conducted in accordance with applicable law, rule or regulation.

POSITION OF THE PARTIES

Agency asserts that it had conducted the RIF properly in its quest to reorganize and realign its pay and personnel structure. Agency states that it followed the law by giving Employee thirty days’ notice and one round of lateral competition. Agency insists that OEA is limited to determining whether the employees have each received one round of lateral competition for positions in each employee’s respective competitive level, and at least 30 days prior written notice before the effective date of his or her separation.

Employee alleges that Agency failed to conduct the RIF in accordance with applicable laws, rules and regulations. Specifically, Employee asserts that Agency's realignment was illegal. He denies refusing a position but rather, that Agency refused to offer him the position and compensation to which he was legally entitled. Employee also claims Agency retaliated against him for exercising his right to question Agency's illegal classification of his position. He alleges that prior to the establishment of DGS, his position should have been converted to a Career Service (CS) status with the appropriate pay.

FINDINGS OF FACT

The following facts are obtained from the submissions from the parties:

1. The Department of General Services ("Agency" or "DGS") was established as a subordinate agency within the executive branch of the District government to manage the District's capital improvement and construction program, acquire and dispose real property, manage space, provide building services, and manage data for government facilities.
2. D.C. Act 19-93, dated June 29, 2011, which established DGS, has a relevant section which states:

"Section 1010. Transition. To facilitate the establishment of the Department, the City Administrator is authorized to coordinate and implement the transition process for the Department. The City Administrator shall transmit to the Council, which shall approve or disapprove by resolution, an implementation plan for the new agency no later than September 1, 2011.

The plan shall: (1) Include an organizational chart; (2) Identify redundant positions and functions; and (3) Include a plan for transferring employees that details how many employees will be required to re-apply for new positions.

3. Upon its establishment in October 1, 2011, Agency received employees from the Department of Parks and Recreation, Fire and Emergency Medical Services, D.C. Public Schools ("DCPS"), Protective Services Police Department ("PSPD"), and other functions related to its mission. DGS received Employee from the former Office of Public Education Facilities Modernization ("OPEFM").
4. The employees were transferred to Agency "as is" with no change in their pay, grades, titles and series.

5. As such, these employees arrived from their former agencies with different pay schedules despite performing the same functions at Agency. For instance, employees such as Employee who came from OPEFM and DCPS were in the Educational Service (“EG”) pay plan, whereas Agency’s other employees were Career Service.
6. Agency is governed by the District Personnel Manual (“DPM”).
7. The District of Columbia Human Resources (“DCHR”) gave guidance to Agency that employees under the EG pay plan can only be placed in the Career Service (“CS”) under the Mayor’s authority through competitive procedures as provided for in Chapter 8 of the DPM.
8. Ten union locals represented these employees. Agency had seven carpenters represented by four (4) different union locals; thirteen (13) electricians covered by three different union locals, and numerous maintenance workers who are covered by three different union locals.
9. The differences in union representation brought significant problems related to pay parity and inconsistent negotiated working conditions for employees in similar or same job classifications.
10. On May 21, 2013, Agency submitted a Request for Approval of Realignment within Agency to DCHR. The approved realignment plan aimed to resolve the inconsistencies between these employees’ pay grades, classifications and compensation with the existing titles, series and grades within DGS for persons performing comparable duties.¹
11. DGS proposed to permit the impacted employees to move competitively to the newly established or other existing titles, series and grades in the realigned DGS.
12. Accordingly, DGS identified comparable positions in the new structure which would insure that the impacted employees would not lose their jobs or face a salary loss with the implementation of the realignment.
13. DCHR approved Agency’s realignment with an effective date of January 2, 2014.
14. It is uncontested that the required signatures on the RIF documents are authentic, timely, and properly procured in accordance with RIF regulations.
15. The realignment in the DGS Capital Construction Division started with 34 employees, including Employee, in the Educational Services System (EG), which originated in the DC Public Schools. Of these 34 EG employees, all but seven were

¹ October 8, 2013 Memorandum from Director Brian Hanlon to City Administrator Allen Lew.

- successfully transitioned to Career Services positions in the realigned DGS.
16. Employee and several other similarly situated former DCPS and OPEFM employees were represented by Teamsters Local 730 and actively bargained with DGS for several years for pay increases and other employment benefits before the Public Employees Relations Board (“PERB”).
 17. Employee and members of his group that were represented by Teamsters Local 730 rejected contract offers made to them by DGS management.² The seven who were not transitioned, including Employee, refused to accept new positions that were offered to them, by refusing to apply for them or refusing the positions that were offered to them after applying.
 18. Teamsters Local 730 then withdrew from further representation of the group of employees that included Employee on February 20, 2014.³
 19. Because these seven (7) employees refused to accept new Career Services positions consistent with the realignment, DGS determined that its previously approved realignment could not be implemented.
 20. Chapter 24 of the District Personnel Manual (“DPM”) is entitled *Reduction in Force* and it contains regulations related to the implementation of a RIF.
 21. On May 11, 2015, DGS Interim Director Jonathan Kayne sought and received approval from the Director of the DC Department of Human Resources, the Deputy Mayor and the City Administrator to conduct a reduction-in-force for seven (7) positions in the Administrative Support and Capital Construction Divisions of DGS to finalize a realignment of DGS’ pay and personnel structure that came into effect on January 2, 2014.
 22. In explaining the justification for the RIF, DGS advised that the RIF was required to support a realignment at DGS that was previously approved by the District of Columbia Human Resources (“DCHR”) and was effective January 2, 2014.
 23. Attached to the Memo was Administrative Order (“AO”) Department of General Services-2015-01 dated May 11, 2015, which cited the reasons for the RIF and identified the positions recommended for abolishment by the RIF and the competitive area in which the RIF would be conducted.
 24. The stated purpose for the RIF was to facilitate DGS’ compliance with a reorganization and realignment affecting several divisions in DGS. No budgetary

² Undated letter from the Warehouse Employees Union Local No. 730 to Dean Aquino of the Office of Public Education Facilities Management.

³ *Id.*

- reason was ever cited as a rationale for the RIF.
25. Approval for the RIF was granted by the Deputy Mayor and City Administrator on May 16, 2015, and the Interim Director Karla Kirby of DCHR on May 26, 2015.
 26. Pursuant to the approval to conduct the RIF, and in accordance with applicable RIF regulations, competitive levels were identified and retention registers were developed. A competitive level encompasses only those positions that are of the same grade and classification series. D.C. Mun. Reg. Tit. 6b § 2410.4. A retention register is a document that lists employees in the same competitive level who are ranked on the retention register according to seniority, which is established in accordance with their reduction-in-force service computation date (RIF-SCD). The most senior person listed on the retention register is ranked first and the least senior person is listed last. D.C. Mun. Reg. Tit. 6b § 2499.
 27. A retention register lists all positions in a competitive level and pursuant to DPM Rule 2412.2, a separate retention register is prepared for each competitive level. The retention register identifies the name of the individual who encumbers the positions listed on the retention register.
 28. Seven positions were identified for abolishment consistent with 6-B DCMR 2401.1(c) (reduction in force for reorganization or realignment).
 29. Employee's position was one of the seven positions for which elimination by reduction-in-force was requested.
 30. Employee occupies the position of Architect, ED-0808-13, with the Agency's Capital Construction Division. He has a service computation date of 9/20/1996 and a RIF service computation date of 9/20/1993.
 31. The RIF Notice informed Employee that his Competitive Area was the Department of General Services and his Competitive Level was ED-0808-13-01-N, he was in Tenure Group I and that his position was the only one in his retention register.⁴
 32. All the information contained in Employee's retention register that was used to determine his retention standing were accurate.
 33. Employee was provided 30 days notice on June 1, 2015, that he would be terminated pursuant to a reduction-in-force as of July 2, 2015.⁵

4 Retention Register dated June 1, 2015.

5 June 1, 2015, RIF Notice Letter.

34. The RIF Notice also advised Employee of his right to file an appeal with the OEA, that he was permitted to review the retention register and any other related documents and that he had priority placement consideration.
35. The RIF Notice included a copy of the OEA appeal form and applicable OEA regulations.
36. Prior to his termination, DGS offered Employee a career service position of Project Manager, CS-801-13/01 with an annual rate of pay of \$76,397, through the DGS' Agency Reemployment Priority Program.⁶
37. Employee did not accept the position of Project Manager, CS-801-13/01.
38. The position encumbered by Employee was abolished.
39. Employee's employment ended on July 2, 2015, the effective date of his RIF termination.⁷
40. Employee filed a Petition for Appeal with the OEA dated July 15, 2015.

ANALYSIS AND CONCLUSION

Which D.C. RIF statute, D.C. Code §1-624.08 (Abolishment Act) or D.C. Code §1-624.02 and 1-624.04, applies where Agency's stated rationale for its RIF action is realignment and reorganization.

The authority for conducting a RIF is primarily set forth in two statutes, D.C. Code §§ 1-624.02 and 1-624.08. Based on the undisputed fact that Agency never cited any budgetary rationale for its decision to RIF Employee, and after carefully reviewing the language of D.C. Code § 1-624.02 and § 1-624.08, and the cases interpreting those statutory provisions, the Undersigned finds that D.C. Code § 1-624.02 and 1-624.04, and not the Abolishment Act, D.C. Code § 1-624.08, is the more applicable statute to govern this RIF. I note that D.C. Code § 1-624.08 was enacted specifically for the purpose of addressing budgetary issues resulting in a RIF. Here, budgetary issues were never stated as a rationale for the RIF.

In *Washington Teachers' Union*, the District of Columbia Public Schools ("DCPS") conducted a 2004 RIF "to ensure balanced budgets, rather than deficits in Fiscal Years 2004 and 2005."⁸ The Court of Appeals found that the 2004 RIF conducted for budgetary reasons, triggered the Abolishment Act ("the Act") instead of "the regular RIF procedures found in D.C.

⁶ Offer Letter dated June 17, 2015.

⁷ Employee Standard Personnel SF-50.

⁸ *Washington Teachers' Union, Local # 6 v. District of Columbia Public Schools*, 960 A.2d 1123, 1125 (D.C. 2008).

Code § 1-624.02.”⁹ 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.”¹⁰

The Abolishment Act was enacted after § 1-624.02, and thus, is a more streamlined statute for use during times of fiscal emergency.¹¹ There is no indication that the D.C. Council intended to supplant D.C. Official Code § 1-624.02 and 1-624.04 with the Abolishment Act. Rather, it intended to supplement it with a different statute which would govern instances where a RIF is conducted for budgetary reasons. I also based my decision on the D.C. Superior Court ruling in *Stevens & Prophet v. D.C. Dept. of Health*, 2010 CA 003345 P(MPA) and 2010 CA 003345 P(MPA) (February 14, 2014).

In conclusion, I find that this RIF was conducted for non-budgetary reasons, and thus is governed by D.C. Code § 1-624.02 and 1-624.04 and not with the Abolishment Act.

Whether Agency’s action separating Employee pursuant to a RIF was conducted in accordance with applicable law, rule or regulation.

Although the RIF statute has been amended a number of times, the controlling language addressing the abolishment of positions for fiscal year 2000 and subsequent years has not changed, and the above-noted provisions have remained intact since Fiscal Year 1996. The relevant statute clearly provided that RIFed employees are entitled to one round of lateral competition within his/her competitive level and thirty (30) days advance notice of the effective date of the RIF. Of specific relevance to this case are D.C. Official Code § 1-624.02, which tracks Omnibus Personnel Reform Amendment Act (OPRAA) of 1998 § 101(x). This section reads in pertinent part as follows:

D.C. Code § 1-624.02. Procedures

- (a) Reduction-in-force procedures shall apply to the Career and Educational Services . . . and shall include:
- (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
- (1) Employee appeal rights. *See* D.C. Official Code § 1-624.04.

D.C. Code § 1-624.04. Appeals

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Mezile v. D.C. Department on Disability Services*, No. 2010 CA 004111 (D.C. Super. Ct. February 2, 2012.)

An employee who has received a specific notice that he or she has been identified for separation from his or her position through a reduction-in-force action may file an appeal with the Office of Employee Appeals if he or she believes that his or her agency has incorrectly applied the provisions of this subchapter or the rules and regulations issued pursuant to this subchapter. An appeal must be filed no later than 30 calendar days after the effective date of the action. The filing of an appeal shall not serve to delay the effective date of the action.”

Chapter 24 of the District of Columbia Personnel Manual (“DPM”), which set forth the District of Columbia Personnel Regulations regarding RIFs¹² state that a competitive level “shall consist of all positions in the competitive area ...in the same grade (or occupational level) and classification series and which are sufficiently alike in qualification requirements, duties, responsibilities and working conditions...”¹³ An employee is assigned to a competitive level based upon his or her “position of record,” which is “the position for which the employee receives pay.”¹⁴

As required by the DPM, Employee received a retention register, which is “established by the appropriate personnel office whenever a competing employee is to be released from his or her competitive level.”¹⁵ “The retention register for each competitive level ... list[s] all positions in the competitive level.”¹⁶

Thus, retention registers are created by grouping together all employees in a competitive level and then listing them by tenure group and RIF Service Computation Date (“SCD”).¹⁷ The retention register is then used to effectuate the RIF, with employees being released in inverse order of their RIF SCD.¹⁸

¹² See 6B DCMR § 2400 *et seq.*

¹³ 6B DCMR § 2410.4; *see also, Dupree v. D.C. O.E.A. & D.C. D.O.C.*, 36 A.3d at 829-30 (describing how RIFs are conducted, including the classification of employees in competitive levels).

¹⁴ 6B DCMR §§ 2410.2-2410.3.

¹⁵ 6B DCMR § 2412.1.

¹⁶ *Id.* at § 2412.6.

¹⁷ “Tenure group” is defined as “the retention group in which competing employees shall be categorized according to their current type of employment [*i.e.*, an employee not serving a probationary period; an employee serving a probationary period; an employee on a term appointment, etc.]”

“Service computation date” is initially the date on which an employee began government service. For purposes of the modified RIF, the initial SCD could be enhanced by: 1) an outstanding rating for the year preceding the RIF; 2) veterans preference; and/or 3) District residency preference. *See* §§ 2474, 2475, and 2476 of the modified RIF regulations.

¹⁸ For example, on a retention register Employee A has a RIF SCD of 5/27/76; Employee B, 10/22/84; Employee C, 2/7/89. If two (2) positions on that register are to be abolished, then Employees B and C would be separated from service.

Prescribed order and one round of lateral competition

The first two provisions enumerated in §1-624.02(a) are closely related. The prescribed order of separation must take into account the one round of lateral competition that an employee must be afforded.

The prescribed order mentioned in subsection (a)(1) above is for the purpose of developing a retention register so that employees may be afforded one round of lateral competition when an agency intends to effectuate a RIF. The factors mentioned in subsection (a)(1) shall determine the retention standing of each competing employee. Together these factors determine whether an employee is entitled to compete with other employees for employment retention and, if so, with whom, and whether the employee is retained or released. According to the DPM, assignment to a competitive level shall be based upon an employee's position of record.¹⁹ The issue of what is an employee's competitive level has been raised on a number of prior occasions, and likewise resolved. Both District of Columbia and federal case law have consistently defined "competitive level" as the official position of record. In *District of Columbia v. King*, 766 A.2d 38 (D.C. 2001), the D.C. government argued, and the Court of Appeals agreed, that a District employee's competitive level must be based on his or her official position of record, and the fact that the employee may have been detailed to a different position at the time of his or her RIF does not change the fact that the establishment of the employee's competitive level is based on the official position description.

Additionally, the DPM specifies that competitive levels shall include positions in the same grade (or occupational level) and classification series, and which are sufficiently alike in qualifications 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 without any loss of productivity beyond that normally expected in the orientation of any new but fully qualified employee.²⁰

In accordance with D.C. Official Code § 1-624.01 *et seq.* (2008 Repl.) and the implementing regulations set forth in Chapter 24, Reductions-in-Force, of Title 6 of the District of Columbia Municipal Regulations, and pursuant to the Approval Order for the RIF on May 16, 2015, Agency established lesser competitive areas for conducting its RIF. Here, Employee's official position of record is Architect, ED-0808-13, with the Agency's Capital Construction Division. He has a service computation date of 9/20/1996, and a RIF service computation date of 9/20/1993.

Administrative Order No. Department of General Services-2015-01, dated May 11, 2015, provides that the Architect, EG-0808-13 position was identified for abolishment. This position was encumbered by Employee.

¹⁹ 6-B DCMR § 2410.2.

²⁰ 6-B DCMR § 2410.4.

On June 1, 2015, Employee received a detailed letter of final action from Agency, advising him that, effective July 2, 2015, his position was being abolished due to a RIF. The RIF Notice informed Employee that his Competitive Area was the Department of General Services and his Competitive Level was ED-0808-13-01-N, as evidenced by his Standard Form 50, Notification of Personnel Action, effective July 2, 2015.²¹ The SF-50 indicated that his competitive level was Grade 13 with Classification Series ED-0808.²²

In addition to the above, the letter also provided to Employee: (1) a listing of his respective competitive area and competitive level, tenure group and RIF service computation date; (2) the location where the official regulations and records pertinent to his respective case may be reviewed; (3) the Employee's appeal rights; and (4) information concerning priority placement consideration. This information was in compliance with the requirements of 6 DCMR 2423.1 (2012).

I find that the information on Employee's retention register was accurate and that he was the sole occupant of the Architect, EG-0808-13, position that was eliminated. Regarding the lateral competition requirement, the record shows that all positions in Employee's competitive level were eliminated in the RIF.

The Administrative Order authorizing the RIF required that all the positions within Employee's competitive level be abolished. Thus, Employee's position was abolished. Even though Employee was entitled to compete for retention, he was limited to competing with only those employees within his same competitive level. Because he was the only one in his level, there was no one with whom Employee could compete with.

OEA has consistently held that when an entire competitive level is abolished pursuant to a RIF or when a separated employee is the only member of his or her competitive level, then the statutory provision affording him or her one round of lateral competition is inapplicable.²³ Therefore, I conclude that the statutory provision of Code § 1-624.02(2), according Employee one round of lateral competition, as well as the related RIF provisions of 24 DPM § 2408.1, are both inapplicable, and that Agency is not required to go through the rating and ranking process described in that chapter relative to abolishing Employee's position.

Accordingly, I conclude that Agency provided Employee with one round of lateral competition in accordance with D.C. Code §1-624.02.

Thirty day Notice of RIF

²¹ Agency Brief, Tab 4.

²² *Id.*

²³ See, e.g., *Johnny Mulligan v. District of Columbia Office of Employee Appeals, et al*, Case No. 11 CA 9981 P(MPA) (D.C. Super. Ct. June 28, 2013); and *May v. DCDMH*, OEA Matter No. 2401-0129-09, *Opinion and Order on Petition for Review* (May 23, 2011).

Employee does not allege that Agency failed to provide him proper notice. 6B DCMR §6422.1.1 or D.C. Official Code §1-624.04 states: “An employee selected for separation shall be given specific written notice at least thirty (30) days prior to the effective date of the separation. 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.” Here, Agency notified Employee in writing on June 1, 2015, that he would be separated from service effective July 2, 2015, which is thirty (30) days later. The record establishes that Employee was in fact separated on July 2, 2015. Thus, I find that Employee received his mandated notice.

Employee’s Claims

Employee makes many claims to assert that Agency’s realignment and his RIF were illegal. First, he claims that Agency violated the above mentioned D.C. Act 19-93. I have read the entire Act and find nothing to substantiate Employee’s claims. In fact, Section 1010 of said Act authorizes Agency to identify redundant positions and functions and plan for the transfer of employees. The Act also allows Agency to require its current employees to re-apply for new positions that it creates. Thus Agency is not required to keep its current employees nor does it guarantee them a position in its reorganization and realignment of its staffing. In other words, Agency’s RIF is entirely in keeping with D.C. Act 19-93.

Next, Employee claims Agency violated the School Modernization Act of 2006, D.C. Act A17-0038 Public Education Reform Amendment Act of 2007, and D.C. Act A17-0129 School Modernization Use of Funds Requirements Amendment Act of 2007. Unfortunately, Employee fails to explain how Agency supposedly violated these laws other than to insist that Employee should have been converted to a Career Service status prior to the realignment. I have reviewed these laws and I find that nothing in them lends credence to Employee’s argument. These Acts do not contain any provisions requiring Agency to convert its employees to a Career Service status. In fact, these Acts do not even require Agency to keep its current employees.

Next, Employee claims that Agency refused to reclassify his position, thereby depriving his due process rights. Again, there is no credible evidence to substantiate this claim. As noted in the findings of facts, Agency offered Employee a reclassified Career Service position of Project Manager that Employee rejected.

Employee then challenges DCHR’s guidance to Agency that employees under the Educational Service (“EG”) pay plan can only be placed in the Career Service under the Mayor’s authority through competitive procedures as provided for in Chapter 8 of the DPM. However, the very regulations he cites, D.C. Personnel Regulations Paragraph 817 Career Service Employment by Transfer, Subparagraph 817.1, “An agency may appoint by transfer an otherwise eligible employee serving under a Career Appointment (Probational) or Career Appointment (Permanent) under a different personnel authority” belies his assertion. That regulation pertains to Career Service employees, not an EG employee such as Employee.

Employee asserts that a hearing is needed to address his claims. However, I find that Employee has offered nothing more than mere allegations to support his claims. It is within the discretion of an ALJ to grant an evidentiary hearing if necessary to “adduce testimony to support or refute any fact alleged in a pleading.” D.C. Mun. Regs. tit. 6B, § 624. Thus, I find an evidentiary hearing is not necessary to decide the issues on the record.²⁴

Finally, Employee alleges that the RIF is in retaliation for his complaints about Agency’s alleged failure to correct his wage deficiency that supposedly resulted from his transfer from OPEFM to Agency in 2011, etc. Apart from bare allegations, Employee offers no evidence to back up his claims.

Regardless, the jurisdiction of this Office does not extend to any and all claims made by an employee regarding his RIF. In *Anjuwan v. District of Columbia Department of Public Works*, 729 A.2d 883 (D.C. 1998), the D.C. Court of Appeals held that OEA’s authority regarding RIF matters is narrowly prescribed, and it may not determine whether the RIF was bona fide or violated any law, other than the RIF regulations. According to D.C. Official Code § 1-624.02 and D.C. Code § 1-624.04, OEA is tasked with determining if Agency afforded Employee one round of lateral competition within his competitive level; given priority reemployment consideration; job sharing and reduced hours consideration; and a thirty-day notice.

As noted above, “an agency’s decision to abolish a specific position shall not be subject to review *except* where an employee affected by the abolishment was (1) not afforded the one round of lateral competition ...; or (2) not given proper written notice of at least thirty days before the effective date of the employee’s separation.”²⁵ Additionally, OEA has indicated that it does not have jurisdiction to determine whether an agency’s stated reasons for abolishing a position were *bona fide*.²⁶ In *Anjuwan*, the D.C. Court of Appeals held that OEA lacked the authority to determine whether an Agency’s RIF was bona fide. The Court in *Anjuwan* noted that OEA does not have the “authority to second-guess the mayor’s decision about the shortage of funds...about which positions should be abolished in implementing the RIF.” Agency, and not this Office, is responsible for deciding whether to retain or abolish particular positions during a reduction-in-force. When agency has been shown to have invoked reduction-in-force regulations for reasons stated in regulation, this Office has no authority to review management considerations that underlay agency’s exercise of its discretion.²⁷

²⁴ See also OEA Rule 624.2, 59 DCR 2129 (March 16, 2012). *Anjuwan v. Dist. of Columbia Dept. of Pub. Works*, 729 A.2d 883 (D.C. 1998) at 885-86 (affirming the ALJ’s decision not to hold an evidentiary hearing where the “petitioner offered nothing to support his suspicion that the agency-wide RIF was a sham to retaliate against him for his whistleblowing activities.”).

²⁵ *Levitt v. District of Columbia Office of Emp. Appeals*, 869 A.2d 364, 366 (D.C. 2005) (emphasis in original).

²⁶ See, e.g., *Byrd v. OCME*, OEA Matter No. 2401-0290-09, November 14, 2011.

²⁷ See *Waksman v. Department of Commerce*, 37 M.S.P.R. 640 (1988).

I conclude that Agency provided Employee with one round of lateral competition in accordance with D.C. Code §1-624.02. Accordingly, I conclude that Agency complied with all relevant statutes, rules, and regulations in conducting Employee's RIF and that the RIF must be upheld.

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