Notice: This decision may be formally revised before it is published in the *District of Columbia Register*. Parties should promptly notify the Office Manager of any formal errors so that this Office can correct them before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
)	OEA Matter No.: 2401-0020-10
LAURA JACKSON,)	
Employee)	
)	Date of Issuance: April 19, 2013
v.)	
)	
DISTRICT OF COLUMBIA)	
DEPARTMENT OF HEALTH,)	
Agency)	Sommer J. Murphy, Esq.
)	Administrative Judge

Donald Temple, Esq., Employee Representative
Andrea Comentale, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On October 6, 2009, Laura Jackson ("Employee") filed a petition for appeal with the Office of Employee Appeals ("OEA") contesting the District of Columbia Department of Health's ("Agency") action of terminating her employment through a Reduction-in-Force ("RIF"). Employee's position of record at the time she was separated from service was a Compliance Specialist. Employee worked in Career Service status at the time she was terminated.

On December 15, 2011, undersigned Administrative Judge ("AJ") held a Status Conference ("SC") for the purpose of assessing the parties' arguments with respect to the instant appeal. I subsequently ordered the parties to submit written briefs addressing the issue of whether Agency conducted the instant RIF in accordance with applicable District of Columbia laws, statues, and regulations. The order further granted Employee's discovery requests.

On January 23, 2012, Agency filed a motion to dismiss for lack of jurisdiction. I held an additional conference on June 18, 2012 to discuss the jurisdictional issue as well as Employee's motion to compel the production of certain documents from Agency. At the SC, I also set a briefing schedule to allow Employee an opportunity to answer Agency's motion to dismiss. Employee complied with the order and Agency submitted a reply to Employee's answer on July 5, 2012.

On July 13, 2012, I issued an Order on Jurisdiction holding that OEA has jurisdiction over Employee's appeal.[1] The Order further scheduled a third SC which was held on August 20, 2012. Based on the documents of record and the parties arguments presented during the course of this appeal, the Undersigned determined that an Evidentiary Hearing was warranted. Thus, an Evidentiary Hearing was subsequently held on August 20, 2012. At the conclusion of the hearing, I ordered the parties to submit written closing arguments. Both parties complied with the order.[2]

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 a 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:

> The employee shall have the burden of proof as to issues of jurisdiction, including timeliness of filing. The agency shall have the burden of proof as to all other issues.

FINDINGS OF FACT, ANALYSIS, AND CONCLUSIONS OF LAW

Employee's Position

Employee argues the following as grounds for contesting her separation under the RIF:

1. Employee did not properly receive one round of lateral competition as required by D.C. rules and regulations.

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[1] Order on Jurisdiction (July 13, 2012).
[2] Order (September 26, 2012).

2. The retention registers produced and utilized by Agency during the RIF process contained numerous errors.

3. Agency should have credited Employee with additional credible service on the retention register based on her prior federal work history.

4. Agency committed harmful procedural error in serving the second RIF notification. Employee argues that the RIF notice failed to state a basis for the RIF. Employee also argues that she did not receive the proper attachments to her second RIF notice.

5. Agency's RIF was retaliatory in nature and not based on a lack of budget. According to Employee, the instant RIF was not based on an actual budget shortfall.[3]

6. Some of Agency's documents produced to Employee are alleged to be altered and/or procured by fraud.

Agency's Position

Agency maintains that it provided Employee with one round of lateral competition, which resulted in her termination under the RIF. Agency further contends that it properly complied with all applicable District laws, rules, and regulations. Agency also submits that it afforded Employee thirty (30) days of written notice prior to the effective date of her termination.

<u>SUMMARY OF RELEVANT TESTIMONY</u>

Lewis Norman (Transcript pages 25-150)

Lewis Norman ("Mr. Norman") is employed with the Department of Human Resources ("DHR"). His current position is the Lead Human Resource Specialist with Agency and is responsible for coordinating realignments and RIFs for agencies under the personnel authority of the mayor. (Tr. pg. 30). When offered a copy of D.C. Personnel Regulations, Chapter 24, Part 1, for review by Agency, Mr. Norman affirmed that those regulations were in effect in 2009 at the time of the RIF. According to Mr. Norman, a RIF occurs when an agency experiences a lack of funds to cover the existing workforce, there is a lack of work or whenever there is a major realignment or reorganization of an agency. (Tr. pg. 32). A RIF request requires an administrative order, a document which lists the positions to be abolished by position number, title, series, grade, and organizational vocation in addition, to an explanation as to why the RIF is necessary.

Mr. Norman testified that DHR reviews the administrative order to ensure that the information contained therein is accurate. In addition, DHR will identify the employees who are affected by the RIF. (Tr. pg. 34). DHR then prepares a retention register, which is a document that lists positions by title, series, grade, competitive area, and competitive level. An employee's standing

[3] Petition for Appeal (October 6, 2009).

on the retention register is primarily based on seniority—the employee with the highest retention standing is listed at the top, and employees with lower standings are listed at the bottom. (Tr. pgs. 34-35). Mr. Norman testified that he was involved in the instant RIF when Administrative Order DOH-09-02-E was approved in July of 2009. He explained that a competitive area is an area in which employees will compete for job retention, and a RIF can either be agency-wide or may consist of a smaller component in an agency. (Tr. pg. 37). Mr. Norman identified two (2) administrative orders relevant to the instant RIF; one dated August 13, 2009, and the other dated July 27, 2009. According to Mr. Norman, the only difference between the old order and the newly amended order was that one (1) additional position (Medical Technician, Grade 7) was added for abolishment under the RIF. (Tr. pg. 39). He testified that two (2) Compliance Specialist positions were listed on both the original and amended administrative orders.

Mr. Norman acknowledged Agency's Exhibit 5 as a retention register ("RR1"), dated July 31, 2009, that identified Employee as one of the five (5) employees in her competitive level. (Tr. pg. 43). RR1 marked Employee's position for abolishment, along with one other employee. Mr. Norman stated that, when determining an employee's service computation date, all credible service counts, including both District service and federal service. If, during a RIF counseling seminar or individual counseling session, an employee feels that their credible service dates were computed in error, they may bring it to the attention of DHR. There is an obligation of DHR to verify an employee's prior service and make corrections to the retention register if necessary. (Tr. pg. 50). Mr. Norman stated that he had personal knowledge that Employee attended the RIF seminar based on his preparation for the instant hearing. (Tr. pgs. 53-54).

Mr. Norman identified Agency's Exhibit 7 as an amended retention register ("RR2") dated August 21, 2009.[4] He testified that this particular retention register would have been prepared if DHR noticed an error on a previous register. Employee's position was not identified for abolishment on August 21, 2009 retention register. (Tr. pgs. 55-56). According to Mr. Norman, DHR issued a letter to Employee on August 21, 2009, rescinding a previously issued letter dated August 5, 2009 (informing Employee that she was being separated from service pursuant to the RIF). The August 21, 2009 letter notified Employee that she would continue to work with Agency.[5] Mr. Norman testified that the letter was prepared because DHR believed that an error had been made. (Tr. pg. 57).

Mr. Norman subsequently identified Agency's Exhibit 8 as another amended retention register, dated September 18, 2009. The register identified Employee for separation under the RIF. Mr. Norman testified that this occurred because another employee in Employee's competitive level ("MJ") submitted to DHR a form DD-214, which is a form recognizing military service.[6] MJ's additional military service had the effect of changing his Service Computation Date ("SCD") on the retention register. Based on MJ's submission of the DD-214, DHR was required to amend the previously developed retention register. (Tr. pgs. 58-60). MJ's additional credit for military service raised his standing on the retention register. Mr. Norman testified that each employee on the retention register has a SCD and that additional credit may be given for an outstanding performance appraisal, veterans' preference, and D.C. residential preference. (Tr. pg. 61). In this case, MJ, who was previously identified for separation under the RIF, received a new SCD of February 7, 1994. This

[4] DHR, Department of Health Addiction, Prevention and Recovery Administration, DS-1801-12-00-N.
[5] *See also* Agency Exhibit 8.
[6] Mr. Norman stated that he had no familiarity with the calculation of "lost military service time" under 10 U.S.C. 972. (Tr. at pp.121-123).

meant that Employee's standing on the retention register was in the second lowest position, thus she was marked for separation. (Tr. pgs. 61-62). Mr. Norman stated that it was not unusual for a retention register to be amended in situations where an employee presents evidence that would affect his or her retention standing subsequent to receiving a RIF notice. (Tr. pgs. 62-63). Mr. Norman testified that, based on the documents he reviewed relevant to this appeal, Employee received one round of lateral competition prior to being separated under the RIF. It is also Mr. Norman's opinion that Employee's separation was done so in accordance with Chapter 24 of the D.C. Municipal Regulations. (Tr. pg. 66).

On cross examination, Mr. Norman stated that DHR has several employees who assist with the development of retention registers; however, registers are initially prepared by staff in the classification office with the assistance of a staffing group. (Tr. pg. 68). The staffing group is tasked with reviewing information contained within an employee's personnel file to make a determination of their SCD, veterans' status, and residency preference. Mr. Norman testified that there were several members on his team who were engaged in creating, procuring, and securing information for the components of the retention register. (Tr. pg. 69). He did not recall having personal knowledge of MJ's credible service with Agency because that information is contained within an employee's official personnel file or DHR's personnel data system. When asked if he was aware that Employee had prior federal employment history, Mr. Norman stated that he was not aware of any federal work history and did not look on the federal personnel register to ascertain the status of any such history. (Tr. pg. 80). While he was aware that Employee attended the RIF counseling seminar, Mr. Norman did not recall that Employee attempted to meet with him regarding her federal service. Mr. Norman stated that the proper person to meet with would have been someone in the staffing group. (Tr. pgs. 81-84). Mr. Norman further testified that he had no personal knowledge of how MJ's information to support his amended SCD was procured by his staff. He was responsible for reviewing the data on retention registers to determine if there is any information required to be added to the form, the source of the data, who prepared the date, and whether the information contained therein came from the employee's official personnel file. (Tr. pgs. 111-112). Mr. Norman stated that there are a number of Agency and DHR employees involved in verifying the data on a retention register, including the Employee. According to Mr. Norman, a modification of a retention register does not require the issuance of a new administrative order. (Tr. pg. 116).

Jacqueline Murphy (Transcript pages 152-160)

Jacqueline Murphy ("Employee" or "Ms. Murphy") currently works with Agency as an Administrative Specialist. Prior to that, Ms. Murphy served as a Management Liaison Specialist and was responsible for processing spreadsheets, writing draft position description, and processing PeopleSoft inquiries.[7] (Tr. pgs. 153-154). Ms. Murphy testified that she does know Employee, but was not involved in any way with the calculations of SCD dates during the August 2009 RIF. (Tr. pg. 156). Ms. Murphy did not recall personally giving Employee a letter on or about September 18, 2009 regarding the RIF. She stated that she did maintain copies of employee's files and was probably a witness when the letter was given to Employee. (Tr. pg. 157).

[7] PeopleSoft® is a Human Resource and payroll database utilized by District government.

Laura Jackson (Transcript pages 161-232)

Laura Jackson ("Ms. Jackson") worked as a Compliance Specialist with Agency until October of 2009 when she was separated from service under the RIF. Ms. Jackson testified that the first time Agency informed her that she was being RIF'd, she was concerned that her SCD was incorrect and she believed she should not have been identified for separation. (Tr. pgs. 164-169). Ms. Jackson testified that she contacted her city councilman thereafter and voiced her concerns regarding the inaccuracies on the retention register. (Tr. pg. 176). According to Ms. Jackson, she spoke with DHR employees to schedule an exit conference. (Tr. pg. 180). Ms. Jackson believes that she was not properly afforded credible service on the retention register for her work with various federal agencies prior to 2002, although she made an attempt to request proof of her additional work history. (Tr. pgs. 182-185). Ms. Jackson did not receive verification of her federal work history via the National Archives and Records Administration, National Personnel Records Center until December 27, 2011. (Tr. pg. 186). During her exit interview with Agency, Ms. Jackson stated that she needed additional time to provide documentation supporting her federal service with other agencies. (Tr. pg. 203). On cross examination, Ms. Jackson stated that she never provided Agency with her "Federal Form 1" because she thought DCHR had them already. (Tr. pg. 221). Ms. Jackson testified that while she did have some documentation in her possession for review by DHR, she did not formally request her federal records until after the effective date of the second RIF. (Tr. pgs. 228-230).

Discussion

In July of 2009, Agency requested the approval of former City Administrator, Neil Albert, to conduct the instant RIF. On August 31, 2009, amended Administrative Order No. DOH-09-02-E was issued pursuant to D.C. Official Code § 1-624.01 *et seq*. and Mayor's Order 2000-83.[8] The amended Administrative Order identified ninety-one (91) positions to be abolished and stated that the RIF was necessitated based on a lack of funds.[9] Although a RIF may be implemented under D.C. Official Code § 1-624.02,[10] which encompasses more extensive procedures, for the reasons explained below, I find that D.C. Official Code § 1-624.08 ("Abolishment Act or the Act") is the more applicable statute to govern the instant RIF.

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[8] Agency Answer, Tab 3 (December 16, 2009).
[9] The August 31, 2009 Administrative Order amended the original July 27, 2009 Order. DOH-09-02-E was amended to include one (1) additional position. Two (2) Compliance Specialist positions were identified for abolishment under the original and amended Administrative Orders.
[10] D.C. 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:
> (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.

Section § 1-624.08 states in pertinent part the following:

> (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.

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."[11] 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."[12]

However, the Court of Appeals took a different position. 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."[13] The Court of Appeals found that the 2004 RIF, conducted for budgetary reasons, triggered the Abolishment Act ("the

[11] *Mezile v. District of Columbia Department on Disability Services*, No. 2010 CA 004111 (D.C. Super. Ct. February 2, 2012).
[12] *Id.* at p. 5.
[13] *Washington Teachers' Union, Local # 6 v. District of Columbia Public Schools*, 960 A.2d 1123, 1125 (D.C. 2008).

Act") instead of "the regular RIF procedures found in D.C. Code § 1-624.02."[14] 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."[15]

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.[16] 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."[17] 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."[18]

The Abolishment Act was enacted after § 1-624.02, and thus, is a more streamlined statute for use during times of fiscal emergency.[19] 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, I am 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 their separation from service; and/or

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

In 2006, Employee was hired as a Compliance Specialist with Agency.[20] Pursuant to the Administrative Order, *supra*, Agency was authorized to establish lesser competitive areas in accordance with Chapter 24, Section 2409 of the D.C. Municipal Regulations ("DCMR"). In this case, Employee was placed in the lesser competitive area of the Department of Health—Addiction Prevention and Recovery Administration ("APRA"). The competitive level in which Employee competed was Compliance Specialist, DS-1801-12.

On August 5, 2009, Employee received notice that she was being separated from service under the RIF based on her relative standing on Agency's retention register. The effective date of the first RIF notice was September 5, 2009. The letter was signed and dated by Employee.

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[14] *Id.*
[15] *Id.*
[16] *Id*. at 1125.
[17] *Burton v. Office of Employee Appeals*, 30 A.3d 789 (D.C. 2011).
[18] *Id.*
[19] *Mezile v. D.C. Department on Disability Services*, No. 2010 CA 004111 (D.C. Super. Ct. February 2, 2012.)
[20] Employee previously worked as a Clerk Typist.

On August 21, 2009, Pierre Vigilance, Agency's Director, issued a letter to Employee rescinding the August 5, 2009 RIF notice. The letter stated in pertinent part:

> "Please refer to my letter of August 5, 2009, notifying you that you would be separated by reduction in force effective September 5, 2009. The above-referenced letter is hereby rescinded. I am pleased to notify you that your services will continue in the DC Department of Health, Addiction Prevention and Recovery."[21]

On September 18, 2009, Pierre Vigilance issued a second letter to Employee. The notice stated in pertinent part:

> "Please refer to my letter of August 21, 2009, notifying you that you would not be separated by reduction in force, effective September 5, 2009…Because of changes in your relative standing on the retention register, the above referenced letter is hereby cancelled."[22]

On September 18, 2009, Employee also received official notice from Agency stating that the effective date of her separation under the RIF was October 23, 2009. The notice was signed and dated by Employee, who subsequently filed a Petition for Appeal with this Office.

Lateral Competition

Competitive Area: Department of Health, Addiction Prevention and Recovery Administration
Competitive Level: Compliance Specialist, DS-1801-12-00-N

Under D.C. Code § 1-624.08, an agency is required to provide employees affected by a RIF with one round of lateral competition based on their competitive area and level. Section 2412 of the RIF regulations, 47 D.C. Reg. at 2431, requires an agency to establish a "retention register" for each competitive level, and provides that 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." 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. An employee's standing is determined by his or her RIF SCD.

District Personnel Manual Section 2408.1 states the following:

> The retention standing of each competing employee shall be determined on the basis of tenure of appointment, length of creditable service, veterans' preference, residency preference, and relative work performance, and on the basis of other selection factors as provided in these regulations. Together these factors

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[21] Agency Answer, Tab 7 (December 16, 2009).
[22] *Id*.

> shall 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.

At the time of the RIF, five (5) individuals, including Employee, held the position of Compliance Specialist with APRA. Administrative Order DOH-09-02-E identified two (2) of the five (5) positions for abolishment under the RIF. On the first retention register provided by Agency (July 31, 2009), Employee was identified for separation because she was one of two employees who had the least amount of credible service their competitive level. Employee's SCD on the first retention register was July 30, 1995. Employee was not given additional service credit for an "Outstanding" work performance evaluation or veterans' preference, but she did receive additional credit for D.C. residency preference.

A second retention register was amended and generated by Agency on August 21, 2009.[23] According to the testimony provided by Mr. Norman, a new retention register would have been prepared if DHR noticed an error on a previous register. (Tr. pg. 55). The second retention register did not identify Employee for separation under the RIF because, after DHR amended the second register, two other people in Employee's competitive level received less credible service than Employee. The August 21, 2009, amendment of the retention register prompted Agency to rescind its first RIF notice to Employee.

On September 18, 2009, a third retention register was amended yet again by Agency. Mr. Norman testified that this occurred because another employee in Employee's competitive level ("MJ") submitted to DHR a form DD-214, which is documentation recognizing credit for military service. MJ's additional military service had the effect of changing his SCD on the retention register. Based on MJ's submission of the DD-214, DHR was required to amend the previously developed retention register. (Tr. pgs. 58-60). MJ's additional credit for military service raised his standing on the retention register. The September 18, 2009 retention register was the final register submitted by Agency. Employee had the second lowest retention standing on this register and was therefore identified for separation under the RIF.

Employee argues that she was not afforded an opportunity to provide Agency with documentation supporting her additional federal work history. According to Employee, had Agency recalculated a SCD for her with this additional information, her position would not have been abolished under the RIF. Employee also submits that another Compliance Specialist in her competitive level, MJ, was given the incorrect amount of additional credible service based on the submission of his DD-214 for military service. In sum, Employee believes that the retention registers were improperly developed by Agency because it failed to follow certain District and federal personnel regulations pertinent to the calculation of credible service.

DPM Section 2419.1 provides that the retention standing of each employee released from his or her competitive level shall be determined as of the date of release. Likewise, Section 2419.2 of the DPM states that when the personnel authority discovers an error in the

[23] It should be noted that the issuance of a new Administrative Order is only required when positions subject to the RIF are added or subtracted from the original Order. The amendment of a retention register by DHR does not require the issuance of a new Administrative Order.

determination of an employee's retention standing, it shall correct the error and adjust any erroneous reduction-in-force action in accordance with the employee's true retention standing as of the effective date established under this section.

Regarding the computation of Employee's SCD, she testified that she neither requested nor submitted proof of her entire federal work service until after the effective date of the RIF. (Tr. pgs. 228-230). Thus, Agency had no basis for adjusting Employee's SCD of July 30, 1995 at the time the RIF became effective. This is not to say that Employee may not have been afforded additional credible service had she provided the proper documentation in a timely manner; however, as of the date of her release, this information had not been provided to DHR. Furthermore, Employee has not provided any statutory authority or case law to support her contention that Agency was required to retroactively recalculate Employee's SCD after the effective date of the RIF.

The testimony of Mr. Norman supports the requirements as provided under DCMR Section 2419. According to Mr. Norman, when determining an employee's SCD, all credible service counts, including both District service and federal service. If, during a RIF counseling seminar or individual counseling session, an employee feels that their credible service dates were computed in error, they may bring it to the attention of DHR. There is an obligation of DHR to verify an employee's prior service and make corrections to the retention register if necessary. (Tr. pg. 50). Mr. Norman stated that he had personal knowledge that Employee attended the RIF seminar based on his preparation for the instant hearing. (Tr. pgs. 53-54).

Although Employee met with members of DHR's staffing group after receiving notice of the RIF, she mistakenly, and to her detriment, failed to provide any and all federal personnel forms to DHR prior to the effective date of the RIF. Consequently, I find that Employee's SCD as of the date of release was properly calculated by Agency based on the information contained in her official personnel file and DHR's internal record keeping database. Regarding the calculation of MJ's credible service date, this tribunal does not retain the authority to alter another employee's personnel records. Therefore, I find that the calculation of MJ's SCD with respect to the instant appeal is outside the purview of this Office's jurisdiction.

Employee does not dispute her placement in the competitive level of Compliance Specialist, DS-1801-12-00-N as required by Chapter 24, Section 2410 of the D.C. Municipal Regulations. I find that, based on the September 18, 2009 retention register, Employee had the second lowest retention standing and her position was correctly identified for abolishment under the RIF. Accordingly, Employee received one round of lateral competition as required under § 1-624.08.

Notice

Under DCMR § 2422.1, a competing employee selected for release from his or her competitive level is required to receive written notice at least thirty (30) full days before the effective date of the employee's release.

Here, Employee received her first RIF notice on August 5, 2009, and the RIF effective date was September 5, 2009. Employee received her second and final RIF notice on September 18, 2009, with an effective date of October 23, 2009. While Employee disputes that Agency properly served her with the final RIF notice and attachments, there is no compelling evidence in the record to support this assertion. The September 18, 2009 notice states that Employee's position was being abolished as a result of a RIF. The notice also provides Employee with information about her appeal rights to this Office and the right to review and inspect the retention register(s). The notice was signed and dated by Employee as well as a witness. The notice also refers to the copy of an OEA appeal form and regulations that were attached to the letter. I therefore find that that Employee was given the required thirty (30) days written notice prior to the effective date of the September 18, 2009 RIF.

I find that the testimony and exhibits presented to me on behalf of the Agency were all highly credible. In summation, the testimonial evidence supports Agency's determination that Employee received one round of lateral competition and thirty (30) days written notice prior to the October 23, 2009 effective RIF date.

Agency's Post-RIF Activities

Employee submits that Agency's RIF was retaliatory in nature and not based on an actual budget shortfall. In *Anjuwan v. D.C. Department of Public Works,*[24] the D.C. Court of Appeals held that OEA lacked the authority to determine whether an Agency's RIF was bona fide. The Court 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.[25] The Court in *Anjuwan* also 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."

OEA has interpreted the ruling in *Anjwuan* to include that this Office has no jurisdiction over the issue of an agency's claim of budgetary shortfall, nor can OEA entertain an employee's claim regarding how an agency elects to use its monetary resources for personnel services. Likewise, how Agency elected to reorganize internally, was a management decision, over which neither OEA nor this AJ have any control.[26]

Grievances

Employee raises several other arguments regarding instant RIF. To wit; Employee alleges that some of the retention registers and Form 50s appear to have been tampered with by Agency employees. She also questions the authenticity of certain documents produced by Agency during the course of this proceeding. I find no credible evidence in the record to support Employee's claims of fraud in creating the documents produced throughout the course of this appeal.

[24] 729 A.2d 883 (December 11, 1998).
[25] *See Waksman v. Department of Commerce*, 37 M.S.P.R. 640 (1988).
[26] *Gaston v. DCPS*, OEA Matter No. 2401-0166-09 (June 23, 2010). *See also Wainwright v. DC Public Schools*, OEA Matter No. 2401-0162-10 (May 25, 2012).

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. Employee's other ancillary arguments are best characterized as grievances and are outside of OEA's jurisdiction. That is not to say that Employee may not press her claims elsewhere, but rather that OEA currently lacks the jurisdiction to hear Employee's other claims.

Conclusion

Based on the foregoing, I find that Employee was properly afforded one round of lateral competition, and that a timely thirty (30) day written notification was served by Agency. I therefore conclude that Agency's action of abolishing Employee's position was done in accordance with D.C. Official Code § 1-624.08 and the Reduction-in-Force which resulted in his removal is 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:

____
Sommer J. Murphy, Esq.
ADMINISTRATIVE JUDGE