THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	
MALLIE WIGGINS, Employee	OEA Matter No. 2401-0010-00
	Date of Issuance: June 20, 2007
DEPARTMENT OF CORRECTIONS, Agency	

OPINION AND ORDER
ON
PETITION FOR REVIEW

Mr. Mallie Wiggins ("Employee") worked for the Department of Corrections ("Agency") as its Maintenance Mechanical Foreman. Employee received a reduction-in-force ("RIF") notice from Agency on August 19, 1999. Agency issued the RIF as the result of the closure of its Lorton, Virginia facility.[1]

Employee filed a Petition for Appeal with the Office of Employee Appeals ("OEA") on October 22, 1999. His petition alleged that he was the victim of discrimination. He claimed that a lower-grade employee was placed in his position and

[1] *Agency's Pre-hearing Statement and Supporting Documents*, p. 1 (February 19, 2002).

that his RIF notice was not signed. As a result, Employee argued that the RIF action was not justified.[2]

Agency filed its response to Employee's petition on February 19, 2002. It provided that due to the Lorton facility's closure, it had to abolish positions and downsize its workforce. Agency argued that all Department of Correction units were affected by the RIFs, and forty-four (44) encumbered positions and eighteen (18) unencumbered positions were abolished. Agency provided Employee with adequate notice of his separation and stated that Employee was the only person within his competitive level.[3] In response to Employee's discrimination claim, Agency correctly argued that OEA lacked jurisdiction to consider that issue.[4]

After a short hearing was conducted, the Administrative Judge ("AJ") determined that there was still a question of Employee's actual position title when he was RIFed. Agency argued that Employee was the Maintenance Mechanical Foreman. Employee argued that he was detailed to the Building Maintenance General Foreman position and held that position at the time of his separation from Agency. Although Agency agreed that Employee held the position of Building Maintenance General Foreman from 1994-1996, it argued that he was not acting in the position when he received notice of his separation in August of 1999. Agency offered several documents as evidence that other

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[2] *Petition for Appeal,* p. 5-7 (October 22, 1999).
[3] *Agency's Pre-hearing Statement and Supporting Documents*, p. 1-3 (February 19, 2002). Agency provided that Employee was given a single round of lateral competition, however, because he was the only employee within that competitive level there was no one who he could bump to remain in the position. Consequently, he was separated.
[4] *Id.* at 5.

employees held the position from November of 1996 until August of 1999.[5]

Employee responded to Agency's assertions by claiming that after serving in the Building Maintenance General Foreman in excess of 120 days, he was a permanent employee at the higher-grade position. Consequently, Employee argued that he remained in this position until he was RIFed and should have competed within the Building Maintenance General Foreman competitive level and not that of Maintenance Mechanical Foreman. Employee offered Part I of the D.C. Personnel Regulations, Chapter 8, Section 841 to bolster his argument concerning his detail to the higher-grade position.[6] Employee concluded that because he held the position of Building Maintenance General Foreman for more than 120 days, then this was his true position of record. Furthermore, he urged the AJ to draw a negative inference against Agency because it failed to provide documentation in his personnel file that he held the higher position.[7]

On October 4, 2004, the AJ issued his Initial Decision. He found that at the time of Employee's termination, his position of record was Maintenance Mechanic Foreman. The AJ relied on the District of Columbia Personnel Manual ("DPM) Rule 2410.3 which states that an employee's position of record is "the position for which the employee receives pay or the position from which the employee had been temporarily reassigned or promoted on a temporary or term basis."

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[5] *Agency's Brief on the Issue of "Assuming that Employee's Detail to the Position of Building Maintenance General Foreman had Continued to his Date of RIF Separation, What Then was Employee's Position of Record,"* p. 1-2 (November 8, 2002).

[6] DPR, Chapter 8, Section 841.1 reads:

> A career service appointee may be detailed to another position to meet a temporary need for a period of not more than one hundred twenty (120) days to an established position or two hundred forty (240) days to an unestablished position unless prohibited by this section, the detail may be extended by the personnel authority in increments of one hundred and twenty (120) days.

[7] *Plaintiff's Post-Hearing Brief,* p. 1-6 (November 12, 2002).

Because Agency provided evidence to prove that Employee was paid as a Maintenance Mechanic Foreman, SW-10 level, the AJ reasoned that this was his position of record. He further reasoned that DPM Rule 2410.3 makes clear that Employee's position of record is the position *from which* he was temporarily reassigned, and that position was Maintenance Mechanic Foreman.

As for Employee's argument that he became a permanent employee at the higher-grade Building Maintenance General Foreman position because he was detailed for more than 120 days, the AJ provided that the regulation clearly stated that the detail may be extended by personnel in additional 120-day increments exceeding one year. Therefore, Employee's argument failed. Consequently, Agency proved that it properly separated Employee from his position as Maintenance Mechanic Foreman.[8]

Employee appealed the AJ's Initial Decision on January 14, 2005. His appeal provided that his Union Contract altered the normal employer-employee relationship as it related to his status as an employee of the Department of Corrections. Therefore, he sought to have his status under the Union Contract clarified. Employee provided that under the Union Contract, employees detailed or assigned to a higher-grade position for more than ninety (90) consecutive days shall receive the higher rate of pay beginning the first full pay period following the ninety days. Therefore, he reasoned that by applying DPM Rule 2410.3 and the terms of his Union Contract that his position of record should have been Building Maintenance General Foreman because he should have been paid at

[8] *Initial Decision*, p. 4-6 (October 4, 2004).

the higher rate after serving in the position for more than ninety days.[9]

Although Employee makes a compelling argument regarding the ninety-day regulation that he cited, it is not enough to convince this Board that he held the higher-grade position of Building Maintenance General Foreman when he was terminated. Agency relied heavily on Sections 1 and 2 of his Union Contract to establish why he was not provided with one-round of lateral competition within the proper group. He claims that Section 1 of the Union Contract provides that "details or temporary promotions shall be made in accordance with the appropriate provisions of the District Personnel Manual." Section 2 goes on to state that "an employee detailed or assigned to a higher grade position for more than ninety consecutive days shall receive the higher rate of pay beginning the first full pay period following the ninety day period. . . ."

First, it is not clear that this language in the Union Contract existed at the time that Employee was hired. Employee failed to provide a copy of the contract. However, assuming arguendo that the terms did apply to Employee, Section 2 clearly states that the rate of pay shall be at the higher rate. It does not, however, address Employee's position of record. If we apply the Union Contract terms and DPM Rule 2410.3 to this matter, then Employee is correct that his position of record was Building Maintenance General Foreman. However, Agency has clearly proven that Employee only held this detail from 1994-1996. At the time that Employee was terminated in 1999, he was back in his old position of Maintenance Mechanic Foreman. As previously stated, Agency provided that

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[9] *Employee's Memorandum of Points and Authorities in Support of his Motion for Reconsideration of the Initial Decision* (January 14, 2005).

other employees held the Building Maintenance General Foreman position from November of 1996 until August of 1999.[10] Additionally, when Employee filed his Petition for Appeal with OEA he listed his position title as Maintenance Mechanic Foreman not Building Maintenance General Foreman.[11]

At most, Employee has proven that he should have been paid at the higher rate when he served in the position of Building Maintenance General Foreman. However, this is not an issue raised by Employee, nor does our office have jurisdiction to consider this particular issue. The office does have jurisdiction over RIF matters as it pertains to 30-day notices and one round of lateral competition. Agency has adequately proven that it provided both to Employee. Accordingly, we hereby deny Employee's Petition for Review of the Administrative Judge's Initial Decision.

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[10] *Agency's Brief on the Issue of "Assuming that Employee's Detail to the Position of Building Maintenance General Foreman had Continued to his Date of RIF Separation, What Then was Employee's Position of Record,"* p. 1-2 (November 8, 2002). On November 27, 1996, Gill Davidson was detailed to the position of Acting Building Maintenance General Foreman. Then effective March 17, 1997, Wesley L. Simpson held the position until August of 1999.

[11] *Petition for Appeal,* p. 2 (October 22, 1999).

ORDER

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

FOR THE BOARD:

Brian Lederer, Chair

Horace Kreitzman

Keith E. Washington

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.