

THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	OEA Matter No. 2401-0099-10
JOANNE TAYLOR-COTTEN,)	
Employee)	
)	Date of Issuance: March 30, 2012
v.)	
)	
DISTRICT OF COLUMBIA)	
PUBLIC SCHOOLS,)	
Agency)	Joseph E. Lim, Esq.
_____)	Senior Administrative
Iris Barber, Esq., Agency Representative		
Donald Taylor, Esq., Employee Representative		

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On October 26, 2009, Joanne Taylor-Cotton (“Employee”) filed a petition for appeal with the Office of Employee Appeals (“the OEA” or “the Office”) contesting the District of Columbia Public School’s (“Agency” or “DCPS”) action of terminating her employment through a Reduction-in-Force (“RIF”). The effective date of the RIF was November 2, 2009. Employee’s position of record at the time her position was abolished was a Counselor, ET-15, at Houston Elementary School (“Houston”). Employee was serving in Educational Service status at the time she was terminated.

I was assigned this matter on February 6, 2012. On February 8, 2012, I ordered the parties to submit briefs on the issue of whether Agency conducted the instant RIF in accordance with applicable District laws, statues, and regulations. Both parties submitted timely responses to the order. The record is now closed.

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.

FINDINGS OF FACTS, ANALYSIS, AND CONCLUSIONS OF LAW

On September 10, 2009, former D.C. Public Schools Chancellor Michelle Rhee authorized a Reduction-in-Force (“RIF”) pursuant to D.C. Code § 1-624.02, 5 DCMR Chapter 15, and Mayor’s Order 2007-186. Chancellor Rhee stated that the RIF was necessitated for budgetary reasons, explaining that the 2010 DCPS fiscal year budget was not sufficient to support the current number of positions in the schools¹.

Employee’s Position

In her brief, Employee does not dispute the propriety of Agency’s actions in conducting her RIF. Nor does Employee contend that she did not receive 30-day notice of the RIF action. Instead, Employee asserts that she should have been excluded from the RIF, given that then-Chancellor Michelle Rhee gave her special status.²

Employee bases her contention on the following events:

1. Prior to being transferred to Houston Elementary, Employee was an instructional staff member at Dunbar Senior High School (“Dunbar”).
2. On May 11, 2009, Dunbar underwent a restructuring and its instructional staff members were advised to reapply for their positions at the school for the 2009-2010 school year, which began in September 2009. (See Employee Exhibit 1. May 11, 2009, letter to all instructional staff members at Dunbar Senior High School signed by Chancellor Rhee.)
3. Employee was not retained at Dunbar and thus was involuntarily transferred to Houston Elementary. Because the May 11, 2009, letter guaranteed a position at the Agency for the 2009-2010 school year, Employee was re-assigned to Houston as a Counselor shortly thereafter.
4. Upon arrival at Houston, Employee discovered that there was another Counselor on the staff who had twenty-two years of service. Employee became concerned about this situation and alleges that she tried to contact the Personnel office, but was ignored.
5. On October 2, 2009, Agency informed Employee that her position as Counselor was eliminated effective November 2, 2009, due to a Reduction-in-Force.
6. Based on the May 11, 2009, letter guaranteeing her a position, Employee now contends that she should not have been subjected to a RIF.

Agency’s Position

Agency submits that it conducted the RIF in accordance with the District of Columbia Municipal Regulations and the D.C. Official Code by affording Employee one round of lateral

¹ See *Agency’s Answer*, Tab 1 (December 9, 2009).

² Employee Brief at p. 4 (March 28, 2012).

competition and thirty (30) days written notice prior to the effective date of her termination. Agency further maintains that it utilized the proper competitive factors in implementing the RIF and that the lowest ranked Counselor, Employee, was terminated as a result of the round of lateral competition.

Agency also argues that based on D.C. Code §1-624.04, this Office's jurisdiction over a RIF is limited. Under Title 5 DCMR § 1507.2(b): "An employee may file with the Office of Employee Appeals an appeal contesting that the separation procedures of §§ 1503 and 1506 were not properly applied." These sections involve the placing of employees in their competitive level and the ranking of employees in these levels to determine which position(s) were to be eliminated in the RIF. Agency argues that this Office may only determine if Agency gave Employee thirty days written notice of her RIF and afforded Employee one round of lateral competition within her competitive level. Agency concludes that Employee's argument regarding her guaranteed employment falls outside the purview of this Office.

Analysis

Under Title 5 DCMR § 1501.1, the Superintendent of DCPS Schools is authorized to establish competitive areas when conducting a RIF so long as those areas are based "upon all or a clearly identifiable segment of the mission, a division or a major subdivision of the Board of Education, including discrete organizational levels such as an individual school or office." For the 2009/2010 academic school year, former DCPS Chancellor Rhee determined that each school would constitute a separate competitive area. In accordance with Title 5, DCMR § 1502.1, competitive levels in which employees subject to the RIF competed were based on the following criterion:

1. The pay plan and pay grade for each employee;
2. The job title for each employee; and
3. In the case of specialty elementary teachers, secondary teachers, middle school teachers and teachers who teach other specialty subjects, the subject taught by the employee.

Here, Houston Elementary School was identified as a competitive area, and Counselors on the ET-15 pay plan was determined to be the competitive level in which Employee competed. According to the Retention Register provided by Agency, there were two (2) Counselor positions subject to the RIF. Of the two positions, one (1) position was identified to be abolished.

Employee was not the only Counselor within her competitive level and was, therefore, required to compete with another employee in one round of lateral competition. Using the criteria enumerated in Title 5, DCMR § 1503.2 *et al.*, Employee received 41.5 points in contrast to the other counselor who received 85 points. As Employee had the lower ranking, her position was abolished.

Employee does not dispute her scoring on her CLDF, and thus I need not discuss Agency's scoring and ranking of its employees. Instead, I will focus on Employee's contention that because ex-Chancellor Michelle Rhee's May 11, 2009, letter guaranteed her a position, Employee should not have been subjected to a RIF.

In reviewing the above-mentioned May 11, 2009, letter, I note that it states that employees affected by the restructuring at Dunbar Senior High School are guaranteed a job at the agency even if they were transferred out of Dunbar. According to Employee's own account, this is indeed what happened. It is undisputed that Employee worked as a Counselor at Houston. Approximately five months later, Employee was informed that her position was to be abolished in a RIF.

There is nothing in the May 11, 2009, letter that guarantees Employee *permanent* job security. (Emphasis supplied.) The author of the letter did what she promised: Employee obtained a position even after the restructuring. The letter did not promise anything more.

In addition, Employee does not offer any statutes, case law, or other regulations to support her contention that because of the aforementioned letter, Agency is forever barred from subjecting her or her fellow employees to a RIF.

CONCLUSION

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

Joseph E. Lim, Esq.
Senior Administrative Judge