THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	
RICHARD DYSON, JR., Employee	OEA Matter No. 2401-0040-03
	Date of Issuance: April 14, 2008
DEPARTMENT OF MENTAL HEALTH, Agency	

OPINION AND ORDER
ON
PETITION FOR REVIEW

Mr. Richard Dyson, Jr. ("Employee") worked as a Laborer with the Department of Mental Health ("Agency"). On January 24, 2003, he received a notice providing that due to a reduction-in-force ("RIF") his position was abolished effective February 28, 2003. On March 18, 2003, Employee filed a Petition for Appeal with the Office of Employee Appeals ("OEA"). In his petition, Employee expressed that he was unsure why he was not selected to remain employed by Agency.[1]

Agency filed a response to Employee's Petition for Appeal. It provided that Employee was the only member within his competitive level. As a result of Employee's

[1] *Petition for Appeal*, p. 5 (March 18, 2003).

position being abolished releasing him from his competitive level, Agency argued that he was properly separated.[2]

Both parties then submitted Pre-hearing Statements to the OEA Administrative Judge ("AJ"). In Agency's Pre-hearing Statement, it provided that Employee's position was identified for abolishment pursuant to Administrative Order DMH-03-07 dated January 24, 2003. It also provided that in accordance with D.C. Official Code § 1-624.08 (d) and (e) (2001 repl.), Employee was entitled to one round of lateral competition within his competitive level, and Agency must have given him 30 days written notice before separating him. It went on to state that because Employee was the sole member within his competitive level, he received one round of lateral competition. Agency also provided that it gave Employee 30 days notice; the notice was provided to Employee on January 27, 2003, and became effective on February 28, 2003. Therefore, Agency complied with the procedures set forth in Chapter 24 of the District Personnel Manuel.[3]

Employee filed his Pre-hearing Statement on August 20, 2004. He alleged that Agency failed to adhere to D.C. laws and personnel regulations because it failed to provide a valid 30-day written notice and did not conduct one round of lateral competition within his competitive level. Employee asserted that the RIF was the result of a major reorganization and under the circumstances, it should have been approved by the Mayor and D.C. City Council. It was Employee's position that because it was not approved by the Mayor, the RIF was not valid.

Furthermore, Employee claimed that Agency failed to request approval to

[2] *Agency's Response*, Tab #6 (December 16, 2003).
[3] *Agency's Pre-hearing Statement*, p. 1-2 (March 12, 2004).

establish a smaller competitive area, and it failed to notify Employee and other Department of Mental Health employees of its decision to use a smaller competitive area. Employee argued that Agency knew or should have known that he performed duties of a Maintenance Mechanic. He stated that Maintenance Mechanic was a higher grade and had more responsibilities than a Laborer.[4]

The AJ issued his Initial Decision on January 14, 2005. He found that although there was credible evidence that Employee performed duties of a Maintenance Mechanic, he did not prove that the RIF action was invalid. The AJ noted that all eight of the Maintenance Mechanic positions were also abolished.[5] He reasoned that Employee's position of record was Laborer, and the RIF notice properly reflected that position. Because he was in a single person competitive level, one round of lateral competition was inapplicable and Agency was not required to go through the rating and ranking process. Moreover, Agency did provide the required 30-day notice to Employee. Therefore, Agency's decision to remove Employee was upheld.[6]

OEA was given statutory authority to address RIF cases. According to D.C. Official Code Ann. §1-606.3(a):

> "An employee may appeal a final agency decision affecting a performance rating which results in removal of the employee (pursuant to subchapter XIIII-A of this chapter), an adverse action for cause that results in removal, reduction in grade, or suspension for 10 days or more (pursuant to subchapter XXIV of this chapter), or a reduction-in-force (pursuant to subchapter XXIV of this chapter) to the Office upon the record and pursuant to other rules and regulations which the Office upon the record

[4] *Employee's Pre-hearing Statement,* p. 1-2 (August 20, 2004).
[5] *Initial Decision,* p. 2 (January 14, 2005).
[6] *Id.,* 4-6.

> and pursuant to other rules and regulations which the Office may issue. Any appeal shall be filed within 30 days of the effective date of the appealed agency action."

In an attempt to more clearly define OEA's authority, D.C. Official Code § 1-624.08(d), (e), and (f) establish the circumstances under which the OEA may hear RIFs on appeal.

> "(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.
>
> (f) Neither the establishment of a competitive area smaller than an agency, nor the determination that a specific position is to be abolished, nor separation pursuant to this section shall be subject to review except that:
>
> > (1) An employee may file a complaint contesting a determination or separation pursuant to subchapter XV of this chapter or § 2-1403.03; and
> >
> > (2) An employee may file with the Office of Employee Appeals an appeal contesting that the separation procedures of subsections (d) and (e) were not properly applied."

As a result of above-referenced statutes, this Office is authorized to review RIF cases where an employee claims the Agency did not provide one round of lateral competition or where an employee was not given a 30-day written notice prior to their separation.

As the AJ provided in his Initial Decision, this office has consistently held that one round of lateral competition does not apply to employees in a single-person

competitive level.[7] Agency provides that Employee was the only person within his position title.[8] Therefore, one round of lateral competition is inapplicable to this case.

Furthermore, Employee does not dispute that Agency provided the RIF notice on January 24, 2003. The notice clearly states that it is effective on February 28, 2003, thirty days after the date of the letter. Therefore, Agency provided the requisite 30 day notice as required by the D.C. Official Code.

[7] *Cabaniss v. Department of Consumer & Regulatory Affairs*, OEA Matter 2401-0156-99 (January 30, 2003), ___ D.C. Reg. ___ ( ); *Robert T. Mills*, OEA Matter 2401-0109-02 (March 20, 2003), ___ D.C. Reg. ___ ( ); *Deborah J. Bryant*, OEA Matter 2401-0086-01 (July 14, 2003), ___ D.C. Reg. ___ ( ); *Robert James Fagelson*, OEA Matter 2401-0137-99 (August 28, 2003), ___D.C. Reg. ____ ( ).
[8] *Agency's Response*, Tab #6 (December 16, 2003).

ORDER

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

FOR THE BOARD:

_____
Sherri Beatty-Arthur, 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.