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THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
)	
Jubill Austin)	OEA Matter No. 2401-0104-04
Employee)	
)	Date of Issuance: July 3, 2005
v.)	
)	Joseph E. Lim, Esq.
)	Senior Administrative Judge
D.C. Public Schools)	
Agency)	
)	

Jubill Austin, Employee *pro se*
Harriet Segar, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION

On June 23, 2004, Employee, an ET-15 Business Teacher with the D.C. Public Schools (the "Agency"), filed a Petition for Appeal with the Office of Employee Appeals (the "Office"), contesting Agency's decision separating him from government service pursuant to the abolishment of his job for financial reasons (the "RIF"), effective June 30, 2004. This matter was assigned to me on February 2, 2005. I held a Prehearing Conference on April 8, 2005.

Since this Matter raised no factual disputes, no hearing was held. I closed the record after Agency submitted its legal brief on the issues. Employee failed to make any submissions.

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 from service as a result of the RIF was in accordance with applicable law, rule or regulation.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

D.C. Official Code § 1-624.08(f) reads as follows:

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 action shall be subject to review except that . . . (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.

Section 1-624.08(d) states in part that:

An employee affected by the abolishment of a position pursuant to this section . . . shall be entitled to one round of lateral competition which shall be limited to positions in the employee's competitive level.

Section 1-624.08(c) states that:

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.

Thus, an employee whose position was abolished as a result of a RIF may only contest before this Office: 1) that he was not afforded one round of lateral competition within his competitive level; and/or 2) that he was not given 30 days notice prior to the effective date of his separation.

Findings of fact.

The following facts are not subject to genuine dispute:

1. According to Agency's personnel records, Employee was an ET-15 Business Teacher at Coolidge Senior High School.
2. During School year 2003-2004, Agency experienced financial constraints and made the decision to reduce staffing levels by abolishing positions throughout the school system.
3. Agency required Coolidge Senior High School to abolish a set number of positions based on student enrollment and budgetary constraints.
4. The Coolidge Senior High School's principal determined that one position would be abolished from the ET 15 Business Teacher competitive level.
5. Including Employee, there were five teachers who occupied this competitive level. The others

were Dr. Mae Covington-Wright, Alice Dixon, Sally Littlejohn, and Sylvia Weathers.

6. Using the prescribed Competitive Level Documentation Form ("CLDF"), the five teachers were rated based on their contributions, accomplishments, performance, professional experience, and the school's needs. Employee ranked last and therefore his position was selected to be abolished.

7. On May 27, 2004, Agency issued to Employee a letter of official notice of abolishment of his position, effective June 30, 2004.

Analysis and conclusions.

At the prehearing conference, Employee asserted that he was a victim of discrimination because he was a union building representative. Employee also asserted that the ranking was flawed but he never presented anything to back up or explain his assertions.


Employee's assertion of discrimination based on his union position, cannot be addressed in a RIF appeal to this Office as this Office lacks jurisdiction over complaints of discrimination.¹ Employee's contention that his RIF was flawed is backed up by nothing more than his suspicions. Absent more substantive evidence, this argument will not be entertained.

Based on the record before me, I conclude that the RIF was conducted in accordance with applicable law, rule, or regulation. Therefore, the agency's action must be upheld.

ORDER

It is hereby ORDERED that Agency's action separating Employee from service pursuant to the modified RIF is UPHeld.

FOR THE OFFICE:



JOSEPH LIM, Esq.
Senior Administrative Judge

¹ See, e.g., *Fowler v. D.C. Public Schools*, OEA Matter No. 2401-0311-96 (November 4, 1999), _ D.C. Reg._ (); *Flowers v. Department of Human Services*, OEA Matter No. 1602-0299-97 (October 13, 1999), _ D.C. Reg._ (); *Brown v. Office of the Chief Financial Officer*, OEA Matter No. 1601-0110-97 (May 28, 1997), _ D.C. Reg._ ().