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THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

| | | |
|---------------------|---|----------------------------------|
| In the Matter of: |) | |
| Guillermina Green |) | OEA Matter No. 2401-0127-04 |
| Employee |) | |
| |) | Date of Issuance: April 19, 2006 |
| v. |) | |
| |) | Sheryl Sears, Esq. |
| |) | Administrative Judge |
| D.C. Public Schools |) | |
| Agency |) | |

Richard Link, Esq., Employee Representative
Harriet Segar, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND FINDINGS OF FACT

By letter dated May 27, 2004, Agency notified Employee, an Administrative Assistant, EG-07, that her position at Charles Young Elementary School would be abolished effective on June 30, 2004, pursuant to a reduction in force (RIF). On June 29, 2004, Employee filed an appeal with this Office. The parties convened for a pre-hearing conference on May 4, 2005.

Employee contends that Agency committed a procedural error in conducting the RIF by placing her in a one person competitive level. According to Employee, J.H, another Administrative Assistant, should have been in a competitive level with her. When her position was abolished, Employee was removed without competition and J.H. was retained. According to Agency, Employee was properly placed in her competitive level. In response to a request for discovery from Employee, Agency placed evidence in the record to support that position.

In a conference call with Attorneys Link and Segar on April 10, 2006, this Judge advised the parties that the deadline for the submission of additional proffers of evidence from Employee would be April 14, 2006. The parties were notified that, absent additional submissions by that date, this matter would be decided on the record.

JURISDICTION

This Office has jurisdiction over this matter pursuant to D.C. Official Code § 1-606-03 (2001).

ISSUES

Whether Employee was improperly denied a round of lateral competition.

BURDEN OF PROOF

OEA Rule 629.3, 46 D.C. Reg. 9317 (1999) provides that “[f]or appeals filed on or after October 21, 1998, the agency shall have the burden of proof, except for issues of jurisdiction.”

ANALYSIS AND CONCLUSIONS

According to the D.C. Official Code § 1-624.08 (2001), which sets forth the standards for review of a RIF appeal, the grounds upon which an employee can challenge a RIF are limited 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 section shall be subject to review except as follows—

(1) an employee may file with the Office of Employee Appeals an appeal contesting that separation procedures of subsections (d) and (f) were not properly applied.

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 *1 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. . .

(f) 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. (Emphasis added).

Employee, an EG-07, contends that Agency should have constructed a competitive level consisting of her and J.H., another Administrative Assistant. Agency submitted the "Charles Young Elementary School Staff Roster 2004/2005" listing J.H. as an Administrative Assistant. According to a document entitled "Budget Sheet 2: Personal Services (PS)" for Young Elementary School, J.H. was an EG-09. As noted above, Employee was an EG-07. Employee was not entitled, under the law, to compete for her position with an employee of a different grade level.

The District Personnel Manual, at § 2401, sets forth the guidelines for establishing a competitive level as follows:

2410.1 Each personnel authority shall determine the positions which comprise the competitive level in which employees shall compete with each other for retention.

2410.2 Assignment to a competitive level shall be based upon the employee's position of record.

2410.3 An employee's position of record is the position for which the employee receives pay or the position from which the employee has been temporarily reassigned or promoted on a temporary or term basis.

2410.4 A competitive level shall consist of all positions in the competitive area identified pursuant to § 2409 in the same grade (or occupational level), and classification series and which are sufficiently alike in qualification requirements, duties, responsibilities, and working conditions so that the incumbent of one (1) position could successfully perform the duties and responsibilities of any of the other positions, without any loss of productivity beyond that normally expected in the orientation of any new but fully qualified employee.

2410.5 The composition of a competitive level shall be determined on similarity of the qualification requirements, including selective factors, to perform the major duties of the position successfully, the title and series of the positions, and other factors prescribed in this section and § 2411.

In accordance with the above provisions, Employee was properly placed in a one-person competitive level because she was the only EG-07 Administrative Assistant in the competitive area. Employee was not denied a proper round of lateral competition. Agency has met the burden of proving that the RIF pursuant to which Employee was removed was conducted in accordance with applicable laws, rules, regulations and guidelines. Therefore, the removal will be upheld.

ORDER

It is hereby ORDERED that the removal of Employee pursuant to a reduction in force is UPHELD.

FOR THE OFFICE:



SHERYL SEARS, ESQ.
ADMINISTRATIVE JUDGE