**THE DISTRICT OF COLUMBIA**

**BEFORE**

**THE OFFICE OF EMPLOYEE APPEALS**

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| In the Matter of: | ) | |
| | ) | |
| LORAINE COUSINS, | ) | |
| Employee | ) | OEA Matter No. 2401-0122-12 |
| | ) | |
| v. | ) | Date of Issuance: March 3, 2015 |
| | ) | |
| D.C. PUBLIC SCHOOLS, | ) | |
| Agency | ) | |
| | ) | |

OPINION AND ORDER
ON
PETITION FOR REVIEW

Loraine Cousins ("Employee") worked as a Business Manager with D.C. Public Schools ("Agency"). On June 18, 2012, Agency issued a Reduction-in-Force ("RIF") notice to Employee. The notice explained that Employee was removed from her position effective August 10, 2012. Thereafter, Employee filed a Petition for Appeal with the Office of Employee Appeals ("OEA") on June 27, 2012. She argued that she was initially told by her principal that her position was being excessed, not RIFed. Employee also provided that she consistently performed her duties, as was evidenced by past performance evaluations. Additionally, she claimed that she had more seniority than other staff members within her school.[1]

Agency filed its Answer to Employee's Petition for Appeal on September 10, 2012. It asserted that the RIF action was conducted in accordance with the D.C. Official Code and

[1] *Petition for Appeal* (June 27, 2012).

District of Columbia Municipal Regulations ("DCMR"). Agency contended that Employee received one round of lateral competition and thirty days' notice that she would be removed from her position.[2] In a subsequent filing, Agency provided that because Employee was the only Business Manager, she was in a single-person competitive level and one round of lateral competition was not applicable in her case.[3]

On December 16, 2013, the OEA Administrative Judge ("AJ") issued an Initial Decision. She held that OEA has consistently held that one round of lateral competition is not applicable in single-person competitive levels. Moreover, she found that the record supported that Employee was the only Business Manager; therefore, Agency was not required to rate and rank the position to be abolished. Additionally, the AJ concluded that Agency provided the requisite thirty days' notice in this matter. As for Employee's arguments regarding past performance evaluations and being excessed as opposed to RIFed, the AJ opined that she offered no evidence to support her contentions. Finally, the AJ held that Employee failed to comply with three of her orders requesting additional documentation. Thus, in accordance with OEA Rule 621, she reasoned that Employee failed to prosecute her case. Accordingly, the RIF action was upheld.[4]

Employee filed a Response to the AJ's Order for Good Cause Statement. However, because she addressed issues within the Initial Decision, this Board will consider the document a Petition for Review. Employee provides that in reference to the orders with which she failed to comply, she had the Post Office hold her mail because she was recovering from surgery. In response to the Initial Decision, Employee provides that she "under[stood] the reason for the instant reduction-in-force and that the District of Columbia followed proper District of Columbia statutes, regulations[,] and laws." However, she contends that she disagrees with the decision

[2] *District of Columbia Public Schools' Answer to Employee's Petition for Appeal* (September 10, 2012).
[3] *District of Columbia Public Schools' Brief,* p. 4-5 (November 13, 2013).
[4] *Initial Decision,* p. 5-6 (December 16, 2013).

because another position should have been eliminated.[5]

Although this Board is sympathetic to Employee's post-surgery recovery, it was still her responsibility to make other arrangements regarding filings in her appeal. OEA Rule 608.5 provides that "an employee's failure to . . . advise the Office of a change in address in writing, shall constitute a waiver of any right to notice and services, and may result in the appeal being dismissed." Although Employee does not appear to have changed her address, at no time did she inform the AJ that she would be unable to receive mail for a period of time. Therefore, it was within the AJ's discretion to utilize OEA Rule 621.3(b) which provides that "if a party fails to take reasonable steps to prosecute . . . the Administrative Judge . . . may dismiss the action or rule for the appellant. Failure of a party to prosecute . . . includes . . . a failure to submit required documents after being provided with a deadline for such submission." The record provides an October 7, 2013; October 23, 2013; and December 2, 2013 order requesting that Employee submit briefs on the RIF action. Employee failed to comply with all of the orders, therefore, the AJ was within her authority to dismiss the matter on that basis.

Alternatively, the AJ decided to issue a decision on the merits of the RIF action. Employee argues on Petition for Review that although she agrees that the proper regulations were followed by Agency, she believes another position should have been eliminated other than hers. However, OEA does not have the authority to determine which positions should be abolished within a RIF action. This determination is solely up to Agency to decide. District Personnel Manual Section 2405.4 provides that the "personnel authorities have authority over the preparation for, and implementation of, a reduction in force . . . ." Moreover, Section 2406.2 provides that ". . . the agency conducting the reduction in force shall prepare a RIF Administrative Order, or an equivalent document, identifying the competitive area of the RIF;

[5] *Petition for Review* (December 20, 2013).

*the positions to be abolished*, by position number, title, series, grade, and organizational location; and stating the reason for the RIF (emphasis added)." Therefore, this Board cannot make changes to specific positions identified for abolishment.

Moreover, the AJ properly held that Agency was not required to provide one round of lateral competition because Employee was in a single-person competitive level.[6] Additionally, Employee was provided with thirty days' notice of the RIF action.[7] Accordingly, Employee's Petition for Review is denied.

[6] OEA has consistently held that one round of lateral competition does not apply to employees in a single-person competitive level. *Cabaniss v. Department of Consumer & Regulatory Affairs*, OEA Matter 2401-0156-99 (January 30, 2003); *Robert T. Mills*, OEA Matter 2401-0109-02 (March 20, 2003); *Deborah J. Bryant*, OEA Matter 2401-0086-01 (July 14, 2003); *Robert James Fagelson*, OEA Matter 2401-0137-99 (August 28, 2003); *Richard Dyson, Jr. v. Department of Mental Health*, OEA Matter No. 2401-0040-03, *Opinion and Order on Petition for Review* (April 14, 2008); and *Lawrence Nwankwo v. Department of Transportation*, OEA Matter No. 2401-0203-09, *Opinion and Order on Petition for Review* (March 21, 2013).

[7] The RIF notice was issued on June 18, 2012, with an effective date of August 10, 2012. This is nearly a sixty-day notice period. Therefore, the requirement was adequately met.

**ORDER**

It is hereby ordered that Employee's Petition for Review is **DENIED**.

FOR THE BOARD:

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William Persina, Chair

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Sheree L. Price, Vice Chair

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Vera M. Abbott

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A. Gilbert Douglass

_____
Patricia Hobson Wilson

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.