THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
ROBERT WILLIS,	)	
Employee	)	OEA Matter No. 2401-0210-10R14
	)	
v.	)	
	)	Date of Issuance: January 24, 2017
D.C. PUBLIC SCHOOLS,	)	
Agency	)	
	)	

OPINION AND ORDER
ON REMAND

This matter was previously before this Board. Robert Willis ("Employee") worked as a Science Teacher with the D.C. Public Schools ("Agency"). On October 2, 2009, Agency notified Employee that he was being separated from his position pursuant to a Reduction-in-Force ("RIF"). The effective date of the RIF was November 2, 2009.[1]

The Initial Decision was issued on June 13, 2012. The AJ found that although the RIF was authorized pursuant to D.C. Official Code § 1-624.02**,** D.C. Official Code § 1-624.08 was the applicable statute to govern the RIF.[2] As a result, he ruled that § 1-624.08 limited his review of the appeal to determining whether Employee received a written, thirty-day notice prior to the

[1] *Petition for Appeal,* p. 11 (December 1, 2009).
[2] The AJ cited the District of Columbia Court of Appeals' position in *Washington Teachers' Union, Local #6 v. District of Columbia Public Schools,* 960 A.2d 1123 (D.C. 2009) and reasoned that D.C. Official Code § 1-624.08 or the "Abolishment Act" was the applicable statute because the RIF was conducted for budgetary reasons, and the statute's 'notwithstanding' language is used to override conflicting provisions of any other section. *Initial Decision,* p. 2-4 (June 13, 2012).

effective date of his separation and if Agency provided one round of lateral competition within his competitive level. The AJ found that Employee was afforded one round of lateral competition and explained that Agency properly considered all of the factors enumerated in DCMR § 1503.2 when it conducted the RIF. He also found that Agency provided Employee the required thirty-day notice. Accordingly, the AJ denied Employee's request for an evidentiary hearing, denied his Motion for Summary Disposition, and upheld Agency's RIF action.[3]

The OEA Board found that the CLDFs in this case blatantly violated the holding in *Evelyn Sligh, et al. v. District of Columbia Public Schools*, 2012 CA 000697 P(MPA)(D.C. Super. Ct. March 14, 2013), because Agency provided language verbatim in the CLDFs for the three employees removed from their positions. Likewise, Agency used the exact language for those employees who retained their positions. The Board opined that Agency did not attempt to camouflage the boilerplate language used throughout the CLDFs for those terminated and those retained. It concluded that it appeared that this was done in an effort to replace individual evaluations, which was a clear violation of the holding in *Sligh et al*. Pursuant to *Sligh*, the Board ordered the Administrative Judge ("AJ") to conduct an evidentiary hearing to adduce testimony to support or refute any fact alleged in the CLDF.

After conducting an evidentiary hearing, the AJ requested written closing arguments. Agency argued that the CLDF language was the same for all of the science teachers because the principal used the same factors to rate them. It contended that Employee received one round of lateral competition and thirty days' notice. Therefore, the RIF was properly conducted.[4]

Employee filed his closing brief on March 19, 2015. He explained that in accordance with D.C. Official Code § 1-624.08 and Chapter 24 of the District Personnel Manual ("DPM"),

[3] *Id.* at 11.
[4] *District of Columbia Public Closing Argument*, p. 4-6 (March 19, 2015).

he was not afforded one round of lateral competition. He claimed that Agency violated sections of Chapter 24 related to retention standing, performance ratings, competitive levels, and service computation dates. Therefore, he requested that he be reinstated with back pay and benefits.[5]

The AJ issued his Initial Decision on Remand on June 10, 2015. He found that Employee was properly afforded one round of lateral competition and explained that Agency properly considered all of the factors enumerated in DCMR § 1503.2 when it conducted the RIF. He also held that Agency provided Employee the required thirty-day notice. Furthermore, the AJ held that the principal had wide latitude to invoke his discretion when assessing an employees' performances and the capabilities. He found the principal to be a credible witness who used good faith judgment when he ranked Employee's against his peers in the RIF. As a result, the AJ upheld Agency's RIF action against Employee.[6]

On July 15, 2015, Employee filed a Petition for Review. He argues that there was conflicting testimony provided by Agency witnesses regarding the length of time a principal could consider when evaluating employees for the RIF action. Moreover, he argues that the AJ's decision did not consider all issues of law and fact raised on appeal.[7] In a subsequent filing, Employee asserts that Agency violated DPM Chapter 24 when removing him through its RIF action.[8] Accordingly, Employee requests that he be reinstated to his position with back pay and benefits.

Agency filed its Response to Employee's Petition for Review on August 19, 2015. It contends that the AJ credibly found that the principal presented substantial evidence to support the CLDF. Agency also claims that the AJ correctly relied on 5 DCMR § 1503.1 when

[5] *Closing Argument and Proposed Order*, p. 14-19 (March 19, 2015).
[6] *Initial Decision on Remand*, p. 10-14 (June 10, 2015).
[7] *Petition for Review of OEA's June 10, 2015 Initial Decision,* p. 12-15 (July 15, 2015).
[8] *Reply to District of Columbia Public Schools' Response to Employee's Petition for Review,* p. 6-8 (September 23, 2015).

analyzing this case. Therefore, it requests that this Board uphold the AJ's ruling.

In *Webster Rogers, Jr. v. D.C. Public Schools,* 2012 CA 006364 P(MPA)(D.C. Super. Ct. December 9, 2013), the Superior Court for the District of Columbia held that D.C. Official Code § 1-624.08 was the proper statute to use when analyzing these RIF cases. However, it found that the OEA Administrative Judges were incorrectly using Chapter 15 of the DCMR when issuing their rulings on these cases. The court held that Chapter 24 of the DPM should be used when determining if the RIF actions conducted under D.C. Official Code § 1-624.08 were proper.

Unfortunately, the AJ improperly analyzed this case using Chapter 15 of the DCMR. In his Closing Brief, Employee argued that Chapter 24 of the DPM should have been used. However, it appears that the AJ neglected to address it.[9] This Board held in the first remand to the AJ that "implicit in the authority to determine whether an employee has been given one round of lateral competition is the jurisdiction to decide whether an employee's CLDF is supported by substantial evidence." Because the AJ used the wrong regulation when assessing the specifics of the one round of lateral competition, the Initial Decision on Remand is not based on substantial evidence.[10] Thus, this matter is remanded to the AJ for the limited purpose of determining if Agency complied with DPM Chapter 24, as provided in D.C. Official Code § 1-624.08, when conducting the RIF action.

[9] In accordance with OEA Rule 633.3(b) and (d) ". . . the Board may grant a petition for review when the petition establishes that the decision . . . is based on an erroneous interpretation of . . . regulation . . . . , or the initial decision did not address all material issues of law and fact properly raised in the appeal."

[10] The Court in *Baumgartner v. Police and Firemen's Retirement and Relief Board,* 527 A.2d 313 (D.C. 1987), found that if administrative findings are supported by substantial evidence, then it must be accepted even if there is substantial evidence in the record to support a contrary finding. Substantial evidence is defined as evidence that a reasonable mind could accept as adequate to support a conclusion. *Mills v. District of Columbia Department of Employment Services*, 838 A.2d 325 (D.C. 2003) and *Black v. District of Columbia Department of Employment Services*, 801 A.2d 983 (D.C. 2002).

ORDER

Accordingly, it is hereby ORDERED that Employee's Petition for Review is **GRANTED**, and this matter is **REMANDED** to the Administrative Judge for further findings.

FOR THE BOARD:

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Sheree L. Price, Interim Chair

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Vera M. Abbott

_____
Patricia Hobson Wilson

_____
P. Victoria Williams

This decision of the Office of Employee Appeals shall become the final decision 5 days after the issuance date of this order. Either party may appeal this decision on Petition for Review to the Superior Court of the District of Columbia. To file a Petition for Review with the Superior Court, the petitioning party should consult Superior Court Civil Procedure Rules, XV. Agency Review, Rule 1.