THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
JONATHAN STRICKLAND, SR.,	)	
Employee	)	OEA Matter No. 2401-0012-10
	)	
v.	)	Date of Issuance: January 10, 2012
	)	
DISTRICT OF COLUMBIA	)	
PUBLIC SCHOOLS,	)	
Agency	)	ERIC T. ROBINSON, Esq.
	)	Senior Administrative Judge
	)	

Mark Murphy, Esq., Employee Representative
Harriet Segar, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On October 6, 2009, Jonathan Strickland, Sr., ("Employee") filed a petition for appeal with the Office of Employee Appeals ("OEA" or "the Office") contesting the District of Columbia Public Schools ("DCPS" or "the Agency") action of abolishing his position through a Reduction-In-Force ("RIF"). Employee received written notice of the RIF on October 2, 2009. The effective date of the RIF was November 2, 2009. At the time his position was abolished, Employee's official position of record within the Agency was Custodian Foreman. Relative to the RIF, Employee's competitive level was Custodian Foreman on the SW pay plan and his competitive area was River Terrace Elementary School.

I was assigned this matter on or around October 17, 2011. Thereafter, a Prehearing Conference was convened on November 15, 2011, in order to assess the parties' arguments. After considering the parties' arguments, I decided that an Evidentiary Hearing was not required. On November 15, 2011, I issued an Order requiring both parties to submit final written briefs in this matter. Since then, both parties have submitted their respective written briefs. The record is now closed.

JURISDICTION

The Office has jurisdiction in this matter pursuant to D.C. Official Code § 1-606.03 (2001).

ISSUE

Whether Agency's action of separating Employee from service pursuant to a RIF was done in accordance with all applicable laws, rules, or regulations.

BURDEN OF PROOF

OEA Rule 629.1, 46 D.C. Reg. 9317 (1999) states:

> The burden of proof with regard to material issues of fact shall be by a preponderance of the evidence. "Preponderance of the evidence" shall mean:
>
> > That degree of relevant evidence which a reasonable mind, considering the record as a whole, would accept as sufficient to find a contested fact more probably true than untrue.

OEA Rule 629.3 *id.* states:

> For appeals filed on or after October 21, 1998, the Agency shall have the burden of proof, except for issues of jurisdiction.

FINDING OF FACTS, ANALYSIS, AND CONCLUSIONS

The following findings of facts, analysis, and conclusions of law are based on the documentary evidence presented by the parties during the course of Employee's appeal process with this Office.

The Agency contends that it followed all applicable laws, rules, and regulations when it abolished Employee's position as part of the instant RIF. The Agency also contends that since Employee's was the sole person in his competitive level and area when his position was abolished, it was not required to provide Employee with one round of lateral competition as is generally mandated by D.C. Official Code § 1-624.02 and 5 DCMR §1503.03.

Employee argues that he was not the only Custodian in his competitive level and area. Although he received the lowest score out of the three Custodians listed, Employee contends that the scores that he received on his Competitive Level Documentation Form ("CLDF") were unsubstantiated and should be subjected to an evidentiary hearing. For reasons that are forthcoming, I disagree.

I find that in a RIF matter, I am guided primarily by D.C. Official Code § 1-624.08, which

states in pertinent part that:

> (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... 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 a 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.

According to the preceding statute, I find that a District of Columbia government employee whose position was abolished pursuant to a RIF may only contest before this Office:

1. That she did not receive written notice thirty (30) days prior to the effective date of her separation from service; and/or
2. That she was not afforded one round of lateral competition within her competitive level.

According to the CLDF, at the time of the RIF, there were two Custodian positions and one Custodian Foreman position at River Terrace Elementary School. *See* DCPS Brief at Tab C. Employee was serving on the SW pay plan while the other two Custodians were serving on the RW pay plan. Employee was a Custodian Foreman while the other two individuals were merely Custodians. Given the instant facts, I find that the Custodian Foreman position is separate and distinct from the Custodian position. I further find that Employee was in a single person competitive level and area when his last position of record was abolished. This Office has consistently held that when a separated employee is the only member of his/her competitive level or *when an entire competitive level is abolished pursuant to a RIF* (emphasis added by this AJ), "the statutory provision affording [him/her] one round of lateral competition was inapplicable." *See, e.g., Fink v. D.C. Public Schools*, OEA Matter No. 2401-0142-04 (June 5, 2006), __ D.C. Reg. __ ( ); *Sivolella v. D.C. Public Schools*, OEA Matter No. 2401-0193-04 (December 23, 2005), __ D.C. Reg. __ ( ); *Mills v. D.C. Public Schools*, OEA Matter No. 2401-0109-02 (March 30, 2003), __ D.C. Reg. __ ( ). *See also Cabaniss v. Department of Consumer & Regulatory Affairs*, OEA Matter No. 2401-0156-99 (January 30, 2003), _ D.C. Reg. __ ( ). Considering as much, I find that the entire unit in which Employee's position was located was

abolished. I further find that no further lateral competition efforts were required and that the Agency was in compliance with the lateral competition requirements of the law.

According to the documents of record, Employee received written notice of the RIF on October 2, 2009. The effective date of the RIF was November 2, 2009. Considering as much, I find that the Agency complied with D.C. Official Code § 1-624.08 (e). I also find that Employee was properly afforded 30 days written notice prior to the abolishment of his position through a RIF.

According to *Anjuwan v. D.C. Department of Public Works,* 729 A.2d. 883 (12-11-98), the OEA's authority over RIF matters is narrowly prescribed. The Court explained that the OEA does not have jurisdiction to determine whether the RIF at the Agency was *bona-fide* or violated any law, other than the RIF regulations themselves. Further, it is an established matter of public law, that as of October 21, 1998, pursuant to the Omnibus Personnel Reform Amendment Act of 1998 (OPRAA), D.C. Law 12-124, the OEA no longer has jurisdiction over grievance appeals. Based on the above discussion, Employee has failed to proffer any credible evidence that would indicate that the RIF was improperly conducted and implemented. Further, Employee's other ancillary arguments are best characterized as grievances and outside of the OEA's jurisdiction to adjudicate. That is not to say that Employee may not press his claims elsewhere, but rather that the OEA currently lacks the jurisdiction to hear Employee's other claims.

Based on the foregoing, I find that the Agency's action of abolishing Employee's position was done in accordance with D.C. Official Code § 1-624.08 (d) and (e) and that any other issue(s) are outside of my authority to review in the instant matter.

ORDER

It is hereby ORDERED that Agency's action of abolishing Employee's position through a Reduction-In-Force is UPHELD.

FOR THE OFFICE:

_____
ERIC T. ROBINSON, ESQ.
SENIOR ADMINISTRATIVE JUDGE