THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	
CALVIN BRAITHWAITE, Employee	OEA Matter No. 2401-0159-04
	Date of Issuance: September 3, 2008
DISTRICT OF COLUMBIA PUBLIC SCHOOLS, Agency	

OPINION AND ORDER
ON
PETITION FOR REVIEW

Calvin Braithwaite ("Employee") worked as a social studies teacher with the District of Columbia Public Schools ("Agency"). On May 27, 2004, Employee received a reduction-in-force ("RIF") notice from Agency. He filed a Petition for Appeal on July 16, 2004, alleging that Agency failed to adhere to management procedures and did not follow his union agreement. He argued that Agency incorrectly used his evaluation from a previous school when making its RIF decision.[1] Additionally, he argued that Agency

[1] Employee provided that Principal Bennett at Charles Hart Middle School used a low-ranking evaluation provided by Principal Hinton from Patricia Roberts Harris Educational Center. It was his belief that Bennett should have used his own evaluation and not that of another principal.

should have removed the least senior teacher within his competitive level and not him.[2]

On January 7, 2005, Agency filed its Response to Employee's Petition for Appeal. It provided that Principal Bennett used the same procedures for all employees within Employee's competitive level. Evaluations from the previous school year were used in assessing each of the employees. Therefore, Employee was properly removed from his position.[3]

The Office of Employee Appeals ("OEA") Administrative Judge ("AJ") issued his Initial Decision on January 24, 2006. After listening to testimony from Employee and Principal Bennett, he found Bennett to be more credible. The AJ provided that evaluations from the previous school year were used throughout Agency's schools when processing RIF actions. He also found that Employee was properly ranked fifth out of the five members within his competitive level. Therefore, he ordered that Agency's action be upheld.[4]

On February 27, 2006, Employee filed a Petition for Review of the AJ's Initial Decision. He argued that his attorney was unaware of the OEA hearing conducted by the AJ. Employee was present at the hearing but argued that he had not heard from his attorney. He claimed that the AJ gave him the option of proceeding on his own or having his matter dismissed.[5] He also argued that he should have received twenty points instead of fifteen in one of the four categories used to determine the points he received on his Competitive Level Documentation Form ("CLDF"). As a result, Employee requested

[2] *Petition for Appeal*, p. 6 (July 16, 2004).
[3] *Agency's Response to Employee's Petition for Appeal*, p. 2 (January 7, 2005).
[4] *Initial Decision,* p. 9 (January 24, 2006).
[5] Employee presented his case to the AJ in his attorney's absence.

that the OEA Board schedule another hearing in this case.

In an attempt to clearly define OEA's authority, D.C. Code § 1-624.08(d), (e), and (f) establishes the circumstances under which the OEA may hear RIFs on appeal.

> "(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 pursuant to Chapter 24 of the District of Columbia Personnel Manual, 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 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."

Therefore, this Office is authorized to review RIF cases where an employee claims the Agency did not provide one round of lateral competition, or where an employee was not given a 30-day written notice prior to their separation. In his Petition for Review, Employee does not assert that he failed to receive written notice 30 days prior to the effective RIF date. Furthermore, he does not contend that Agency failed to provide one round of lateral competition. He takes issue with the outcome of the competition.

Although Employee argued that he should have been awarded five more points

than he received on his CLDF, he offers no proof to substantiate this claim. Moreover, this was not an argument presented to the AJ before he closed the record in this matter.[6] This Board believes that Agency clearly gave each employee credit for the information they provided on their CLDFs.[7] Therefore, Employee's receipt of fifteen points was accurate.

Employee's final argument was that he should be allowed another hearing because his attorney was not present for the OEA hearing. However, the AJ sent reminder notices of the hearing to Employee, his attorney, and Agency's attorney one month before the hearing. The AJ did not receive returned mail from any of the parties. Moreover, he found that Employee tried to reach his attorney as well before the hearing date – to no avail. The AJ determined that this was an issue between the Employee and his attorney, and he did not reschedule the matter.[8] We agree with the AJ's decision to move forward with the hearing. It was not the AJ's responsibility to delay the hearing because Employee's attorney chose not appear.

Furthermore, Employee has provided no basis on which this Board should disturb Agency's decision in this RIF action. Agency provided him with thirty days notice and one round of lateral competition. He had the lowest number of points within his competitive level, therefore, he was properly RIFed. Accordingly, we deny Employee's Petition for Review.

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[6] OEA Rule 634.4 provides that "any objections or legal arguments which could have been raised before the Administrative Judge, but were not, may be considered waived by the Board."
[7] Because Employee's previous evaluation was used, Mr. Bennett had to rely on information provided by his previous supervisor. Although Bennett could not change Employee's evaluation, he informed him that he would accept additional credentials provided by Employee to help increase his score. However, Employee never provided any additional information. Mr. Bennett also noted during the OEA hearing that although Employee was not certified as a teacher and did not hold degrees relevant for a social studies teacher, he gave him credit for all of his degrees. *OEA Hearing Transcript*, p. 24-35 (September 15, 2005).
[8] *Id.*, p. 7-8.

ORDER

Accordingly, it is hereby **ORDERED** that Employee's Petition for Review is **DENIED**.

FOR THE BOARD:

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Sherri Beatty-Arthur, Chair

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Barbara D. Morgan

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Richard F. Johns

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.