THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	
CEDRIC CRAWLEY, Employee	OEA Matter No. 2401-0011-14
v.	
DEPARTMENT OF YOUTH REHABILITATION SERVICES, Agency	Date of Issuance: May 10, 2016

OPINION AND ORDER
ON
PETITION FOR REVIEW

Cedric Crawley ("Employee") worked as a Program Analyst with the Department of Youth Rehabilitation Services ("Agency"). On September 6, 2013, Agency issued a final Reduction-in-force ("RIF") notice to Employee removing him from his position.[1] Employee filed a Petition for Appeal with the Office of Employee Appeals ("OEA") on October 24, 2013. He argued that he should not have been terminated because he had more seniority than the other Program Analysts within Agency. Employee also asserted that he was targeted for the RIF action because he was the leader of a labor committee.[2]

Agency filed its Answer to Employee's Petition for Appeal on December 11, 2013. It contended that it provided Employee with thirty days' notice of the RIF. Additionally, Agency

[1] *Petition for Appeal,* p. 5-6 (October 24, 2013).
[2] *Id.* at 3.

explained that because Employee was in a single-person competitive level, it did not need to provide him with one round of lateral competition. Moreover, it provided that Employee's claims regarding him being targeted were baseless and lacked merit. Therefore, it requested that Employee's appeal be dismissed.[3]

The OEA Administrative Judge ("AJ") issued her Initial Decision in this matter on October 8, 2014. She held that Employee was in a single-person competitive level. Therefore, Agency was not required to provide him with one round of lateral competition in accordance with D.C. Official Code § 1-624.08(e). As for the thirty-day notice, the AJ found that Agency only provided twenty nine days' notice. Accordingly, she ordered that Agency provide one day of back pay and benefits to Employee for the error.[4]

Employee disagreed with the Initial Decision and filed a Petition for Review with the OEA Board on November 12, 2014. He makes many of the same arguments presented to the AJ on Petition for Appeal. Additionally, Employee argues that Agency did not provide proper notice for the RIF action and that the AJ cited to the wrong statutory language in her analysis of one round of lateral competition. Moreover, Employee claims that OEA does have jurisdiction to address his claims that Agency violated the Collective Bargaining Agreement. Thus, he requested that the Board grant his Petition for Review.[5]

On December 8, 2014, Agency filed a Response to Employee's Petition. It asserts that the AJ accurately ruled that one round of lateral competition was not required in this matter. Furthermore, Agency agreed with the AJ regarding its procedural error of not providing

[3] *Agency's Answer to Employee's Petition for Appeal,* p. 4-8 (December 11, 2013).
[4] *Initial Decision,* p. 6-8 (October 8, 2014). Employee also made arguments that Agency violated the Collective Bargaining Agreement ("CBA"). The AJ reasoned that issues pertaining to the CBA should have been raised before the Public Employee Relations Board ("PERB") and not OEA. She also cited to *Brown v. Watts,* 933 A.2d 529 (D.C. 2010) and provided that "[w]hile OEA may assess an applicable CBA violation to help determine whether Agency had cause to institute an adverse action, it cannot singularly assess whether Agency violated provisions of its CBA."
[5] *Employee's Petition for Review of Initial Decision,* p. 3-5 (November 12, 2014).

Employee with the requisite thirty days' notice. Accordingly, it conceded that it should pay the one day of back pay and benefits to Employee. As for Employee's argument regarding the CBA, Agency explained that singular claims regarding CBA violations fall under PERB's jurisdiction and not OEA's, as the AJ ruled. Thus, it asked that Employee's Petition for Review be denied.[6]

OEA was given statutory authority to address RIF cases in D.C. Official Code §1-606.03(a).

> "An employee may appeal a final agency decision affecting a performance rating which results in removal of the employee (pursuant to subchapter XIIII-A of this chapter), an adverse action for cause that results in removal, reduction in grade, or suspension for 10 days or more (pursuant to subchapter XXIV of this chapter), or a reduction-in-force (pursuant to subchapter XXIV of this chapter) to the Office upon the record and pursuant to other rules and regulations which the Office upon the record and pursuant to other rules and regulations which the Office may issue. Any appeal shall be filed within 30 days of the effective date of the appealed agency action."

In an attempt to more clearly define OEA's authority, D.C. Official Code § 1-624.08(d), (e), and (f) establish 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

[6] *Agency's Response to Employee's Petition for Review of Initial Decision,* p. 2-4 (December 8, 2014).

> 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."

As a result of above-referenced statutes, 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 thirty-day written notice prior to their separation.

As the AJ provided in her Initial Decision, this Office has consistently held that one round of lateral competition does not apply to employees in a single-person competitive level.[7] Agency provided the retention register which lists Employee as the only person who held the Program Analyst position.[8] Therefore, one round of lateral competition is inapplicable to this case.

Agency does not dispute that it provided the Employee with only twenty-nine days' notice. Accordingly, it will correct its error by reimbursing Employee with one day of back pay and benefits. Thus, Employee will be made whole.

As for Employee's CBA arguments, as the AJ and Agency provided, OEA is not the proper venue for matters regarding violations of the agreement. As highlighted in the Initial Decision, *Brown v. Watts* provides that "[w]hile OEA may assess an applicable CBA violation to help determine whether Agency had cause to institute an adverse action, it cannot singularly assess whether Agency violated provisions of its CBA." Employee is requesting that OEA

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[7] *Cabaniss v. Department of Consumer & Regulatory Affairs*, OEA Matter 2401-0156-99 (January 30, 2003); *Robert T. Mills*, OEA Matter No. 2401-0109-02 (March 20, 2003); *Deborah J. Bryant*, OEA Matter No. 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); *Alan Mora v. Office of Public Education Facilities Modernization*, OEA Matter No. 2401-0227-09, *Opinion and Order on Petition for Review* (June 4, 2012); and *Lawrence Nwankwo v. Department of Transportation*, OEA Matter No. 2401-0203-09, *Opinion and Order on Petition for Review* (March 21, 2013).

[8] *Agency's Answer to Employee's Petition for Appeal,* Exhibit #4 (December 11, 2013).

engage in a singular assessment of alleged CBA violations, which we lack the authority to conduct. Therefore, we must deny Employee's Petition for Review.

ORDER

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

FOR THE BOARD:

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Sheree L. Price, Interim Chair

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Vera M. Abbott

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A. Gilbert Douglass

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Patricia Hobson Wilson

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.