THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
VICTOR OGU,	)	
Employee	)	OEA Matter No. 2401-0261-09
	)	
v.	)	Date of Issuance: May 6, 2011
	)	
OFFICE OF PUBLIC EDUCATION FACILITIES MODERNIZATION,	)	
Agency	)	ERIC T. ROBINSON, Esq.
	)	Administrative Judge
	)	

Sandy Lee, Esq., Employee Representative
Charles Brown, Jr., Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On September 3, 2009, Victor Ogu ("Employee") filed a petition for appeal with the Office of Employee Appeals ("OEA" or "the Office") contesting the Office of Public Education Facilities Modernization ("OPEFM" or "the Agency") action of abolishing his position through a Reduction-In-Force ("RIF"). The effective date of the RIF was September 21, 2009. At the time his position was abolished, Employee's official position of record within the Agency was General Engineer – Contracts. His competitive area was Contract Services. According to the Retention Registry provided in Tab 5 of Agency's Answer, there was one other General Engineer in Employee's competitive level and area. Only one position survived the instant RIF. Employee was the lowest ranked General Engineer. Agency asserts that Employee was properly afforded one round of lateral competition within his competitive area and level and received 30 days written notice prior to the abolishment of his position.

I was assigned this matter on or around February 9, 2011. Thereafter, a prehearing conference was convened in order to assess the parties' arguments. After considering the parties respective positions as presented during the prehearing conference, I determined that an evidentiary hearing was not warranted. I then ordered the parties to submit final legal briefs in this matter. Both parties have since responded to said order. After giving full consideration to the totality of the parties' arguments and the documents of record, I have decided that no further

proceedings are required. 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 the Employee's appeal process with this Office. Agency contends that it followed all applicable rules and regulations with respect to the instant matter. I find that in a RIF matter that 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 he/she did not receive written notice thirty (30) days prior to the effective date of his/her separation from service; and/or
2. That he/she was not afforded one round of lateral competition within his/her competitive level.

Despite Employee protestations to the contrary, based on the documents of record, I find that Employee's position was abolished, after he properly received one round of lateral competition and a timely 30-day legal notification was properly served. I conclude 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 the OEA is precluded from addressing any other issue(s) in this matter.

This initial decision is the culmination of Employee's right to due process. Given the current state of the body of law with respect to the dismissal of an employee pursuant to a RIF, I find that Employee failed to proffer any reasonable argument(s) that would provide a responsible basis for ruling in his favor.

ORDER

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

FOR THE OFFICE:

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ERIC T. ROBINSON, ESQ.
ADMINISTRATIVE JUDGE