

THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
Michael Clark, Sr.)	OEA Matter No. 2401-0226-09
Employee)	
)	Date of Issuance: November 8, 2010
v.)	
)	Senior Administrative Judge
Office of Public Education Facilities Modernization)	Joseph E. Lim, Esq.
Agency)	
_____)	

Rachel Kirtner, Esq., Employee Representative
Charles Brown, Jr., Esq., Agency Representative

INITIAL DECISION

INTRODUCTION

On August 20, 2009, Employee, a Gardener, RW-5003-10, in the Career Service, filed a petition for appeal from Agency's final decision separating him from Government service pursuant to a modified reduction-in-force (RIF).

This matter was assigned to me on October 4, 2010. I conducted a Prehearing Conference on November 15, 2010. Since the matter could be decided based on the documentary evidence and the parties' positions as set forth at the conference, no further proceedings were conducted. The record is closed.

JURISDICTION

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

ISSUE

Whether Agency's action separating Employee from service as a result of the RIF was in accordance with applicable law, rule or regulation.

FINDINGS OF FACT

The following facts are not subject to genuine dispute:

1. On September 21, 2009, the effective date of his RIF, Employee had occupied the position of Gardener, RW-5003-10, in the Career Service. Pursuant to § 2412 of the RIF regulations, Agency established a retention register for Employee's competitive level. There were two persons in his competitive level.
2. Employee's Retention Register shows that his RIF service computation date is January 1, 1973. Because all two positions in his competitive level were eliminated, Employee was terminated.
3. Employee received the requisite 30-day notice prior to the effective date of his separation.
4. At the conference, Employee disputed the budget rationale of the Agency.

ANALYSIS AND CONCLUSIONS

D.C. Official Code § 1-606.03 (2001) gives this Office the authority to review, *inter alia*, appeals from separations pursuant to a RIF. Subchapter XXIV of the Code sets forth the law governing RIF's. Section 1-624.08 of subchapter XXIV pertains to RIF's for "the fiscal year ending September 30, 2000, and each subsequent fiscal year. . . ." Chapter 24 of the DPM, § 2410.4, 47 D.C. Reg. 2430 (2000), defines "competitive level" as:

All positions in the competitive area ... in the same grade (or occupational level), and classification series and which are sufficiently alike in qualification requirements, duties, responsibilities, and working conditions so that the incumbent of one (1) position could successfully perform the duties and responsibilities of any of the other positions, without any loss of productivity beyond that normally expected in the orientation of any new but fully qualified employee.

Section 2412 of the RIF regulations, 47 D.C. Reg. at 2431, requires an agency to establish a "retention register" for each competitive level, and provides that the retention register "shall document the final action taken, and the effective date of that action, for each employee released from his or her competitive level." Generally, employees in a competitive level who are separated as a result of a RIF are separated in inverse order of their standing on the retention register. An employee's standing is determined by his/her RIF service computation date (RIF-SCD), which is usually the date on which the employee began D.C. Government service.

Regarding the lateral competition requirement, the record shows that all positions in Employee's competitive level were eliminated in the RIF. Therefore, I conclude that the statutory provision of Code § 1-624.08(e), according Employee one round of lateral competition, as well as the related RIF provisions of 5 D.C. Municipal Regulations 1503.3, are both inapplicable, and that Agency is not required to go through the rating and ranking process described in that chapter relative

to abolishing Employee's position. See *Leona Cabiness v. Department of Consumer and Regulatory Affairs*, OEA Matter No. 2401-0156-99 (January 30, 2003), __ D.C. Reg. __; *Robert T. Mills v. D.C. Public Schools*, OEA Matter No. 2401-0109-02 (March 20, 2003), __ D.C. Reg. __; *Deborah J. Bryant v. D.C. Department of Corrections*, OEA Matter No. 2401-0086-01 (July 14, 2003), __ D.C. Reg. __; and *R. James Fagelson v. Department of Consumer and Regulatory Affairs*, OEA Matter No. 2401-0137-99 (December 3, 2001), __ D.C. Reg. __.

Employee's argued that the budget woes cited by Agency as the rationale for the RIF was spurious.

Section 1-624.08(e) states that an employee who is "selected for separation" as a result of a RIF is entitled to 30 days written notice prior to the effective date of the RIF. Thus, an employee whose position was abolished as a result of a RIF may only contest the following before this Office: 1) that he/she was not afforded one round of lateral competition within his/her competitive level; and/or 2) that he/she was not given 30 days' notice prior to the effective date of his/her separation.

Thus, an employee whose position was abolished as a result of a RIF may only contest before this Office: 1) that he/she was not afforded one round of lateral competition within his/her competitive level; and/or 2) that he/she was not given 30 days notice prior to the effective date of his/her separation.

Based on the above cited statute, Employee's stated grounds for appealing his RIF are legally insufficient to overturn his RIF. Here, it is undisputed that Employee received his round of lateral competition within his competitive level; and that he was given 30 days' notice prior to the effective date of his separation.

Based on the foregoing, I must uphold Agency's action of abolishing Employee's position through a RIF.

ORDER

It is hereby ORDERED that Agency's action separating Employee pursuant to a RIF is UPHeld.

FOR THE OFFICE:

Joseph E. Lim, Esq.
Senior Administrative Judge