THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	OEA Matter No.: 2401-0245-10
LINDA DUBUCLET,	)	
Employee	)	
	)	Date of Issuance: July 6, 2012
v.	)	
	)	
DISTRICT OF COLUMBIA PUBLIC SCHOOLS,	)	Monica Dohnji, Esq.
Agency	)	Administrative Judge
	)	

Linda duBuclet, Employee *Pro Se*
W. Iris Barber, Esq., Agency's Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On December 2, 2009, Linda duBuclet ("Employee") filed a petition for appeal with the Office of Employee Appeals ("OEA" or "Office") contesting the District of Columbia Public Schools' ("Agency" or "DCPS") action of abolishing her position through a Reduction-in-Force ("RIF"). The effective date of the RIF was November 2, 2009. Employee's position of record at the time her position was abolished was an ET-15 Special Education Teacher at Cardozo Senior High School ("Cardozo"). Employee was serving in Education Service status when her position was abolished.

I was assigned this matter on February 7, 2012. Upon review of the record, the undersigned determined that there may be a jurisdiction question in this matter since Employee was RIFed during her probationary period. Therefore, on February 15, 2012, I ordered the parties to address the jurisdiction question in this matter. On February 24, 2012, Employee filed a Motion for Extension to file her jurisdiction brief.[1] This Motion was granted on February 27, 2012. Employee had until March 9, 2012, to submit her response to the jurisdiction Order, and Agency had until March 19, 2012, to reply to Employee's brief on jurisdiction. Both parties complied. Upon further review of the record, the undersigned issued an Order on March 20, 2012, notifying the parties that this Office has jurisdiction over Employee's appeal and as such, the parties were further ordered to submit briefs on the issue of whether Agency conducted the instant RIF in accordance with applicable District laws,

[1] Employee noted her change of address in this Motion.

statues, and regulations.[2] On May 16, 2012, I issued an Order for Statement of Good Cause to both parties, who were ordered to submit a statement of good cause based on their failure to provide a response to my March 20, 2012, Order. Both parties had until May 25, 2012, to respond. Agency's response to the Show Cause Order, along with its brief was timely received. Because Employee's copy of the March 20, 2012, and May 16, 2012, Orders were sent to her former address, on June 8, 2012, the undersigned re-issued the March 20, 2012, Order to Employee's current address. And since the previous Orders were erroneously sent to the wrong address, the undersigned granted Employee additional time to file her brief.[3] Employee has complied. After reviewing the record, I have determined that there are no material facts in dispute and therefore, an evidentiary hearing is not warranted. The record is now closed.

JURISDICTION

This 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 628.1, 59 DCR 2129 (March 16, 2012) 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 628.2 *id.* states:

> The employee shall have the burden of proof as to issues of jurisdiction, including timeliness of filing. The agency shall have the burden of proof as to all other issues.

FINDINGS OF FACTS, ANALYSIS, AND CONCLUSIONS OF LAW

On September 10, 2009, former D.C. School Chancellor Michelle Rhee authorized a Reduction-in-Force ("RIF") pursuant to D.C. Code § 1-624.02, 5 DCMR Chapter 15, and Mayor's Order 2007-186. Chancellor Rhee stated that the RIF was necessitated for budgetary reasons, explaining that the 2010 DCPS fiscal year budget was not sufficient to support the current number of positions in the schools.[4]

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[2] On March 26, 2012, a copy of the March 20, 2012, Order to Employee was returned to this Office marked "Forward time Exp RTN to send."
[3] Agency was also ordered to resubmit its briefs and supporting document to Employee's current address.
[4] *See* Agency's Answer, Tab 1 (January 7, 2010).

Although the instant RIF was authorized pursuant to D.C. Code § 1-624.02[5], which encompasses more extensive procedures, for the reasons explained below, I find that D.C. Official Code § 1-624.08 ("Abolishment Act") is the more applicable statute to govern this RIF.

Specifically, section § 1-624.08 states in pertinent part that:

> (a) ***Notwithstanding*** *any other provision of law, regulation, or collective bargaining agreement either in effect or to be negotiated while this legislation is in effect* for the fiscal year ending September 30, 2000, and *each subsequent fiscal year*, each agency head is authorized, within the agency head's discretion, to identify positions for abolishment (emphasis added).
>
> (b) Prior to February 1 of each fiscal year, each personnel authority (other than a personnel authority of an agency which is subject to a management reform plan under subtitle B of title XI of the Balanced Budget Act of 1997) shall make a final determination that a position within the personnel authority is to be abolished.
>
> (c) ***Notwithstanding*** *any rights or procedures established by any other provision of this subchapter*, any District government employee, regardless of date of hire, who encumbers a position identified for abolishment shall be separated without competition or assignment rights, except as provided in this section (emphasis added).
>
> (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.

In *Mezile v. D.C. Department on Disability Services*,[6] the D.C. Superior Court found that "the language of § 1-624.08 is unclear as to whether it replaced § 1-624.02 entirely, or if the government can only use it during times of fiscal emergency." The Court also found that both laws were current

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[5] D.C. Code § 1-624.02 states in relevant part that:

> (a) Reduction-in-force procedures shall apply to the Career and Educational Services… and shall include:
> (1) A prescribed order of separation based on tenure of appointment, length of service including creditable federal and military service, District residency, veterans preference, and relative work performance;
> (2) One round of lateral competition limited to positions within the employee's competitive level;
> (3) Priority reemployment consideration for employees separated;
> (4) Consideration of job sharing and reduced hours; and
> (5) Employee appeal rights.

[6] No. 2010 CA 004111 (D.C. Super. Ct. February 2, 2012).

and that the government triggers the use of the applicable statute by using "specific language and procedures."[7]

However, the Court of Appeals took a different position. In *Washington Teachers' Union, Local #6 v. District of Columbia Public Schools*,[8] DCPS conducted a 2004 RIF "to ensure balanced budgets, rather than deficits in Fiscal Years 2004 and 2005." The Court of Appeals found that the 2004 RIF conducted for budgetary reasons, triggered the Abolishment Act ("the Act") instead of "the regular RIF procedures found in D.C. Code § 1-624.02."[9] The Court stated that the "ordinary and plain meaning of the words used in § 1-624.08(c) appears to leave no doubt about the inapplicability of § 1-624.02 to the 2004 RIF."[10]

The Abolishment Act applies to *positions abolished for fiscal year 2000 and subsequent fiscal years* (emphasis added). The legislation pertaining to the Act was enacted specifically for the purpose of addressing budgetary issues resulting in a RIF.[11] The Act provides that, "notwithstanding any rights or procedures established by any other provision of this subchapter," which indicates that it supersedes any other RIF regulations. The use of the term 'notwithstanding' carries special significance in statutes and is used to "override conflicting provisions of any other section."[12] Further, "it is well established that the use of such a 'notwithstanding clause' clearly signals the drafter's intention that the provisions of the 'notwithstanding' section override conflicting provisions of any other sections."[13]

The Abolishment Act was enacted after § 1-624.02, and thus, is a more streamlined statute for use during times of fiscal emergency.[14] Moreover, the persuasive language of § 1-624.08, including the term 'notwithstanding,' suggests that this is the more applicable statutory provision to conduct RIFs resulting from budgetary constraints. Accordingly, I am primarily guided by § 1-624.08 for RIFs authorized due to budgetary restrictions. Under this section, an employee whose position was terminated 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.

Employee's Position

In her petition for appeal, Employee submits that Agency failed to follow appropriate procedures. She notes that the "RIF decisions were executed and applied in a discriminatory manner based on age, union activity and/or other invidious reasons." She further notes that the RIF decisions were based on reliance of false, inadequate, inaccurate and/or unreliable performance data. She also

[7] *Id.* at p. 5.
[8] 960 A.2d 1123, 1125 (D.C. 2008).
[9] *Id.*
[10] *Id.*
[11] *Id*.
[12] *Burton v. Office of Employee Appeals*, 30 A.3d 789 (D.C. 2011).
[13] *Id.*
[14] *Mezile v. D.C. Department on Disability Services*, No. 2010 CA 004111 (D.C. Super. Ct. February 2, 2012).

alleges that she "was removed from DCPS pursuant to an adverse action" and that the RIF was a pretext for termination. She explains that she was "terminated for insufficient cause."[15]

In her brief, Employee also submits that she was denied priority re-employment on December 9, 2009, after accepting a Special Education Teacher position at Takoma Education Center. Employee further notes that she was not afforded one round of lateral competition as required by the RIF procedure because her competitive level score card "was so fictitious and erroneous that it did not constitute her relevant contributions; accomplishments; performances;…degrees; licenses; or areas of expertise…as required by [the] RIF procedures."[16] Employee explains that during her employment, she consistently carried out many of the instructional factors that would have resulted in a higher competitive level ranking score card and as such, she would have ranked higher than the bottom five (5) out of fifteen (15).[17]

Agency's Position

Agency submits that it conducted the RIF in accordance with the District of Columbia Municipal Regulations and the D.C. Official Code by affording Employee one round of lateral competition and thirty (30) days written notice prior to the effective date of her separation. Agency asserts that there were fifteen (15) ET-15 Special Education teacher positions at Cardozo, and five (5) positions were identified as the positions that would be subject to the RIF. Agency maintains that it utilized the proper competitive factors in implementing the RIF and that Employee was the fourth lowest ranked ET-15 Special Education teacher, and was terminated as a result of the round of lateral competition.[18]

Analysis

Under Title 5 DCMR § 1501.1, the Superintendent of DCPS is authorized to establish competitive areas when conducting a RIF so long as those areas are based "upon all or a clearly identifiable segment of the mission, a division or a major subdivision of the Board of Education, including discrete organizational levels such as an individual school or office." For the 2009/2010 academic school year, former DCPS Chancellor Rhee determined that each school would constitute a separate competitive area. In accordance with Title 5, DCMR § 1502.1, competitive levels in which employees subject to the RIF competed were based on the following criterion:

1. The pay plan and pay grade for each employee;

2. The job title for each employee; and

3. In the case of specialty elementary teachers, secondary teachers, middle school teachers and teachers who teach other specialty subjects, the subject taught by the employee.[19]

[15] Petition for Appeal (December 2, 2009).
[16] Employee's Brief (June 29, 2012).
[17] *Id.*
[18] Agency's Brief (May 25, 2012).
[19] *Id.* at pp 2-3. School-based personnel constituted a separate competitive area from nonschool-based personnel and are precluded from competing with school-based personnel for retention purposes.

Here, Cardozo was identified as a competitive area, and ET-15 Special Education teacher was determined to be the competitive level in which Employee competed. Employee has not provided any credible evidence that she was placed in the wrong competitive level. According to the Retention Register provided by Agency, there were fifteen (15) ET-15 Special Education Teachers subject to the RIF. Of the fifteen (15) positions, five (5) were identified to be abolished. Because Employee was not the only ET-15 Special Education Teacher within her competitive level, she was required to compete with other employees in one round of lateral competition. According to Title 5, DCMR § 1503.2 *et al.*:

> If a decision must be made between employees in the same competitive area and competitive level, the following factors, in support of the purposes, programs, and needs of the organizational unit comprising the competitive area, with respect to each employee, shall be considered in determining which position shall be abolished:
>
> (a) Significant relevant contributions, accomplishments, or performance;
>
> (b) Relevant supplemental professional experiences as demonstrated on the job;
>
> (c) Office or school needs, including: curriculum, specialized education, degrees, licenses or areas of expertise; and
>
> (d) Length of service.

Based on § 1503.1, Agency gave the following weights to each of the aforementioned factors when implementing the RIF:

> (a) Office or school needs, including: curriculum, specialized education, degrees, licenses or areas of expertise - (75%)
>
> (b) Significant relevant contributions, accomplishments, or performance – (10%)
>
> (c) Relevant supplemental professional experiences as demonstrated on the job – (10%)
>
> (d) Length of service – (5%).[20]

Agency argues that nothing within the DCMR, applicable case law, or D.C. Official Code prevents it from exercising its discretion to weigh the aforementioned factors as it sees fit.[21] Agency

[20] It should be noted that OEA has consistently held that DCPS is allowed discretion to accord different weights to the factors enumerated in 1503.2. Thus, Agency is not required to assign equal values to each of the factors. *See White v. DCPS*, OEA Matter No. 2401-0014-10 (December 30, 2001); *Britton v. DCPS*, OEA Matter No. 2401-0179-09 (May 24, 2010).
[21] Agency Brief at pp. 4-5 (May 25, 2012).

cites *to American Federation of Government Employees, AFL-CIO v. OPM*, 821 F.2d 761 (D.C. Cir. 1987), wherein the Office of Personnel Management was given "broad authority to issue regulations governing the release of employees under a RIF…including the authority to reconsider and alter its prior balance of factors to diminish the relative importance of seniority." I agree with this position and find that Agency had the discretion to weigh the factors enumerated in 5 DCMR 1503.2, in a consistent manner throughout the instant RIF.

Competitive Level Documentation Form

Agency employs the use of a CLDF in cases where employees subject to a RIF must compete against each other in lateral competition. In conducting the instant RIF, the principal of Cardozo was given discretion to assign numerical values to the first three factors enumerated in Title 5, DCMR § 1503.2, *supra*, as deemed appropriate, while the "length of service" category was completed by the Department of Human Resources ("DHR").

Employee received a total of nineteen (19) points on her CLDF and was therefore ranked the fourth lowest in her competitive level. Employee's CLDF stated, in pertinent part, the following:

> "In the classroom, Ms. Linda DuBuclet lacks enthusiasm in her demeanor and lesson presentations, which is essential if you want your students to perform more willingly and at a higher level of capacity. During her classroom observation there was very little communication between the teacher and the students and lack of proper planning was evident. Ms. DuBuclet participates in the mandated professional development; however from her classroom observations none of the training received has been put into practice in the classroom. She lacks presence in the classroom and students are not attentive to her directive."[22]

Office or school needs

This category is weighted at 75% on the CLDF and accounts for any factors that may have an impact on the success of the school or achievement of the students at the school such as; curriculum, specialized education, degrees, licenses or areas of expertise. Employee received a total of two (2) points out of a possible ten (10) points in this category, resulting in a weighted score of fifteen (15); a score much lower than the other employees within her competitive level who were retained. Employee asserts that the RIF decisions were based on reliance on false, inadequate, inaccurate and/or unreliable performance data. She also notes that, her competitive level score card "was so fictitious and erroneous that it did not constitute her relevant contributions; accomplishments; performances;…degrees; licenses; or areas of expertise…as required by [the] RIF procedures."[23] She highlights her degrees and specific tasks she accomplished while working at Agency. Employee explains that during her employment, she consistently carried out many of the instructional factors that would have resulted in a higher competitive level ranking score card and as such, she would have ranked higher than the bottom five (5) out of fifteen (15). However, Employee has failed to provide any evidence to highlight how her degrees translate into her classroom expertise. Moreover,

[22] *Id.* at Exhibit B.
[23] Employee's Brief (June 29, 2012).

Title 5, DCMR § 1503.2, *supra* does not specify any particular number of points to be assigned to each factor. And because Employee received a total of two (2) points in this category, it can be reasonably assumed that her degrees and other activities in the school were taken into consideration in the calculation of the awarded points. Also, there is no indication that any supplemental evidence would supplant the higher score received by the other employees in her competitive level who were not separated from service pursuant to the RIF. Additionally, it is within the principal of Cardozo's managerial expertise to assign numeric values to this factor. As such, this Office cannot substitute its judgment for that of the principal at Cardozo.

Significant relevant contributions, accomplishments, or performance

This category is weighted at 10% on the CLDF. Employee received zero (0) points in this area. This category includes factors such as student outcomes, rating, awards, attendance etc. Employee highlights that her student made some progress. However, Employee did not provide any documentation to supplement additional points being awarded in this area. Moreover, it is within the principal's managerial discretion to award points in this area given her independent knowledge of the employees and student body.

Relevant supplemental professional experiences as demonstrated on the job

This category accounts for 10% of the CLDF. In her brief, Employee highlights her supplemental professional experiences. She notes that she applied these experiences to her job as an ET-15 Special Education teacher. However, Employee has failed to demonstrate how these experiences translated to her classroom expertise. Additionally, Employee has provided no documentation to supplement additional points being awarded in this area. Moreover, it is within the principal of Cardozo's managerial expertise to assign numeric values to this factor.

Length of service

This category accounts for 5%. It was completed by DHR and was calculated by adding the following: 1) years of experience; 2) military bonuses; 3) D.C. residency points; and 4) rating add—four years of service was given for employees with an "outstanding" or "exceeds expectations" evaluation within the past year. The length of service calculation, in addition to the other factors, were weighted and added together, resulting in a ranking for each competing employee.

Here, Employee's Service Computation Date ("SCD") is listed as 1999. She was employed with Agency for ten (10) years. She received ten (10) points for Years of Experience. Employee received six (6) points for D.C. residency. She did not receive any points for Veterans preference. She did not receive an "outstanding" or "exceeds expectations" performance rating for the prior year, and therefore, did not receive the additional four years. She does not contest the calculation of the points awarded. Therefore, I find that Agency properly calculated this number.

In reviewing the documents of record, Employee does not offer any statutes, case law, or other regulations to refute Agency's position regarding the principal's authority to utilize discretion in completing an employee's CLDF during the course of the instant RIF. In *Washington Teachers' Union Local No. 6, Am. Fed'n of Teachers, AFL-CIO v. Bd. of Educ. of the Dist. of Columbia,* 109 F.3d 774 (D.C. Cir. 1997), the D.C. Court of Appeals, in evaluating several union arguments concerning a RIF, stated that "school principals have total discretion to rank their teachers" and noted

that performance evaluations are "subjective and individualized in nature."[24] Employee has a total score of nineteen (19) points after all of the factors outlined above were tallied and scored. The next lowest employees who were retained received a total score of fifty (50) points. Employee has not proffered any other evidence to suggest that a further re-evaluation of her CLDF scores would result in a different outcome in this case.[25]

Accordingly, I find that the principal of Cardozo had discretion in completing Employee's CLDF as she was in the best position to observe and evaluate the criteria enumerated in DCMR §1503.2, *supra*, when implementing the instant RIF. While it is unfortunate that Agency had to release any employee as a result of budgetary constraints, there is nothing within the record that would lead the Undersigned to believe that the RIF was conducted unfairly. I therefore find that Agency did not abuse its discretion in completing the CLDF, and Employee was properly afforded one round of lateral competition as required by D.C. Official Code § 1-624.08.

Thirty (30) Days Notice Requirement

Title 5, §1506 of the DCMR provides the notice requirements that must be given to an employee affected by a RIF. Section 1506.1 states that "an employee selected for separation shall be given specific written notice at least thirty (30) days prior to the effective date of the separation. The notice shall state specifically what action is taken, the effective date of the action, and other necessary information regarding the employee's status and appeal rights." Additionally, the D.C. Official Code § 1-624.08(e) which governs RIFs provides that an Agency *shall* give an employee thirty (30) days notice *after* such employee has been *selected* for separation pursuant to a RIF (emphasis added). Here, Employee received her RIF notice on October 2, 2009, and the RIF effective date was November 2, 2009. The notice stated that Employee's position was being abolished as a result of a RIF. The Notice also provided Employee with information about her appeal rights. Employee has not alleged that she did not receive a written thirty (30) days notice prior to the effective date of the RIF. Thus, it is undisputed that Employee was given the required thirty (30) days written notice prior to the effective date of the RIF.

RIF Rationale

Employee also asserts that the RIF was a pretext for termination. She notes that she was terminated for insufficient cause. As discussed above, I find that Agency complied with the applicable D.C. statutes, laws and regulations governing RIFs in the instant case. Moreover, Employee has not provided any credible evidence to support her assertion that the RIF was a pretext for termination.

Discrimination

Employee asserts that the RIF decisions were executed and applied in a discriminatory manner based on age, union activity and/or other invidious reasons. D.C. Code § 2-1411.02, specifically reserves complaints of unlawful discrimination to the Office of Human Rights ("OHR"). Per this statute, the purpose of the OHR is to "secure an end to unlawful discrimination in

[24]*See also American Fed'n of Gov't Employees, AFL-CIO v. Office of Pers. Mgmt.*, 821 F.2d 761, 765 (D.C. Cir. 1987) (noting that the federal government has long employed the use of subjective performance evaluations to help make RIF decisions).
[25] *See Anderson v. Liberty Lobby, Inc*., 477 U.S. 242, 248 (1986) (stating that a material fact is one which might affect the outcome of the case under governing law).

employment…for any reason other than that of individual merit." Complaints classified as unlawful discrimination are described in the District of Columbia Human Right Act.[26] Additionally, District Personnel Manual ("DPM") § 1631.1(q) reserves allegations of unlawful discrimination to Office of Human Rights. Moreover, the Court in *Anjuwan v. D.C. Department of Public Works* held that OEA's authority over RIF matters is narrowly prescribed.[27] This Court explained that, OEA lacks the authority to determine broadly whether the RIF violated any law except whether "the Agency has incorrectly applied…the rules and regulations issued pursuant thereto." This court further explained that OEA's jurisdiction cannot exceed statutory authority and thereby, OEA's authority in RIF cases is to "determine whether the RIF complied with the applicable District Personnel Statutes and Regulations dealing with RIFs." *Citing Gilmore v. Board of Trustees of the University of the District of Columbia*, 695 A.2d 1164, 1167 (D.C. 1997).

However, it should be noted that the Court in *El-Amin v. District of Columbia Dept. of Public Works*[28] stated that, OEA may have jurisdiction over an unlawful discrimination complaint if the employee is "contending that he was targeted for whistle blowing activities outside the scope of the equal opportunity laws, or that his complaint of a retaliatory RIF is different for jurisdictional purposes from an independent complaint of unlawful discrimination or retaliation…"[29] In the instant case, Employee alleges that the RIF decisions were executed and applied in a discriminatory manner based on age, union activity and/or other invidious. However, Employee has failed to provide any credible evidence to substantiate this assertion. Moreover, she does not allege any whistle blowing activities or claims that are retaliatory in nature. Consequently, I find that Employee's claim falls outside the scope of OEA's jurisdiction.

Priority Re-employment

Employee also argues that she was entitled to priority re-employment, but DCPS denied her priority re-employment on December 10, 2009, after she accepted a Special Education position at Takoma Education Center. Employee explains that after the RIF, she applied and accepted a position with Takoma Education Center. However, during the hiring process with Agency's Human Resources Department, she was informed via telephone that she could not be offered the job at Takoma Education Center. Employee notes that the Human Resources Coordinator at Agency did not provide a reason for not rehiring Employee. As such, Employee contends that Agency did not follow RIF procedures by not giving her priority reemployment consideration as required after she accepted an offer of employment at Takoma Education Center, one of Agency's schools. As discussed above, § 1-624.08 and not § 1-624.02 applies to the instant RIF. Section 1-624.08 does not require an agency to engage in priority re-employment procedures. Furthermore, the RIF Notice from Agency specifically informed Employee that she could apply for any job vacancies within Agency or the District government, and that she would be considered for priority re-employment. However, it further explained that, this did not guarantee re-employment. Also, Employee has provided no credible evidence to show that the above-referenced incident was somehow related to the fact that she had been RIFed from Agency. Considering as much, I conclude that Employee's argument regarding priority re-employment is wholly unsubstantiated.

[26] D.C. Code §§ 1-2501 *et seq.*
[27] 729 A.2d 883 (December 11, 1998).
[28] 730 A.2d 164 (May 27, 1999).
[29] *El-Amin*; *citing Office of the District of Columbia Controller v. Frost*, 638 A.2d 657, 666 (D.C. 1994).

Because Agency is not required to provide Employee with priority re-employment pursuant to § 1-624.08, *supra*, Employee's contention is best characterized as post-RIF activity. And this Office has previously held that it lacks jurisdiction to entertain any post-RIF activity which may have occurred at an agency.[30] Therefore, the undersigned is unable to address the merits of such a claim. This does not mean that Employee's objections regarding Agency's post-RIF activity cannot be entertained elsewhere.

CONCLUSION

Based on the foregoing, I find that Employee's position was abolished after she properly received one round of lateral competition and a timely thirty (30) days legal notification was properly served. I therefore conclude that Agency's action of abolishing Employee's position was done in accordance with D.C. Official Code § 1-624.08 and the Reduction-in-Force which resulted in her removal is upheld.

ORDER

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

FOR THE OFFICE:

MONICA DOHNJI, Esq.
Administrative Judge

[30] *Williamson v. DCPS*, OEA Matter No. 2401-0089-04 (January 5, 2005); *Cabaniss v. Department of Consumer and Regulatory Affairs*, OEA Matter No. 2401-0156-99 (January 30, 2003).