

Notice: This decision may be formally revised before it is published in the *District of Columbia Register*. Parties should promptly notify the Office Manager of any formal errors so that this Office can correct them before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
STAROLD CELISTAN)	
MICHAEL BAILEY)	
STANLEY BRACEY)	
CHERYL L. SWOR)	
Employees)	
)	OEA Matter Nos.: 2401-0059-03
)	2401-0060-03
v.)	2401-0062-03
)	2401-0063-03
)	Date of Issuance: May 15, 2007
DEPARTMENT OF MENTAL HEALTH)	
Agency)	
_____)	

OPINION AND ORDER
ON
PETITION FOR REVIEW

Starold Celistan, Michael Bailey, Stanley Bracey, and Cheryl Swor (“Employees”) worked for the Department of Mental Health (“Agency”). Mr. Celistan was an Electrician, Mr. Bailey was a Locksmith, Mr. Bracey was a Supply Clerk/Technician and Ms. Swor was a Management Analyst. On January 24, 2003 the Employees received a letter notifying them that their positions were being abolished due

to a reduction-in-force (“RIF”). The letter went on to state that the RIF would take effect February 28, 2003.

Thereafter, each Employee filed a Petition for Appeal with the Office of Employee Appeals (“Office”). The Employees put forth several reasons as to why Agency’s action should be invalidated. Specifically the Employees claimed that Agency had made the following mistakes:

- (a) failed to obtain prior approval for the 2002 Agency-wide reorganization;
- (b) failed to justify the use of a smaller competitive area and to publish such;
- (c) failed to properly develop the competitive areas;
- (d) failed to properly develop the retention registers;
- (e) failed to ensure that affected employees received timely pre-RIF performance evaluations;
- (f) failed to follow residency preference guidelines;
- (g) failed to maintain correct records to determine retention standing;
- (h) failed to properly grade the positions;
- (i) failed to adhere to the regulations in hiring; and
- (j) failed to adhere to the Agency Reemployment Priority Program.

On November 29, 2004 the Administrative Judge issued an Initial Decision. The Administrative Judge found that according to D.C. Official Code § 1-624.02, an employee who appeals a RIF action to this Office is limited to alleging that he or she was not afforded one round of competitive-level lateral competition and/or that he or she was not given the required 30-day notice.¹ The Administrative Judge went on to state that the “Employees have not alleged that Agency violated their right to a single round of lateral competition . . . or that they were denied at least 30 days advance written notice prior to

¹ *Initial Decision* at 3.

the effective date of the RIF.”² With respect to the allegations which Employees did raise, the Administrative Judge held they were “all pre-RIF, and outside of the scope of [his] jurisdiction over RIF appeals, pursuant to D.C. Official Code § 1-624.08 (2001).”³ For these reasons, the Administrative Judge upheld Agency’s action.

On December 27, 2004 Employees filed a Petition for Review. In the petition they put forth the same pre-RIF arguments they raised before the Administrative Judge. However, they also claim that “the Agency violated District personnel regulations in its attempt to provide (1) one round of lateral competition and (2) a 30-day notice to affected employees.”⁴ On February 2, 2005 Agency filed a Response to Employees Petition for Review. Essentially Agency claims that Employees have again failed to show that this Office has jurisdiction over the pre-RIF issues raised by Employees.

OEA Rule 634.4 provides that “any objection of legal arguments which could have been raised before the Administrative Judge, but were not, may be considered waived by the Board.” Prior to the filing of their Petition for Review, Employees never argued that Agency failed to provide them with a proper 30-day notice nor did they claim that they were not afforded one round of lateral competition. Therefore, the Board will not now consider these arguments.

With respect to the pre-RIF arguments raised by Employees, we agree with the Administrative Judge’s assessment of this Office’s jurisdiction over pre-RIF issues. Employees’ claim that their positions were not properly classified is clearly an issue that existed prior to the RIF. As a result, we agree with the Administrative Judge and the

² *Id.* at 4.

³ *Id.*

⁴ *Petition for Review* at 7.

court in *In the Matter of Teteja*, 2405-0013-91 (July 2, 1992), 39 D.C. Reg. 7213. The court provided that the Temporary Appeals Panel could only review the validity of RIFs and not job classifications.

Employees claim that Agency failed to gain approval for the reorganization is also a pre-RIF issue. The District of Columbia Court of Appeals in *Anjuawan v. D.C. Dep't of Public Works*, 729 A.2d 883 (Dec. 11, 1998), provided that this Office does not have jurisdiction to make any decisions pertaining to the shortage of funds that an agency may face. The court provided that so long as an agency can show that there was a shortage of funds to justify the RIFs, it is then within the agency's discretion to implement a RIF. This Office cannot second guess the Mayor's decision in this regard. The court was clear in its ruling that this Office only has authority to determine if the RIF complied with the applicable statutes and regulations.

As for the other pre-RIF issues raised by Employees, this Office has consistently held that it cannot consider anything outside of its authorized scope concerning RIF appeals. The proper place for Employees to have raised the pre-RIF issues may have been at the agency level. Because we lack authority to consider these pre-RIF issues and further because Employees failed to prove that Agency did not provide the requisite notice and one round of lateral competition, Employees' Petition for Review is DENIED.

ORDER

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

FOR THE BOARD:

Brian Lederer, Chair

Horace Kreitzman

Keith E. Washington

Barbara D. Morgan

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.