THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
ENNICE DAVIS,	)	OEA Matter No. 2401-0215-12
Employee	)	
	)	Date of Issuance: February 16, 2016
v.	)	
	)	
D.C. PUBLIC SCHOOLS,	)	
Agency	)	
	)	

OPINION AND ORDER
ON
PETITION FOR REVIEW

Ennice Davis ("Employee") worked as an Administrative Aide with D.C. Public Schools ("Agency"). On June 18, 2012, Employee received a Reduction-in-Force ("RIF") notice from Agency which provided that she would be terminated from her position effective August 10, 2012.[1] Employee filed a Petition for Appeal with the Office of Employee Appeals ("OEA") on August 21, 2012. In her petition, she argued that she should not have been terminated because her position was changed without her knowledge; she had seniority; her union was not made aware of the RIF action; and she had an "Effective" rating on her performance evaluation.[2]

Agency submitted its response to Employee's petition on September 28, 2012. It contended that it complied with the D.C. Municipal Regulations ("DCMR") when conducting its

[1] *Petition for Appeal,* p. 7-8 (August 21, 2012).
[2] *Id.,* 3-6.

RIF. Agency claimed that Employee was provided with thirty days' notice; it considered Employee's length of service; and it notified Employee's union of the RIF action.[3] In a subsequent brief filed by Agency, it explained that it was not required to conduct one round of lateral competition because Employee was in a single-person competitive level.[4]

On February 27, 2014, Employee filed a brief which reiterated her length of service with Agency and her performance rating as "Effective" or "Highly Effective." She also provided that she was the only Administrative Aide within her school and that Agency requested funding for her position for the 2013 fiscal year. Employee claimed that after she was RIFed, Agency hired an Administrative Assistant with the funding for her position.[5] She contends that because her position was funded, she should have not been RIFed for budgetary reasons. Moreover, Employee objected to the categories Agency used to weigh each section of the competitive process. She also opined that Agency should have used D.C. Official Code § 1-624.08 instead of D.C. Official Code § 1-624.02 when conducting the RIF.[6]

The OEA Administrative Judge ("AJ") issued her Initial Decision on April 29, 2014. She found that Agency should have used D.C. Official Code §1-624.08 instead of D.C. Official Code § 1-624.02 when conducting the RIF action. Therefore, she used D.C. Official Code § 1-624.08 in her analysis of this case. The AJ held that because Employee was the sole Administrative Aide within her competitive level, Agency was not required to conduct one round of lateral competition. Additionally, she found that Agency provided Employee with thirty days' notice. The AJ reasoned that, in accordance with *Anjuwan v. D.C. Department of Public Works*, 729 A.2d 883 (D.C. 1998), OEA lacked jurisdiction to consider if Agency's RIF was bona fide or to

[3] *District of Columbia Public Schools' Answer to Employee's Petition for Appeal,* p. 1-4 (September 28, 2012).
[4] *District of Columbia Public Schools' Brief,* p. 4-5 (January 27, 2014).
[5] Employee asserted that because there was no Administrative Assistant position at the time of the RIF, then this position is synonymous with her Administrative Aide's position. *Employee's Brief,* p. 9 (February 27, 2014).
[6] *Id.,* 3-11.

consider how Agency elected to use its budgetary resources. Accordingly, the AJ upheld Agency's RIF action.[7]

Employee disagreed with the AJ's decision and filed a Petition for Review with the OEA Board. She argues that the AJ overlooked the fact that Agency used the wrong Code section when conducting the RIF. Therefore, her decision was not based on substantial evidence. Additionally, Employee contends that the AJ misinterpreted *Anjuwan* and failed to consider that there was no change in the number of full-time positions after the RIF. Therefore, she requested that she be reinstated with back pay, benefits, and attorney's fees.[8]

Applicable Code Section

Employee's claim that the AJ overlooked that Agency used D.C. Official Code § 1-624.08 instead of Official Code § 1-624.02 lacks merit. The AJ offered extensive analysis on this particular issue in her Initial Decision. She agreed with Employee's position that D.C. Official Code § 1-624.08 was the appropriate statute that should have been used in this case. Accordingly, she was tasked with determining if Agency adhered to the RIF standards provided in D.C. Official Code § 1-624.08.[9]

As the AJ correctly held, D.C. Official Code § 1-624.08(d), (e), and (f) establish the circumstances under which the OEA may hear RIFs on appeal. Those sections of the Code provide the following:

> (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.

[7] *Initial Decision* (April 29, 2014).
[8] *Employee's Petition for Review of Initial Decision* (June 2, 2014).
[9] *Initial Decision*, p. 3-5 (April 29, 2014).

> (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 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 the 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.

Notice

The merits of the RIF notice requirements are not in dispute in this matter. Employee does not dispute that she received the RIF notice on June 18, 2012.[10] The effective date of the RIF was August 10, 2012. Thus, Agency complied with the thirty-day notice statutory requirement. The issue that was contested in this case was the one round of lateral competition.

Round of Lateral Competition

D.C. Official Code § 1-624.08(d) provides for one round of lateral competition within an employee's competitive level. However, OEA has consistently held that one round of lateral

[10] *Petition for Appeal*, p. 7-8 (August 21, 2012).

competition does not apply to employees in single-person competitive levels.[11] Agency asserted that Employee was in a single-person competitive level. Furthermore, in her brief to the AJ, Employee concedes that she was the only Administrative Aide within her school.[12] Therefore, because she was in a single-person competitive level, Agency was not required to provide one round of lateral competition. Hence, the AJ's ruling was based on substantial evidence regarding the RIF action as it relates to D.C. Official Code § 1-624.08.[13]

Anjuwan Analysis

Employee's final argument is that the AJ misinterpreted *Anjuwan*. As the AJ provided, the D.C. Court of Appeals held in *Anjuwan* that OEA's authority regarding RIF matters is narrowly prescribed. The Court ruled that OEA may not determine whether the RIF was bona fide or violated any law, other than the RIF regulations. Moreover, it provided that that OEA does not have jurisdiction to make any decisions pertaining to the shortage of funds that an agency may face. The Court explained that as long as an agency can show that there was a shortage of funds to justify the RIFs, then it is within its discretion to do so. Consequently, OEA could not second guess a Mayor's decision about a shortage of funds or an agency's management decisions about which positions need to be abolished. The Court was clear in its ruling that OEA only has authority to determine if the RIF complied with the District RIF statutes and

[11] *Cabaniss v. Department of Consumer & Regulatory Affairs*, OEA Matter No. 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 v. Department of Consumer and Regulatory Affairs*, OEA Matter No. 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); *Gordon Cloney v. Department of Insurance Securities and Banking*, OEA Matter No. 2401-0085-09, *Opinion and Order on Petition for Review* (August 22, 2011); and *Ernest Hunter v. D.C. Child and Family Services Agency*, OEA Matter No. 2401-0321-10, *Opinion and Order on Petition for Review* (March 4, 2014).

[12] *Employee's Brief,* p. 9 (February 27, 2014).

[13] Substantial evidence is defined as evidence that a reasonable mind could accept as adequate to support a conclusion. *Mills v. District of Columbia Department of Employment Services*, 838 A.2d 325 (D.C. 2003) and *Black v. District of Columbia Department of Employment Services*, 801 A.2d 983 (D.C. 2002). The Court in *Baumgartner v. Police and Firemen's Retirement and Relief Board,* 527 A.2d 313 (D.C. 1987), found that if administrative findings are supported by substantial evidence, then it must be accepted even if there is substantial evidence in the record to support a contrary finding.

regulations.[14] Therefore, the AJ correctly held that OEA lacks jurisdiction over Employee's claims regarding Agency's subsequent hiring post-RIF.

Conclusion

The AJ's decision was based on substantial evidence. Agency properly RIFed Employee. Therefore, Employee's Petition for Review is denied.

[14] *See also Valerie Jones, Gerald Whitmore, and Emmanuel L. Peaks v. Department of Mental Health*, OEA Matter Numbers 2401-0064-03, 2401-0065-03, 2401-0066-03, *Opinions and Orders on Petition for Review* (May 15, 2007); *Dushane Clark v. Department of Health,* OEA Matter No. 2401-0091-09, *Opinion and Order on Petition for Review* (December 12, 2011); *Ricky Williams v. D.C. Public Schools,* OEA Matter No. 2401-0211-10, *Opinion and Order on Petition for Review* (March 4, 2014); and *Ernest Hunter v. District of Columbia Child and Family Services Agency,* OEA Matter No. 2401-0321-10, *Opinion and Order on Petition for Review* (March 4, 2014).

ORDER

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

FOR THE BOARD:

_____
Sheree L. Price, Vice Chair

_____
Vera M. Abbott

_____
A. Gilbert Douglass

_____
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.