THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matters of:	)	
	)	OEA Matter Nos.: 2401-0068-10
VICKI McNAIR	)	2401-0069-10
LINDA RIDLEY	)	2401-0070-10
SYDNETTA WALKER	)	2401-0071-10
DENISE SMITH	)	2401-0072-10
JOANNE BADGETT	)	2401-0074-10
JACQUELINE LEMONS	)	2401-0076-10
SHIRL KELLEY	)	2401-0077-10
HOPE NWOSU	)	2401-0078-10
NORINE GORHAM	)	2401-0079-10
VILENA CHERRY	)	2401-0091-10
BERNICE HAWKINS	)	2401-0093-10
DONNA BUTLER,	)	
Employees	)	
	)	Date of Issuance: March 30, 2012
v.	)	
	)	
DISTRICT OF COLUMBIA	)	
DEPARTMENT OF PARKS & RECREATION,	)	
Agency	)	Sommer J. Murphy, Esq.
	)	Administrative Judge

Donald Temple, Esq., Employee Representative
Pamela Smith, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On October 23, 2009, the Employees listed in the above-captioned matter filed separate petitions for appeals with the Office of Employee Appeals ("the OEA" or "the Office") contesting the Department of Public Works' ("Agency") action of abolishing their employment through a Reduction-in-Force ("RIF"). Each Employee's termination was effective on September 25, 2009.

I was assigned this matter on or around January of 2012. On February 7, 2012, counsel for Employees filed a Motion to Consolidate and requested that the appeals be joined in the interest of judicial and economic efficiency. This motion was granted and on February 22, 2012, I held a telephonic Status Conference with counsel for Agency and Employees. I subsequently issued an Order

on February 24, 2012, requiring the parties to submit written briefs regarding the RIF. Both parties responded to the Order. 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 Employees 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.

ANALYSIS, AND CONCLUSIONS OF LAW

Because Employee's termination was the result of a RIF, I am guided 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:

Cc:
Vicki McNair, Employee
Donald Temple, Esq., Employee Representative
Pamela Smith, Esq., Agency Representative

> (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 or she did not receive written notice thirty (30) days prior to the effective date of their separation from service; and/or

2. That he or she was not afforded one round of lateral competition within their competitive level.

On March 9, 2009, Employee's counsel submitted a written brief, which states in pertinent part:

> "The Employees in this matter admit that they received both timely written notifications of the subject RIF at least thirty (30) days prior to the effective date of separation and a single round of competition…[b]ased on the foregoing, the OEA does not have jurisdiction over the claims herein which are outside OEA's jurisdiction."

The Petitioners concede that they received the statutorily required one round of lateral competition and thirty (30) days written notice prior to the effective date of their termination. Furthermore, both parties have stated that the claims forming the basis for appealing Agency's RIF fall outside the purview of this Office's jurisdiction, thus I am unable to address the merits of such claims.

Based on the record, I find that Agency complied with D.C. Official Code § 1-624.08, *supra*. Accordingly, the Reduction-in-Force which resulted in the Employee's removal is upheld.

ORDER

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

FOR THE OFFICE:

_____
SOMMER J. MURPHY, ESQ.
ADMINISTRATIVE JUDGE

Cc:
Vicki McNair, Employee
Donald Temple, Esq., Employee Representative
Pamela Smith, Esq., Agency Representative