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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
EMPLOYEE ¹ ,)	
Employee)	OEA Matter No. 2401-0048-23
)	
v.)	Date of Issuance: March 26, 2024
)	
D.C. PUBLIC SCHOOLS,)	
Agency)	MICHELLE R. HARRIS, ESQ.
)	Senior Administrative Judge
_____)	
Robert H. Alston, Jr., Employee Representative)	
Angel Cox, Esq., Agency Representative)	

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On June 28, 2023, 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 as an Aide-Administrative through a Reduction-In-Force (“RIF”). The effective date of the RIF was June 23, 2023. On June 28, 2023, OEA sent a letter requesting Agency submit an Answer on or before July 28, 2023. Agency filed its Answer to Employee’s Petition for Appeal on July 28, 2023, as requested. This matter was assigned to the undersigned Senior Administrative Judge (“AJ”) on July 31, 2023. On August 3, 2023, I issued an Order Convening a Prehearing Conference in this matter for September 7, 2023. Prehearing Statements were due on or before August 31, 2023. Both parties submitted their Prehearing Statements as requested. The parties appeared for the Prehearing Conference on September 7, 2023, as required. During that conference, Employee asserted that she needed more time to seek representation in this matter. Accordingly, the undersigned issued an Order on September 7, 2023, requiring that Employee provide a status update regarding representation by September 25, 2023, and that Order scheduled a Status Conference for October 4, 2023. On September 18, 2023, Employee filed a Designation of Representation with this Office, noting that she was now represented by her Union.

¹ Employee’s name was removed from this decision for the purposes of publication on the Office of Employee Appeals’ website.

Both parties appeared for the Status Conference on October 4, 2023. That same day, I issued a Post Prehearing Conference Order requiring the parties to submit briefs in this matter. Agency's brief was due on or before November 3, 2023, Employee's brief was due on or before December 4, 2023, and Agency had the option to submit a sur-reply brief on or before December 15, 2023. Both parties submitted their briefs in accordance with the Order. Agency did not file a sur-reply brief. On February 27, 2024, I issued an Order requiring Agency to submit Employee's SF-50 form, as it was not included with the record. Agency filed the SF-50 on March 7, 2024, as required. I have determined that an Evidentiary Hearing in this matter is not warranted. The record is now closed.

JURISDICTION

The 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.

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS OF LAW

The authority for conducting a RIF is primarily set forth in two statutes, D.C. Official Code §§ 1-624.02 and 1-624.08. Because the instant RIF was conducted to "eliminate positions that would be redundant or unnecessary following a reorganization of functions"², I have determined that D.C. Official Code § 1-624.02 is the more applicable statute in the instant RIF. A RIF pursuant to D.C. Official Code § 1-624.02 (a) shall include:

- (1) A prescribed order of separation based on tenure of appointment, length of service including creditable federal and military service, District residency, veteran's 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. D.C. Official Code § 1-624.02.

The following findings of fact, analysis, and conclusions of law are based on the documentary evidence presented by the parties during the course of Employee's appeal process with OEA. D.C. Official Code § 1-606.03 (2001) gives this Office the authority to review, *inter alia*, appeals from separations pursuant to a RIF.

Employee's Position

Employee contends that the RIF was improper. Employee asserts that while she understands "the policy surrounding DCPS RIF procedures and the role of the Chancellor, it is important to note that the Chancellor list positions across the city that can be reduced but to the level of reductions at a

² Agency's Prehearing Statement at Page 2 (September 1, 2023).

specific school. Those reductions are chosen by the local school leader.”³ Employee asserts that in “early May, she was told by Vernard Howard that [her] position was good for FY 2023-2024.”⁴ Employee later notes that she subsequently received an email regarding the RIF of her position. Employee asserts that she spoke with Principal Logan after receiving that email, and that “Principal Logan was not aware of the RIF at that moment.”⁵ Employee asserts that she contacted her union and her union representative, Robert Alston, advised her to talk to the LSAT⁶ Chair, Sylvia Crystal. Employee cites that Sylvia Crystal told her that “no DCPS positions were being RIF.” Employee maintains that she showed Sylvia Crystal her letter and that she then “brought her computer upstairs and when she opened the budget, we both found out that my position was not on the list.” Employee avers, that Sylvia Crystal told her that “she had no knowledge of when that was done.”⁷ Employee also notes that she requested Sylvia Crystal provide a statement, but she was unwilling to do so.

Further, Employee cites that on “[May] ⁸ 26, 2023 at 2:35pm,” she was in a meeting with Principal Logan, Bernard Howard (the DSL), and union representative Robert Alston; wherein, questions were asked regarding why Employee was the only union employee subject to the RIF at that time.⁹ Employee avers that she asserted that she was entitled to retain her job. Employee cites that Principal Logan said, “If [Employee] is willing to cover classes she could be kept as the Administrative Aid.” Employee further asserts that her union representative noted that this was a violation of the Collective Bargaining Agreement (CBA).¹⁰

Employee also argues that the RIF was improper because “two people have been placed in administrative roles since the reduction of [Employee] from the position of Administrative Aide.”¹¹ Employee avers that “these people were hired as substitute teachers but are now listed on the website as administrative support.” Employee also notes that a job open for an Administrative Aide was on the website. Employee argues that “per DCPS rule and law, that position cannot be filled without bring [Employee] back to work.” Employee also cites that “there is no evidence that an affidavit signed by Principal Logan to reduce the above-named position was voted on by the LSAT Committee.” Employee asserts that her union requested to meet with the LSAT Chair to arrange a review of the LSAT meeting minutes, but that they never received a return call for a meeting.

Employee maintains that her position responsibilities “per the job description for Administrative Aide at Duke Ellington included: covering the front office, answering phones, operating the CASS machine for attendance, assisting Ms. Hayden when inputting attendance because there was no regular registrar, assisting Mr. Lee in the Finance Department during monthly banking reconciliations, and ordering supplies for the entire school.”¹² Employee asserts that she

³ Employee’s Brief at Page 1. (November 28, 2023).

⁴ Employee’s Prehearing Statement (September 1, 2023).

⁵ *Id.*

⁶ Employee does not provide what the “LSAT” stands for.

⁷ *Id.*

⁸ Employee’s Brief at Page 1 (November 28, 2023). Here, Employee’s brief references March 26, 2023. However, in her previously submitted Prehearing Statement filed on September 1, 2023, Employee references this meeting having taken place on May 26, 2023, in and around 2:30pm following a request she made on May 25, 2023, for a meeting with Principal Logan scheduled by her executive assistant, Veroncia Martin. The Prehearing Statement noted the same attendees – Principal Logan, “Vernard Howard” (noted as Bernard Howard in the November 28, 2023, submission), Robert Alston and herself. Wherefore, the undersigned finds that the March date is a typographical error and the appropriate date for consideration for the purpose of the record is May 26, 2023.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* at Page 2.

¹² *Id.*

was a highly effective employee and that her last impact score was a 3.50. She asserts that after she was subject to the RIF, “other employees were hired to perform the same duties as [Employee] but under a different title.” Employee asserts that she, along with her union filed the instant appeal before this Office.

Agency’s Position

Agency states that it had authority to conduct the instant RIF and in separating Employee, it complied with the required RIF procedures. Agency avers that “[p]rior to the beginning of school year 2023-22034, the Chancellor of DCPS authorized a Reduction-in-Force (RIF) of school-based staff at sixty-one (61) schools due to reorganization of functions and budgetary shifts.”¹³ Agency provides that it made reductions on a “school-by-school basis.” Agency contends that pursuant to “5 DCMR § 1501, Chancellor Ferebee designated each of the sixty-one (61) DCPS schools that were included in the RIF process as a separate competitive area for said process.”¹⁴ Additionally, in accordance with §1502.1, “Chancellor Ferebee identified particular positions as separate competitive levels.” As such, “when deciding between employees in the same competitive area and level, each school was required to consider four (4) factors to determine which position should be eliminated, “using a standardized rubric with the weight for each factor as indicated below.”

Agency asserts that Employee was an “Aide-Administrative at Duke Ellington School of the Arts (“Duke Ellington”) during the 2022-2023 school year.” Agency cites that “Duke Ellington was determined to be a competitive area and [Employee’s] position, Aide-Administrative, was identified as a position that would be subject to the RIF.”¹⁵ Agency further cites that the elimination of Employee’s position was due to budgetary constraints. Agency avers that Employee was the only “Aide-Administrative at Duke Ellington at the time of the RIF. Therefore, the Aide-Administrative position was a single-person competitive level, and one round of lateral competition was not required.”¹⁶ Agency also avers that Employee received written notification on May 15, 2023, that her position was being reduced effective June 23, 2023. Agency asserts that it “outlined to help Employee find a position for the 2023-2024 school year, the Teacher Acquisition & Selection team would be holding virtual hiring fairs on Thursday, May 25 and Thursday, June 29.”¹⁷

Agency maintains that the Chancellor determined the competitive areas and competitive levels for the instant RIF. Agency asserts that the Chancellor has this authority pursuant to 5 DCMR §§1501.1 -1501.2 and §§ 1502.1-1502.2. As such, Agency asserts that the Chancellor “identified Aide-Administrative” as one of the competitive groups, and that there was only one Aide-Administrative at Duke Ellington, which was Employee.”¹⁸ Wherefore Agency contends that “it had the authority to determine that a RIF is necessary and has the authority to ensure that the provision of the RIF subchapter of the D.C. Code and the rules and regulations issues pursuant to that subchapter- specifically for DCPS Title 5-E Chapter 15 of the DCMR- are applied when effecting a reduction-in-force within DCPS.”¹⁹ Agency further contends that the “2022-2023 RIF was conducted in a lawful manner and is a valid exercise of the discretion of the DCPS Chancellor.” Agency notes that the Reduction-in-Force Memorandum was created in accordance with the D.C. Code and D.C. Municipal

¹³ Agency’s Brief at Page 1 (November 3, 2023).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* at Page 2.

¹⁷ *Id.*

¹⁸ *Id.* at Page 3.

¹⁹ *Id.*

Regulations to establish an orderly procedure for the termination of employment of DCPS employees due the lack funds, lack of work, or reorganization of functions.” Specifically, Agency avers that the instant RIF “was conducted in accordance with D.C. Code §1-624.02” and was “led to eliminate positions that would be redundant or unnecessary following a reorganization of functions.” Accordingly, Agency avers that pursuant to 1-624.02(a) the RIF must include: (1) A prescribed order of separation based on tenure of appointment, length of service including creditable federal and military service, District residence, 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.

Agency maintains that it followed all appropriate law rules and regulations in the administration of the instant RIF. Further, Agency avers that pursuant to D.C. Code §1-624.05, OEA’s jurisdiction of RIFs is narrowly prescribed and limited to a review of whether Agency had “incorrectly applied the provisions of this subchapter or the rules and regulations issued pursuant to this subchapter.”²⁰ Thus, Agency asserts that OEA’s review is based on the procedures. Agency maintains that the instant RIF was administered appropriately and should be upheld.

ANALYSIS

Round of Lateral Competition

In order to determine if Agency conducted the instant RIF properly, the undersigned must evaluate whether Agency, pursuant to D.C. Official Code § 1-624.02(a)(1) and (2), met the requirements for lateral competition. The DPM provides that each personnel authority has the responsibility to establish the competitive levels, and that these levels shall be based upon employee’s position of record.²¹ Additionally, the DPM requires that the competitive levels be “sufficiently alike” in the qualification requirements, such that an incumbent of one position could successfully perform the duties and responsibilities of any of the other positions.²² Generally, an employee’s position of record is shown through the issuance of an SF-50 Notification of Personnel Action.²³ Pursuant to 5 DCMR §1501.1, the “Superintendent is authorized to establish competitive areas based upon all or 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.”²⁴

In the instant matter, the May 8, 2023, Memorandum that authorized the instant RIF provided that the competitive areas, which were established on a school-by-school basis, would include the Duke Ellington School of the Arts (“Duke Ellington”).²⁵ Additionally, the Aide-Administrative position was identified as a competitive level that would be eliminated by the RIF. Based on Employee’s SF-50 at the time the RIF was conducted, she was employed as an Aide, Administrative. As a result of the RIF, Employee’s position was eliminated, and she was separated from service. Agency asserts that pursuant to 5 DCMR 1503.2, “if two or more employees are in the same

²⁰ *Id.* at Page 5.

²¹ 6-B DCMR §§§ 2410.1, 2410.2, 2410.3.

²² 6-B DCMR § 2410.4.

²³ *See. Armeta Ross v. D.C. Office of Contracting & Procurement*, OEA Matter No. 2401-0133-09-R11 (April 8, 2013).

²⁴ *See. 5-E DCMR §1501.1.*

²⁵ Agency’s Brief at Exhibit 1 (November 3, 2023).

competitive area and the same competitive level, and a principal has to decide which employee will be subject to a RIF” there are certain considerations that must be made.²⁶ However, Agency avers that 5 DCMR § 1503.3 provides that “when an entire competitive area is eliminated, these factors need not be considered in determining which positions will be abolished.” Because Employee was the only person employed in that position at the time of the RIF, I find that Employee was in a single-person competitive level. Employee does not dispute that she was the only Aide-Administrative at the time, rather she questions the validity of the RIF itself. Accordingly, I conclude that the statutory provision of D.C. Official Code § 1-624.02(a)(2), requiring Employee to have one round of lateral competition is inapplicable because the position was eliminated. OEA has consistently held that where an entire competitive level is eliminated, there is no one against whom an employee can compete.²⁷ Consequently, I find that the one round of lateral competition is inapplicable in the instant RIF. I also find that for the aforementioned reasons, a Retention Register was not required.

Priority Reemployment

D.C. Official Code § 1-624.02(a)(3) provides that employees separated pursuant to a RIF under this section are to be afforded consideration for priority reemployment. In the RIF notice dated May 15, 2023, Agency indicated that Employee’s position had been eliminated, but that there may be positions at other schools for which Employee may be qualified.²⁸ Agency included information regarding upcoming staffing fairs and information regarding assistance to help Employee find employment. Further, the notice indicated that Employee could apply for any vacancies at Agency or within District Government that may arise in the future.²⁹ Additionally, the notice indicated that Employee would receive “some priority consideration”, but was not guaranteed reemployment.³⁰ Accordingly, I find that Agency complied with the RIF requirement to consider Employee for priority reemployment.

Consideration of Job Sharing

Pursuant to D.C. Official Code § 1-624.02(a)(4) and DPM Section 2404, OEA has held that when a RIF is conducted, an Agency should consider job sharing and reduced hours for employees separated pursuant to the RIF.³¹ The DPM addresses Agency’s responsibility for considering job sharing and reduced working hours. Specifically, DPM section 2404.1 provides:

²⁶ *Id.* at Page 4. Factors included: significant relevant contributions, accomplishments, or performance; relevant supplemental professional experiences as demonstrated on the job; office or school needs, including: curriculum, specialized education, degrees, licenses or areas of expertise; and length of services.

²⁷ *See. Laura Smart v. D.C. Child and Family Services Agency*, OEA Matter No. 2401-0328-10, Opinion and Order on Petition for Review (March 4, 2014); *Jessica Edmond v. Department of Consumer and Regulatory Affairs*, OEA Matter No. 2401-0344-10, p. 6 (November 6, 2012); *Nicole Sivoletta v. D.C. Public Schools*, OEA Matter No. 2401-0193-04, p. 3 (December 23, 2005); *Evelyn Lyles v. D.C. Dept. of Mental Health*, OEA Matter No. 2401-0150-09 (March 16, 2010); *Leona Cabiness v. Department of Consumer and Regulatory Affairs*, OEA Matter No. 2401-0156-99 (January 30, 2003); *Robert T. Mills v. D.C. Public Schools*, OEA Matter No. 2401-0109-02 (March 20, 2003); *Deborah J. Bryant v. D.C. Department of Corrections*, OEA Matter No. 2401-0086-01 (July 14, 2003); and *R. James Fagelson v. Department of Consumer and Regulatory Affairs*, OEA Matter No. 2401-0137-99 (December 3, 2001).

²⁸ Agency’s Brief at Page 5 (November 3, 2023).

²⁹ *Id.*

³⁰ *Id.*

³¹ *Ramon Griffin v. District of Columbia Public Schools*, OEA Matter No. 2401-0085-19 (January 22, 2020).

An employee may be assigned to job sharing or reduced working hours, provided the following conditions are met:

- (a) The employee is not serving under an appointment with specific time limitation; and
- (b) The employee has voluntarily requested such an assignment in response to agency's request for volunteers for the purpose of considering the provisions of subsection 2403.2(a) of this chapter in order to preclude conducting, or to minimize the adverse impact of, a reduction in force.

Furthermore, DPM section 2403.2 provides that, “[a]n Agency may, within its budget authorization, take appropriate action, prior to planning a reduction in force, to minimize the adverse impact on employees or the agency .”³² As previously stated, OEA has held that job sharing considerations should be made during the administration of a RIF.³³ In the instant matter, Agency asserts that it considered job sharing and reduced hours, and included notice of that in the May 15, 2023, Notice to Employee. Agency asserts that ultimately, “a determination was made that these were not options due to the school’s operation.” Accordingly, I find that Agency considered job sharing and reduced hours as required.

Notice/Employee Appeal Rights

D.C. Official Code § 1-624.02(a)(5) states that Agency must provide employees separated pursuant to a RIF their appeal rights. Each employee separated pursuant to a RIF shall be entitled to written notice at least thirty (30) days before the effective date of the employee’s separation from service.³⁴ Here, Employee was notified that she was subject to separation from service pursuant to a RIF in a Notice dated May 15, 2023, and the effective date of separation was June 23, 2023.³⁵ Therefore, the undersigned finds that this timeline provided more than the thirty (30) days’ notice required by the statute.

Retaliation/Post RIF Activity-Job Postings

Employee submits that the RIF was improper because she was subject to the RIF after she refused to serve as a substitute teacher. Additionally, Employee asserted that a former Assistant Principal, Lisa Jones (AP Jones), for whom Employee previously worked, cited that Employee was a person who had reported AP Jones to the Central Office for not coming to work.³⁶ To establish a retaliation claim, the party alleging retaliation must demonstrate the following: (1) she engaged in a protected activity by opposing or complaining about employment practices that are unlawful under the District of Columbia Human Rights Act (“DCHRA”); (2) her employer took an adverse personnel action against her; and (3) there existed a causal connection between the protected activity and the adverse personnel action.³⁷ A prima facie showing of retaliation under DCHRA gives rise to a presumption that the employer's conduct was unlawful, which the employer may rebut by

³² *Id.*

³³ *Id.*

³⁴ See DPM § 2422.

³⁵ Agency’ Brief (November 3, 2023).

³⁶ Employee asserted that this occurred in April 2023. See. Employee’s Prehearing Statement (September 1, 2023).

³⁷ *Vogel v. District of Columbia Office of Planning*, 944 A.2d 456 (D.C. 2008).

articulating a legitimate reason for the employment action at issue.³⁸ Here, Employee states that she was RIF'd after not accepting to work as a substitute at Duke Ellington.³⁹ The instant RIF was effectuated across an entire competitive area and level where Employee was employed. There is no evidence in the record to suggest that Employee was singled out; rather her position was deemed as one of those that would be eliminated through the RIF. Consequently, I find that Employee's claims are unsubstantiated, and as such, fall outside the scope of OEA's jurisdiction.

Employee further indicated that there were positions on the website following the RIF that were of similar nature to her reduced position. This Office has previously held that it lacks the jurisdiction to entertain any post-RIF activity which may have occurred at an agency.⁴⁰ Accordingly, I find that Agency, in conducting the instant RIF, properly followed all proper District of Columbia statutes, regulations and laws.

ORDER

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

FOR THE OFFICE:

/s/ Michelle R. Harris
Michelle R. Harris, Esq.
Senior Administrative Judge

³⁸ *Id.*

³⁹ Employee's Prehearing Statement (September 1, 2023).

⁴⁰ *Williamson v. DCPS*, OEA Matter No. 2401-0080-04 (January 5, 2015).