THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	
JANNICE WRIGHT	OEA Matter Nos. 2401-0064-10
VERNELL BEASON	2401-0065-10
CECILIA GRAVES	2401-0066-10
TARESSA MORENO	2401-0067-10
LEONTYNE MALLORY	2401-0094-10
LYNETTE PRATT,	2401-0095-10
Employee	
v.	Date of Issuance: April 3, 2012
DISTRICT OF COLUMBIA DEPARTMENT OF PARKS & RECREATION,	
Agency	
	STEPHANIE N. HARRIS, Esq. Administrative Judge

Donald Temple, Esq., Employees' Representative
Frank McDougald, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On October 23, 2009 Employees ("Petitioners") listed in the above captioned matter filed separate petitions for appeals with the Office of Employee Appeals ("OEA") contesting the District of Columbia Parks and Recreation's ("Agency") action of abolishing their employment through a Reduction-in-Force ("RIF"). Petitioners' terminations were effective on September 25, 2009.

I was assigned this matter on or around January of 2012. On February 22, 2012 counsel for Petitioners 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 27, 2012 I held a telephonic Status Conference with counsel for Agency and counsel for Petitioners. During the status conference, the parties requested to submit a joint written stipulation

addressing the jurisdictional issue. However, the parties were unable to agree to a joint stipulation of fact. On March 13, 2012, Agency submitted a brief addressing the jurisdictional issue. Subsequently, on March 23, 2012 Petitioners submitted a response to Agency's brief. 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 the Petitioners 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:

For appeals filed on or after October 21, 1998, the Agency shall have the burden of proof, except for issues of jurisdiction.

ANALYSIS AND CONCLUSIONS OF LAW

Because Petitioners' terminations were 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:
>
> (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/she did not receive written notice thirty (30) days prior to the effective date of his/her separation from service; and/or

2. That he/she was not afforded one round of lateral competition within his/her competitive level.

In its brief, Agency states that (1) OEA has jurisdiction to adjudicate the instant matter; (2) Petitioners were given a thirty (30) day written notice before the effective date of the RIF; and (3) Petitioners were afforded one round of lateral competition in their competitive levels.[1] Petitioners submit in their brief that "[t]he immediate action was filed merely to exhaust apparent administrative remedies."[2] Further, Petitioners concede that "written notifications were received at least thirty (30) days prior to the effective date of separation and that the single round of lateral competition requirement was satisfied."[3] However, Petitioners assert that "OEA lacks jurisdiction over [their] claims relating to the subject reduction in force."[4]

Contrary to Petitioners' assertion that OEA does not have jurisdiction over these claims, I find that OEA does have limited jurisdiction as it pertains to whether the Petitioners received one round of lateral competition and whether they were afforded at least thirty (30) days written notice prior to the effective date of the RIF.[5] Petitioners acknowledged that they received the statutorily required one round of lateral competition and thirty (30) days written notice prior to

[1] Agency's Brief (March 13, 2012).
[2] Petitioners' Brief (March 23, 2012).
[3] *Id.*
[4] *Id.*
[5] *See* D.C. Official Code § 1-624.08.

the effective date of the RIF. Based on the record, I find that Agency's action of abolishing Petitioners' employment complied with D.C. Official Code § 1-624.08 and the RIF which resulted in their terminations is upheld.

ORDER

It is hereby ORDERED that Agency's action of abolishing Employees' position through a Reduction-In-Force is UPHELD.

FOR THE OFFICE:

STEPHANIE N. HARRIS, Esq.
Administrative Judge