THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
SHANTELL BUSH,	)	OEA Matter No. 2401-0015-13
Employee	)	
	)	
v.	)	Date of Issuance: September 19, 2014
	)	
DISTRICT OF COLUMBIA DEPARTMENT OF HEALTH,	)	
Agency	)	
	)	STEPHANIE N. HARRIS, Esq.
	)	Administrative Judge

Kadija T. Ash, Employee Representative
Lindsay Neinast, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On October 31, 2012, Shantell Bush ("Employee") filed a Petition for Appeal with the Office of Employee Appeals ("OEA" or "Office") contesting the District of Columbia Department of Health's ("Agency" or "DOH") action of abolishing her position through a Reduction-in-Force ("RIF"). Employee's RIF notice was dated September 27, 2012, with an effective date of November 2, 2012. At the time her position was abolished, Employee's official position of record within Agency was Staff Assistant. On December 5, 2012, Agency filed an Answer to Employee's Petition for Appeal.

I was assigned this matter on January 21, 2014. On January 23, 2014, the undersigned issued an Order scheduling a Prehearing Status Conference for March 24, 2014. Both parties were in attendance at the Prehearing Status Conference and a Post Prehearing Status Conference Order was issued on the same day. The undersigned issued an Order granting Employee's request for an extension of time on April 17, 2014. Employee timely submitted her brief on April 21, 2014, and Agency timely submitted its brief on May 12, 2014. Employee also submitted an optional rebuttal brief on June 3, 2014. After reviewing the record, I have determined that there are no material facts in dispute requiring further proceedings and therefore, an Evidentiary Hearing is not warranted. 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 Employee from service pursuant to the instant 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

Employee's Position

In her Petition for Appeal, Employee states that Agency did not follow the proper procedure for her competitive level and that the RIF was conducted by preference.[1] She claims that her position was not abolished because her supervisor "was trying to find someone to complete [her] duties."[2] In her Brief, Employee argues that Agency did not properly apply D.C. Code §1-624.08 because she was not afforded one round of lateral competition.[3] Employee contends that while Agency may assert that there were no appropriate competitive level positions, Employee's union, the American Federation of Government Employees ("AFGE"), verified several CS-301-09 positions that could have been offered to Employee before her separation date, including Program Monitor, Program Specialist, Data Analyst, and Field Representative.[4] Employee argues that she has a right to priority reemployment and was not given one round of lateral competition in accordance with D.C. Code § 1-624.08.

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[1] *See* Petition for Appeal (October 31, 2012).
[2] *Id.*, p. 3.
[3] *See* Employee Brief (April 22, 2014).
[4] Employee Brief, Exhibit B (April 22, 2014).

Agency's Position

Agency submits that it properly conducted the instant RIF pursuant to Chapter 24 of the District of Columbia Personnel Manual ("DPM") and D.C. Code §1-624.08, which requires Agency to provide Employee with one round of lateral competition and thirty (30) days notice prior to the effective date of separation.[5] Agency relays that on September 27, 2012, it personally served Employee with official written notification of her separation effective November 2, 2012, which provided her thirty (30) days written notification prior to the effective date of the instant RIF. Agency asserts that because Employee was the only individual who occupied her competitive level as evidenced in the Retention Register, the statutory provision affording her one round of lateral competition was inapplicable.

In its Answer, Agency asserts that DOH was facing a shortage of funds in the HIV/AIDS, Hepatitis, STD, and TB Administration ("HAHSTA"), and that a realignment was approved on August 8, 2012.[6] Agency states that it sought lesser competitive areas for HAHSTA in order to satisfy grantor objectives and align grantor budget submissions for the capabilities that specifically apply to each separate grant. An initial Retention Register was approved on September 27, 2012, showing that Employee was the sole Staff Assistant in the approved lesser competitive area.[7] The Retention Register was finalized on November 2, 2012, and reflected the resulting personnel actions, including the separation of Employee via the instant RIF.[8]

Agency states that it sought to minimize the number of employees separated by the instant RIF by placing qualified persons in alternative positions and by selecting vacant, but funded positions for elimination.[9] Agency asserts that unfortunately, during the instant RIF, the Staff Assistant position was less likely to have skills that transferred to other positions, and as such, there was not a similar position that could be identified for Employee.

Additionally, Agency contends that it properly followed DPM, Chapter 24 in establishing the competitive areas and levels for the instant RIF. DOH relays that it obtained a lesser competitive area, smaller than the entire agency, for the HAHSTA division. In selecting the positions for the instant RIF in the HAHSTA division, Agency asserts that it denoted positions having the least impact, which included five (5) Staff Assistant positions.

In response to Employee's argument that Agency was trying to find another employee to complete her duties, Agency contends that the instant RIF was conducted due to lack of funds and realignment, not lack of work. As such, Agency relays that the work previously conducted by Employee was reassigned to remaining employees and notes that reassignment of work duties is common after a RIF when the remaining work continues with fewer employees. Agency also asserts that Employee's arguments regarding unsubstantiated financial need for the RIF and alleged CBA and priority placement rights violations are outside of OEA's jurisdiction, which is

[5] *See* Agency's Answer (December 5, 2012); Agency Brief (May 12, 2014).
[6] Agency Answer, Tabs 4, 6, and 7 (December 5, 2012).
[7] *Id*., Tab 8.
[8] *Id*., Tab 11.
[9] *Id*., Tabs 5, 8, 11.

limited to one round of lateral competition and thirty (30) days written notification prior to the effective date of separation.[10]

Analysis of RIF Regulations

In a September 27, 2012 Administrative Order, Agency was granted authorization to conduct the instant RIF due to lack of funds and agency realignment pursuant to D.C. Code § 1-624.08 *et seq.*; Title 6 of the District of Columbia Municipal Regulations ("DCMR"), Chapter 24; and Mayor's Order 2008-92.[11]

For the reasons explained below, the undersigned finds that D.C. Official Code § 1-624.08 ("Abolishment Act" or "the Act") is the more applicable statute to govern this RIF.[12]

Section § 1-624.08 states in pertinent part that:

> (a) ***Notwithstanding*** *any other provision of law, regulation, or collective bargaining agreement either in effect or to be negotiated while this legislation is in effect* for the fiscal year ending September 30, 2000, and *each subsequent fiscal year*, each agency head is authorized, within the agency head's discretion, to identify positions for abolishment (emphasis added).
>
> (b) Prior to February 1 of each fiscal year, each personnel authority (other than a personnel authority of an agency which is subject to a management reform plan under subtitle B of title XI of the Balanced Budget Act of 1997) shall make a final determination that a position within the personnel authority is to be abolished.
>
> (c) ***Notwithstanding*** *any rights or procedures established by any other provision of this subchapter*, any District government employee, regardless of date of hire, who encumbers a position identified for

[10] Agency Brief, pp. 3-6 (May 12, 2014).
[11] Agency Answer, Tab 4 (December 5, 2012).
[12] D.C. Code § 1-624.02 states in relevant part that:

> (a) Reduction-in-force procedures shall apply to the Career and Educational Services… and shall include:
> (1) A prescribed order of separation based on tenure of appointment, length of service including creditable federal and military service, District residency, 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.

> abolishment shall be separated without competition or assignment rights, except as provided in this section (emphasis added).
>
> (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.
>
> (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*** (emphasis added).

In *Mezile v. D.C. Department on Disability Services*, the D.C. Superior Court found that "the language of § 1-624.08 is unclear as to whether it replaced § 1-624.02 entirely, or if the government can only use it during times of fiscal emergency."[13] The Court also found that both laws were current and that the government triggers the use of the applicable statute by using "specific language and procedures."[14]

However, the Court of Appeals took a different position. In *Washington Teachers' Union*, DCPS conducted a 2004 RIF "to ensure balanced budgets, rather than deficits in Fiscal Years 2004 and 2005."[15] The Court of Appeals found that the 2004 RIF conducted for budgetary reasons, triggered the Abolishment Act instead of "the regular RIF procedures found in D.C. Code § 1-624.02."[16] The Court stated that the "ordinary and plain meaning of the words used in

[13] *Mezile v. District of Columbia Department on Disability Services*, No. 2010 CA 004111 (D.C. Super. Ct. February 2, 2012).
[14] *Id.* at p. 5.
[15] *Washington Teachers' Union, Local # 6 v. District of Columbia Public Schools*, 960 A.2d 1123, 1125 (D.C. 2008).
[16] *Id.*

§ 1-624.08(c) appears to leave no doubt about the inapplicability of § 1-624.02 to the 2004 RIF."[17]

The Abolishment Act applies to *positions abolished for fiscal year 2000 and subsequent fiscal years* (emphasis added). The legislation pertaining to the Act was enacted specifically for the purpose of addressing budgetary issues resulting in a RIF.[18] The Act provides that, "notwithstanding any rights or procedures established by any other provision of this subchapter," which indicates that it supersedes any other RIF regulations. The use of the term 'notwithstanding' carries special significance in statutes and is used to "override conflicting provisions of any other section."[19] Further, "it is well established that the use of such a 'notwithstanding clause' clearly signals the drafter's intention that the provisions of the 'notwithstanding' section override conflicting provisions of any other sections."[20]

The Abolishment Act was enacted after § 1-624.02, and thus, is a more streamlined statute for use during times of fiscal emergency.[21] Moreover, the persuasive language of § 1-624.08, including the term 'notwithstanding', suggests that this is the more applicable statutory provision to conduct RIFs resulting from budgetary constraints. Accordingly, the undersigned is primarily guided by § 1-624.08 for RIFs authorized due to budgetary restrictions. Under this section, an employee whose position was terminated may only contest before this Office:

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

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

Lateral Competition

Pursuant to D.C. Code §1-624.08, employees separated due to a RIF are entitled to one round of lateral competition within their competitive level. According to DPM §§ 2410.2, 2410.4, employees who have the same job title, series, and grade are placed in the same competitive level. A separate Retention Register is created for each competitive level within a competitive area. The Retention Register "shall document the final action taken, and the effective date of that action, for each employee released from his or her competitive level."[22] Generally, employees in a competitive level who are separated as a result of a RIF are separated in inverse order of their standing on the Retention Register.[23] An employee's standing is determined by several factors, including tenure group and RIF service computation date.[24] The finalized Retention Register provided by Agency shows that Employee was the only Staff

[17] *Id.*
[18] *Id.*
[19] *Burton v. Office of Employee Appeals*, 30 A.3d 789 (D.C. 2011).
[20] *Id.*
[21] *See Mezile v. D.C. Department on Disability Services*, No. 2010 CA 004111 (D.C. Super. Ct. February 2, 2012).
[22] DPM §2412.3.
[23] DPM §2420.3.
[24] DPM §§ 2413, 2415.

Assistant in her competitive level.[25] Further, the RIF authorization records show that although there were other Staff Assistants subject to the RIF, they were in subdivisions and competitive levels different from Employee.[26]

Pursuant to DPM §2409, each Agency shall generally constitute a single competitive area and lesser competitive areas ("LCA") may be established by the approving personnel authority. Additionally, DPM §2409.4 also states that an LCA may be established where they are no smaller than a major subdivision of an agency or an organizational segment that is clearly identifiable and distinguished from others in the agency in terms of mission, operation, function, and staff. In this case, the Director of the Department of Human Resources ("DCHR") approved Agency's RIF request and the designation of LCAs, including Employee's division HASHTA, STD and TB Control Division.[27]

Employee argues that her competitive level was not properly established. According to DPM § 2410.1, "each personnel authority ***shall determine the positions which comprise the competitive level***" (emphasis added). Additionally, DPM § 2410.4 denotes that a competitive level shall consist of positions in the same grade (or occupational level), classification series, and sufficiently alike in qualification requirements, duties, responsibilities, and working conditions. DPM § 2410.2 also states that "assignment to a competitive level shall be based upon the employee's position of record."

The record shows that Employee was placed into a competitive level according to her job title, Staff Assistant. The undersigned also notes that Employee does not argue that her position of record, Staff Assistant, was incorrect. The personnel authority, in this case, the Agency head, had the authority to establish lesser competitive levels, including Employee's competitive level, was established based on her position of record. The fact that there may have been other Staff Assistants within Agency, but in different divisions, does not mean that these employees should have competed in the same level. Further, while the record shows that there were other Staff Assistant positions in separate subdivisions, those employees would not have been in the same competitive level that Employee was in. Thus, the undersigned finds that Employee was placed in the proper competitive level authorized in the RIF, by the approving personnel authority, based on her position of record, grade, and classification.

Further, this Office has consistently held that when an employee *holds the only position in her competitive level or when an entire competitive level is abolished* pursuant to a RIF, D.C. Official Code § 1-624.08(d), which affords Employee one round of lateral competition, as well as the related RIF provisions of DPM §2420.3, are both inapplicable (emphasis added).[28] Based

[25] Agency Answer, Tab 11 (December 5, 2012).
[26] *Id*., Tab 7.
[27] *Id*., Tabs 6, 7.
[28] *Perkins v. District Department of Transportation*, OEA Matter No. 2401-0288-09 (October 24, 2011); *Allen v. Department of Health*, OEA Matter No. 2401-0233-09 (March 25, 2011); *Wigglesworth v. D.C. Department of Employment Services*, OEA Matter No. 2401-0007-05 (June 11, 2008); *Fink v. D.C. Public Schools*, OEA Matter No. 2401-0142-04 (June 5, 2006); *Sivolella v. D.C. Public Schools*, OEA Matter No. 2401-0193-04 (December 23, 2005).

on the documents of record, the undersigned finds that Employee was the sole person in her competitive level, which was abolished. Accordingly, because Employee was the only person in her abolished competitive level, the undersigned finds that no further lateral competition efforts were required and that Agency was in compliance with the requirements of the law.

Thirty (30) Days Written Notice

DPM § 2422 provides the notice requirements that must be given to an employee affected by a RIF. Specifically, DPM § 2422.1 states that "[a]n employee selected for release from his or her competitive level … shall be entitled to written notice at least thirty (30) full days before the effective date of the employee's release." The specific notice shall state specifically what action is to be taken, the effective date of the action, and other necessary information regarding the employee's status and appeal rights.[29] Additionally, D.C. Official Code § 1-624.08(e), which governs RIFs, provides that an Agency *shall* give an employee thirty (30) days notice *after* such employee has been *selected* for separation pursuant to a RIF (emphasis added).

Agency's RIF Notice was dated September 27, 2012, with an effective date of November 2, 2012. The RIF Notice stated that Employee's position was eliminated as part of a RIF and provided Employee with information about her appeal rights. Employee has not alleged that she did not receive the requisite statutory notice and the record shows that Employee refused to sign and acknowledge receipt of her RIF Notice on September 27, 2012.[30] An employee's refusal to acknowledge receipt of a separation notice may be used as evidence of service.[31] Further, Employee has not contested that she did not receive thirty (30) days notice. Thus, the undersigned finds that Employee was given the required thirty (30) days written notice prior to the effective date of the RIF.

RIF Rationale

Employee also argues that Agency's assertion regarding the financial need for the RIF was unsubstantiated. Employee contends that Agency's August 30, 2012, Memorandum for Request for Approval of RIF, made no material reference to financial necessity, economic pressure, or documented a burden sufficient to support a RIF. DPM §2406.2 states in relevant part that a RIF Administrative Order is required to identify the competitive area of the RIF, the positions to be abolished (by position number, title, series, grade, and organizational location), and state the reasons for the RIF. In the instant case, the RIF Authorization Order was approved by DCHR on September 27, 2012, and designates the competitive areas, positions to be abolished, and the reasons given for the RIF, which included lack of funds and agency realignment.[32] Thus, the undersigned finds that Agency provided a sufficient reason for the RIF as required by DPM §2406.2.

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[29] *See* 6-B DCMR §2423.
[30] *See* Agency Answer, Tab 9 (December 5, 2012).
[31] *Aygen v. District of Columbia Office of Employee Appeals*, No. 2009 CA 006528; No. 2009 CA 008063 at p. 9 (D.C. Superior Ct. April 5, 2012).
[32] Agency Answer, Tab 7 (December 5, 2012).

Further, in *Anjuwan v. D.C. Department of Public Works,*[33] the D.C. Court of Appeals ruled that OEA lacked authority to determine whether an Agency's RIF was bona fide and held that OEA's authority over RIF matters is narrowly prescribed. The Court of Appeals explained that as long as a RIF is "justified by a shortage of funds at the agency level, the agency has discretion to implement the RIF…"[34] The Court also noted that OEA does not have the "authority to second guess the mayor's decision about the shortage of funds…[or] management decisions about which position should be abolished in implementing the RIF."[35]

OEA has interpreted the ruling in *Anjuwan* to include that this Office has no jurisdiction over the issue of an agency's claim of budgetary shortfall, nor can OEA entertain an employees' claim regarding how an agency elects to use its monetary resources for personnel services. In this case, how Agency elected to spend its funds on personnel services or how Agency elected to reorganize internally was a management decision, over which neither OEA nor this Administrative Judge has any control.[36]

Priority Reconsideration

Employee contends that while Agency may assert that there were no appropriate competitive level positions, Employee's union AFGE verified several CS-301-09 positions that could have been offered to Employee before her separation date, including Program Monitor, Program Specialist, Data Analyst, and Field Representative.[37]

Employee further argues that she had a right to priority reemployment in accordance with E-DPM Instruction No. 8-69, 9-36, and 36-11, Priority Reemployment Consideration for Employees Affected by Reduction-In-Force (RIF). While Employee has not provided an official copy of this purported DPM instruction, she relays that the instruction states in part: (1) when a qualified person is available on the Agency Reemployment Priority Program ("ARPP") list, a Career Service position within the competitive area shall not be filled with a new appointment, transfer, or reemployment of a person not on the ARPP list; 2) employees who are issued a RIF letter are to be given priority consideration for all agency vacancies that are open during the RIF notice period (before separation); and 3) when selecting employees on the ARPP prior to separation, offers of employment shall be made according to the employees' relative standing in their competitive levels.

According to D.C. Code §1-624.08(h), separation resulting from the Abolishment Act does not affect an employee's rights under either the Agency Reemployment Priority Program or the Displaced Employee Program as detailed in Chapter 24 of the District Personnel Manual. However, while DPM §2427 requires Agency to maintain a reemployment priority list, it does guarantee separated employees a right to be reemployed or to be hired for any specific position. The ARPP only gives separated employees a priority placement in the hiring process, where

[33] 729 A.2d 883 (December 11, 1998).
[34] 792 A.2d 883, 885.
[35] *Id.*
[36] *Gatson v. DCPS*, OEA Matter No. 2401-0166-09 (June 23, 2010).
[37] Employee Brief, Exhibit B (April 22, 2014).

certain requirements are met, but *there is no guarantee of employment* (emphasis added). Additionally, while D.C. Code 1-624.08(h) gives employees a right to be added to the priority reemployment list, OEA has held that D.C. Code 1-624.08(f)(2) limits the issues that OEA can consider in RIF matters, and thus Agency does not have to provide or corroborate its reemployment lists.[38]

Further, the E-DPM instruction provided by Employee does not state that Employee must be placed in a specific position; it only describes the procedures for how to fill an available position when considering employees on the ARPP list. Employee has not provided any documentation or evidence showing that an available position was filled by someone who was not on the ARPP. In regards to the three (3) available positions that Employee identified and claimed that she should have been offered, Employee has not provided any documentation showing that she was qualified for these positions or that these positions were in fact CS-301-09 positions, similar to her last position of record. Moreover, offering one round of lateral competition does not require an agency to place an employee in a different position via the ARPP.

Alleged Post-RIF Activity

Additionally, Employee alleges that those employees originally slated for separation were not terminated, and maintains that she was the only person separated via the instant RIF. However, Employee has not provided any evidence to show that she was the only employee separated via the instant RIF and the documents of record reflect that there were several positions subject to the instant RIF. While Employee argues that AFGE's October 12, 2012 letter to the Mayor caused Agency to reconsider its actions relative to the instant RIF, there is nothing in the record to corroborate these assertions. Moreover, this Office has previously held that it lacks jurisdiction to entertain any post-RIF activity which may have occurred at Agency.[39]

Violation of CBA

Employee alleges that Agency's RIF violated the applicable collective bargaining agreement ("CBA") and that the realignment was done to retaliate against members of the AFGE union. Employee claims that the CBA provides for special consideration in the Career Service area, an Agency Priority Reemployment register, and specific methods for filling vacancies. However, Employee has not provided any official documentation showing the details of the CBA or specifically stated how Agency's action violated the CBA.

Moreover, D.C. Code §1-605.02, specifically reserves resolution of unfair labor practice allegations, CBA violations, and union related retaliation to the Public Employee Relations Board ("PERB"). According to the preceding statute, PERB is tasked with deciding whether

[38] *See Ricky Williams v. D.C. Public Schools*, OEA Matter No. 2401-0211-10, *Opinion and Order on Petition for Review* (March 4, 2014); *see also Beale et al. v. District of Columbia Office of Contracting and Procurement and Office of Employee Appeals*, No. 2012 CA 003434B (D.C. Super. Ct. August 26, 2012).
[39] *Williamson v. DCPS*, OEA Matter No. 2401-0089-04 (January 5, 2005); *Cabaniss v. Department of Consumer and Regulatory Affairs*, OEA Matter No. 2401-0156-99 (January 30, 2003).

unfair labor practices and CBA violations have been committed. While OEA may assess an applicable CBA violation to help determine whether Agency had cause to institute an adverse action, it cannot singularly assess whether Agency violated a provision of the CBA.[40] In this case, the alleged CBA violation raised by Employee does not have any bearing on whether Agency provided Employee with one round of lateral competition or thirty (30) days notice. Therefore, the undersigned finds that Employee's allegations regarding Agency's alleged CBA violations are outside of OEA's jurisdiction.

Grievances

Additionally, it is an established matter of public law that as of October 21, 1998, pursuant to the Omnibus Personnel Reform Amendment Act of 1998 (OPRAA), D.C. Law 12-124, OEA no longer has jurisdiction over grievance appeals. This Office has also held that the primary responsibility for managing and disciplining Agency's work force is a matter entrusted to the Agency, not to OEA.[41] Further, Employee's other ancillary arguments are best characterized as grievances and outside of OEA's jurisdiction to adjudicate. That is not to say that Employee may not press her claims elsewhere, but rather that OEA currently lacks the jurisdiction to hear Employee's other claims.

CONCLUSION

Based on the foregoing, the undersigned finds that Employee was properly separated via the instant RIF after she was properly placed in a single-person competitive level and was given thirty (30) days written notice prior to the effective date of the RIF. The undersigned therefore concludes that Agency's action of abolishing Employee's position was done in accordance with D.C. Official Code § 1-624.08.

ORDER

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

FOR THE OFFICE:

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STEPHANIE N. HARRIS, Esq.
Administrative Judge

[40] *Brown v. Watts*, 933 A.2d 529, 533-34 (D.C. 2010). The Court of Appeals held that OEA is not jurisdictionally bared from considering claims that an adverse action violated the express terms of an applicable CBA.

[41] *See Huntley v. Metropolitan Police Dep't*, OEA Matter No. 1601-0111-91, *Opinion and Order on Petition for Review* (March 18, 1994); and *Hutchinson v. District of Columbia Fire Dep't*, OEA Matter No. 1601-0119-90, *Opinion and Order on Petition for Review* (July 2, 1994); *See also Stokes v. District of Columbia*, 502 A.2d 1006, 1009 (D.C. 1985) (OEA's review is limited to determining if "managerial discretion has been legitimately invoked and properly exercised").