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THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	OEA Matter No.: 2401-0083-17
TYHASHA WRIGHT,)	
Employee)	
)	Date of Issuance: August 27, 2018
v.)	
)	
DISTRICT OF COLUMBIA PUBLIC SCHOOLS,)	Arien P. Cannon, Esq.
Agency)	Administrative Judge
)	
)	
_____)	
Tyhasha Wright, Employee, <i>Pro se</i>		
Carl Turpin, Esq., Agency Representative		

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On August 14, 2017, Tyhasha Wright (“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”) decision to separate her from her position as an Administrative Officer, pursuant to a Reduction-in-Force (“RIF”). I was assigned this matter on October 3, 2017.

Agency filed its Answer, along with a Motion to Dismiss, on September 21, 2017. In its Motion to Dismiss, Agency asserted that Employee was not separated from her position. On October 10, 2017, an Order was issued which required Employee to respond to Agency’s Motion to Dismiss. Employee submitted her response on October 16, 2017, and asserted that she had, in fact, been separated pursuant to a RIF. Upon consideration of Agency’s Motion to Dismiss and Employee’s response, a telephonic Status Conference was convened on November 20, 2017. Subsequently, it was determined that Employee had in fact been separated pursuant to a RIF and a Prehearing Conference was convened on January 9, 2018. A Post Prehearing Conference Order was issued on January 12, 2018.

Because Employee did not submit a Prehearing Statement, it was ordered that she submit her legal brief addressing the arguments in Agency's Prehearing Statement. Employee's brief in response to the Post Prehearing Order was due on or before February 9, 2018. In a February 14, 2018 email sent by the undersigned, in response to an email sent by Employee, she was given an extension of time until February 21, 2018, to file her brief. On February 23, 2018, a Show Cause Order was issued for Employee's failure to submit her brief. Employee's brief was filed with OEA on March 6, 2018. Agency submitted a response brief on March 19, 2018. On June 5, 2018, an Order was issued for Agency to submit the Administrative Order, or equivalent document, authorizing the RIF, pursuant to D.C. Code § 1-624.02 and Chapter 24 of the D.C. Personnel Regulations. Agency submitted its response on June 19, 2018. The record is now closed.

JURISDICTION

Jurisdiction of this Office is established 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.

BURDEN OF PROOF

OEA Rule 628.1 states that the burden of proof with regard to material issues of fact shall be by a preponderance of the evidence.¹ "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.

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.²

Agency's Position

Agency asserts that D.C. Code § 38-172³ authorizes the Mayor to delegate his or her authority to a designee as he or she determines is warranted. To support their argument, Agency provides a Mayoral Order issued on July 5, 2007 (Mayor's Order 2007-158), by former Mayor Adrian Fenty. Agency asserts that this Order delegated the Mayor's authority to the Chancellor to function as the personnel authority for District of Columbia Public Schools. Further, Agency

¹ 59 DCR 2129 (March 16, 2012).

² OEA Rule 628.2, 59 DCR 2129 (March 16, 2012).

³ Although Agency states D.C. Code § 38-171 in its brief submitted on June 19, 2018, it is clear from the language cited that it intended to cite to D.C. Code § 38-172.

contends that this Order bestowed authority in the Chancellor to take corrective or adverse action against employees, authorize placing employees on enforced leave, and conduct RIFs.

Agency further maintains that on August 10, 2007, former Mayor Fenty issued a revised Order (Mayor's Order 2007-186) further delegating authority in the Chancellor with regards to personnel matters. Based on the two Mayoral Orders, DCPS contends that it was not obligated to seek authority from the Mayor before conducting the instant RIF.

Employee's Position

Employee submitted a written statement on March 6, 2018, in response to the January 12, 2018 Post Prehearing Conference Order. However, Employee's statement does not directly address the RIF or whether it was carried out in accordance with all applicable laws, rules, or regulations. Rather, Employee argues that DCPS violated her rights and failed to protect her from "bullying, harassment, and [being] demoted in the work place..."

FINDINGS OF FACT, ANALYSIS, AND CONCLUSIONS OF LAW

Agency filed a Motion to Dismiss on September 21, 2017, alleging that Employee received notice on or about August 4, 2017, that her position was being reduced pursuant to a RIF. Agency asserted in its motion that prior to the effective date of the RIF, Employee accepted another position at a different school and did not experience a break in service.

During an October 30, 2017 Status Conference, it was determined that Employee was, in fact, separated pursuant to a RIF, effective August 4, 2017. However, prior to the RIF becoming effective, Employee accepted a part-time position with Agency as a Special Education Coordinator at Burroughs Elementary School, beginning on July 23, 2017. This part-time position became a full-time position beginning on November 12, 2017. Thus, for approximately three and a half months, Employee only received a part-time salary instead of the full-time salary she was earning prior to the effective date of the RIF, and prior to her assuming a full-time position with Agency again in November 2017. Although there was no break in service, Employee suffered harm in the part-time salary versus the full-time salary she received for approximately three and a half months.

Whether Agency's action of separating Employee from service pursuant to a RIF was done in accordance with all applicable laws, rules, or regulations.

Pursuant to D.C. Official Code § 1-624.02(a), a RIF 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. *See* D.C. Official Code § 1-624.02.

6-B DCMR § 2406 provides further guidance in conducting a RIF. Specifically, this section states in pertinent part:

2406.1. If a determination is made that a reduction in personnel is to be conducted pursuant to the provisions of sections 2400 through 2431 of this chapter, *the agency shall submit a request to the appropriate personnel authority to conduct a reduction in force (RIF).*

2406.2 *Upon approval of the request as provided in subsection 2406.1 of this section, the agency conducting the reduction in force shall prepare a RIF Administrative Order, or an equivalent document, identifying the competitive area of the RIF; the positions to be abolished, by position number, title, series, grade, and organizational location; and the reason for the RIF.*

As previously stated, Agency asserts that D.C. Code § 38-172 (effective, June 12, 2007) authorized the Mayor to delegate his or her authority to a designee as he or she determines is warranted. Agency provides a Mayoral Order issued on August 10, 2007 (Mayor's Order 2007-186). This Order delegates authority to DCPS Chancellor to include, but not limited to, authority over all curricula, *personnel*, school operations and programs, functions and activities supported by the public schools and all day to day administrative duties related to education services for public school education.⁴

Generally, the Mayor is the designated personnel authority for the District government. However, a reading of D.C. Code § 38-172, together with Mayor's Order 2007-186, makes evident that the DCPS Chancellor may make personnel decisions, including with respect to RIFs. D.C. Code § 38-172 went into effect on June 12, 2007. Mayoral Order 2007-186, was subsequently issued granting authority in Agency's Chancellor to carry out RIFs. Here, there are no documents of record bearing the Chancellor's name, much less, documents bearing the Chancellor's name on an Administrative Order, or equivalent document, approving the instant RIF. Thus, I find that the RIF was unauthorized.

Agency fails to submit any documentation evincing that it submitted anything to the Chancellor for approval or that the Chancellor actually approved anything associated with the RIF. An Order was issued on June 5, 2018, by the undersigned, which ordered Agency to "submit the Administrative Order, pursuant to D.C. Code § 1-624.02 and Chapter 24 of the D.C. Personnel Regulations [] [sic] authorizing the instant RIF."⁵ A "Notice to Employees" is attached to Agency's Response to the June 5, 2018 Order, which "provided employees with a

⁴ *See* Agency's Response to Administrative Judge's June 5, 2018 Order, Exhibit 12 (June 19, 2018).

⁵ *See* Order issued June 5, 2018.

notice that outlined staffing changes and reductions.”⁶ Attached to the letter is a listing of employees there were purportedly reduced. The notice submitted with Agency’s response states that the RIF was to “accommodate shifts in programming and individual school budgets.”⁷ This notice was not an Administrative Order, nor an equivalent document, authorized by the Chancellor that “identif[ies] the competitive areas of the RIF; the positions to be abolished, by position number, title, series, grade, and organizational location.”⁸ Agency has conducted numerous RIF actions that have appeared before this Office and has always seemed to provide a document of some sort bearing the Chancellor’s approval. That is not the case in the instant matter. As such, I find that Agency has failed to prove its burden with respect to D.C. Code § 1-624.02(a)(1) and 6-B DCMR § 2406, *et. seq.*

While Agency may have complied with the other requirements set forth in D.C. Code § 1-624.02 in effectuating the RIF, without the proper approval of the Chancellor, the RIF must be held invalid. Accordingly, I must find that the RIF was not done in accordance with all applicable laws, rules, or regulations.

ORDER

It is hereby **ORDERED** that:

1. Agency’s action of abolishing Employee’s position through a RIF is **REVERSED**;
2. Agency shall reimburse Employee all back-pay and benefits lost as a result of her being transitioned into a part-time position from August 4, 2017, through November 12, 2017, pursuant to the invalid RIF; and
3. Agency shall file with this Office, within thirty days from the date which this decision becomes final, documents evidencing compliance with the terms of this Order.

FOR THE OFFICE:

Arien P. Cannon, Esq.
Administrative Judge

⁶ See Agency’s Response to Administrative Judge’s June 5, 2018 Order, at p. 1.

⁷ See *Id.*, Exhibit 9.

⁸ See 6-B DCMR § 2406.2.