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THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
SEABERN HILL,)	OEA Matter No. 2401-0061-13
Employee)	
)	
v.)	Date of Issuance: October 27, 2014
)	
UNIVERSITY OF THE DISTRICT)	
OF COLUMBIA,)	
Agency)	
)	STEPHANIE N. HARRIS, Esq.
_____)	Administrative Judge
John W. Davis, Esq., Employee Representative		
Anessa Abrams, Esq., Agency Representative		

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On February 27, 2013, Seabern Hill (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the University of the District of Columbia’s (“Agency” or “UDC”) action of abolishing his position through a Reduction-in-Force (“RIF”). Agency’s RIF notice was dated January 24, 2013, with an effective date of February 28, 2013. At the time his position was abolished, Employee’s official position of record was Records Officer.

I was assigned this matter in February 2014. On March 6, 2014, I issued an Order for Good Cause directing Agency to address its failure to submit an Answer in response to Employee’s Petition for Appeal. On March 21, 2014, Agency submitted a response to the Show Cause Order, which was accepted. On March 24, 2014, Agency submitted its Answer.

On April 15, 2014, the undersigned issued an Order, directing the parties to appear at a Prehearing Conference (“PHC”) on June 11, 2014. Both parties were in attendance on the prescribed day and time. During the PHC, the undersigned denied Employee’s February 27, 2013 Motion for an Emergency Stay and Agency’s June 6, 2014 Motion to Stay Proceedings. On June 13, 2014, the undersigned issued a Post PHC Order (“June 13th Order”) requiring the parties to submit supporting documentation on or before June 26, 2014. Additionally, Employee was

ordered to submit his brief on or before July 10, 2014, and Agency was ordered to submit its brief on or before July 31, 2014. Agency submitted its supporting documentation on July 16, 2014, and submitted a Motion to Dismiss on July 22, 2014, which was denied by the undersigned.

On August 22, 2014, the undersigned issued an Order for Statement of Good Cause for Employee's failure to submit his brief and supporting documentation as directed by the June 13th Order. Employee was ordered to submit his brief and supporting documentation on or before September 3, 2014. Employee's Statement of Good Cause and brief was submitted on September 3, 2014; however, it did not include the referenced exhibits. Agency submitted a Motion for Sanctions and to Compel on September 4, 2014, which was denied by the undersigned. On September 5, 2014, the undersigned issued an Order for Statement of Good Cause, requiring Employee to submit the referenced exhibits in his brief, on or before September 18, 2014. On September 17, 2014, Employee submitted a Statement of Good Cause, exhibits, and a request to submit a supplemental brief. Employee's Statement of Good Cause and exhibits were accepted, but Employee's request to submit a supplemental brief was denied. On September 24, 2014, Agency submitted an optional response to Employee's Statement of Good Cause.

After reviewing the record, the undersigned has determined that no further proceedings are needed in this matter and 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 of RIF Regulations

D.C. Official Code § 1-606.03 (2001) gives this Office the authority to review, *inter alia*, appeals from separations pursuant to a RIF. As this issue has arisen in other related RIF matters, the undersigned will address why D.C. Official Code §1-624.02, which encompasses more extensive RIF procedures, is inapplicable to the instant matter. Moreover, for the reasons explained below, the undersigned find that D.C. Official Code §1-624.08 is the more applicable statute to govern this RIF.¹

D.C. Official Code § 1-624.08, which 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 abolishment shall be separated without competition or assignment rights, except as provided in this section (emphasis added).*

¹ 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.

(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.

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.”² 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.”³

However, the Court of Appeals took a different position. In *Washington Teachers’ Union*, the District of Columbia Public Schools (“DCPS”) conducted a 2004 RIF “to ensure balanced budgets, rather than deficits in Fiscal Years 2004 and 2005.”⁴ The Court of Appeals found that the 2004 RIF conducted for budgetary reasons, triggered the Abolishment Act (“the Act”) instead of “the regular RIF procedures found in D.C. Code § 1-624.02.”⁵ The Court stated that the “ordinary and plain meaning of the words used in § 1-624.08(c) appears to leave no doubt about the inapplicability of § 1-624.02 to the 2004 RIF.”⁶

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

² *Mezile v. District of Columbia Department on Disability Services*, No. 2010 CA 004111 (D.C. Super. Ct. February 2, 2012).

³ *Id.* at p. 5.

⁴ *Id.* at 1132.

⁵ *Id.*

⁶ *Id.*

the purpose of addressing budgetary issues resulting in a RIF.⁷ 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.”⁸ 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.”⁹

The Abolishment Act was enacted after § 1-624.02, and thus, is a more streamlined statute for use during times of fiscal emergency.¹⁰ 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, I am 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 he did not receive written notice thirty (30) days prior to the effective date of his separation from service; and/or
2. That he was not afforded one round of lateral competition within his competitive level.

Accordingly, the undersigned will address issues raised by Employee, in terms of the applicable regulations of D.C. Code § 1-624.08.

Employee’s Position

In his Petition for Appeal, Employee submits that his position should not have been abolished because the duties of the position are statutorily mandated. He also claims that UDC violated his seniority and retention rights during the RIF. Employee also contends that Agency did not “determine if there were any other positions, vacant or otherwise,” and did not fill the position of Director of Records Management.¹¹ He further states that in 2010, he was demoted from his position of Acting Director of Records Management to a “line position of Records Officer in the Admissions Officer.”¹² Employee claims that in November 2012, he was stripped of his duties as a Records Officer. He relays that these duties were later assigned to interns, which he alleges is illegal. Employee also claims that it is illegal for Agency to not have a formal Records Manager or Records Officer.

Additionally, in his brief, Employee states that he is “unsure if he was actually given any opportunity to compete for any available positions.”¹³ He further argues that in order for Agency

⁷ *Washington Teachers' Union, Local # 6 v. District of Columbia Public Schools*, 960 A.2d 1123, 1125 (D.C. 2008).

⁸ *Burton v. Office of Employee Appeals*, 30 A.3d 789 (D.C. 2011).

⁹ *Id.*

¹⁰ *Mezile v. D.C. Department on Disability Services*, No. 2010 CA 004111 (D.C. Super. Ct. February 2, 2012).

¹¹ Petition for Appeal, p. 11.

¹² *Id.*, p. 23.

¹³ Employee Brief, p. 2 (September 3, 2014).

to be in compliance with the D.C. Public Records Administration Act, there should be a staff person in each UDC office converting paper files to digital files. Employee claims that there were several positions in his “old office which directly [relate] to converting paper records to digital formats” that he should have been able to “bump” into.¹⁴ Employee contends that the reasons given for the abolishment of Employee’s position were questionable. He claims that as a tenured public employee, he is entitled to a pre-termination hearing and has a right to a full scale adversarial post-termination hearing. Employee also claims that educational service employees are exempt from the Abolishment Act of 1997 pursuant to D.C. Code §1-602.3(b).

Agency’s Position

According to Agency, on January 21, 2013, the UDC Board of Trustees issued a resolution (“UDC Resolution 2013-01”) approving the abolishment of positions under D.C. Code §1-624.08 due to budget and financial constraints.¹⁵ Agency relays that the UDC Board was directed by the D.C. City Council to approve a plan to bring UDC’s costs, staff, and faculty size in line for Fiscal Year 2013. In its Abolishment Plan, Agency highlights how it selected the positions proposed for abolishment and how it planned to implement the abolishment action.¹⁶ Agency submits that it conducted the RIF in accordance with D.C. Code §1-624.08 by affording Employee thirty (30) days written notice prior to the effective date of his separation and one round of lateral competition, which was not applicable since Employee’s position was abolished.¹⁷

Agency submits that it established a lesser competitive area for each major department unit and conducted one round of lateral competition in accordance with the Abolishment Act and the District Personnel Manual (“DPM”). Agency notes that there was only one (1) employee who qualified for the Retention Register at Employee’s competitive level.¹⁸ Agency relays that an employee’s position of record, as identified in their Notification of Personnel Action (“SF-50”), was the principal controlling factor to determine competitive levels.¹⁹ Each competitive level consisted of all positions in the pertinent lesser competitive areas which had the same title, were in the same grade, and were sufficiently alike in qualification requirements, duties, responsibilities, and working conditions.

Competitive Area and Level

Pursuant to D.C. Code §1-624.08(d), employees separated due to a RIF are entitled to one of round of lateral competition within their competitive level. Employee claims that he is unsure if he was actually given an opportunity to compete for available positions through one round of lateral competition. In contrast, Agency relays that Employee was given one round of lateral competition under the Abolishment Act, D.C. Code §1-624.08, but was the only person in his competitive level.

¹⁴ *Id.*

¹⁵ Agency Answer, Tab 9 (March 24, 2014).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*, Tab 10.

¹⁹ Agency’s Motion to Dismiss, p. 9 (July 22, 2014).

Agency relays that on January 23, 2013, the UDC Board of Trustees approved Resolution No. 2013-01 for the abolishment of positions pursuant to D.C. Code §1-624.08, due to budget and financial constraints placed on Agency.²⁰ Pursuant to Fiscal Year 2013 Budget Support Act of 2012, the UDC Board was directed by the D.C. City Council to approve a plan to reduce UDC's costs, staff, and faculty size. In this matter, Appendix B of the UDC Resolution No. 2013-01 (which is equivalent to the Administrative Order) lists the various Agency divisions, departments, position number, job title, salary, service computation date of all positions that were affected by the RIF.²¹ Appendix A of this document also listed the abolishment plan, which includes, but is not limited to the designation of lesser competitive areas. According to the UDC Resolution, one (1) Records Officer position in the Academic Affairs Administration Department was listed for abolishment.

DPM §§ 2412.2, 2412.3 states that a Retention Register is created for each competitive level within a competitive area and that it "shall document the final action taken, and the effective date of that action, for each employee released from his or her competitive level." The Retention Register provided by Agency shows that Employee was the only Records Officer in his competitive level.²² Further, the Retention Register documented the final action of Employee's position being eliminated, and identification of the competitive level, title, series, and grade.²³ Thus, I find that Agency's Retention Register was properly created and implemented.

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 UDC Board Chairperson served as the approving personnel authority, and as discussed above, had the authority to select and establish the lesser competitive area of Academic Affairs Administration, which is an identifiable subdivision at UDC.²⁴

DPM § 2410.1 states that "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 states that "assignment to a competitive level shall be based upon the employee's position of record. Pursuant to the DPM § 2410 above, Agency was authorized to establish the competitive level, based on the employee's title of record, and other relevant factors.

²⁰ Agency Answer, Tab 9.

²¹ *Id.*

²² *Id.*, Tab 10.

²³ *Id.*

²⁴ *Id.*, Tab 9.

The record shows that Employee was placed into a competitive level according to his job title, Records Officer, as listed on the SF-50 showing his reassignment to this position in 2010.²⁵ The personnel authority, in this case the UDC Board Chairperson, had the authority to establish any lesser competitive levels and in this case, Employee's competitive level was established based on his position of record. The undersigned finds that Employee was placed in the proper competitive level, based on his position of record, grade, and classification.

As noted above, the Retention Register provided by Agency shows that Employee was the only Records Officer in his competitive level.²⁶ Further, Agency maintains that while Employee was allowed one round of lateral competition, Employee was the only person in his competitive level and Employee's position was abolished.²⁷ This Office has consistently held that *when an employee holds the only position in his 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 on the documents of record, I find that the Employee was the only person in his competitive level, and therefore, no further lateral competition efforts were required, and Agency was in compliance with the lateral competition requirements of the law. I further find that Employee's separation via the instant RIF was not arbitrary and capricious and was conducted in accordance with the applicable rules and regulations.

Thirty (30) Days Written Notice

DPM § 2422 provides the notice requirements that must be given to an employee affected by a RIF. Section 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 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).

Here, Employee received his RIF notice on January 24, 2013, and the RIF effective date was February 28, 2013. The notice stated that Employee's position was being abolished as a result of a RIF. The Notice also provides Employee with information about his appeal rights. The record shows that Employee signed and acknowledged receipt of his RIF notice on January 24,

²⁵ Agency Answer, Exhibit 5.

²⁶ Agency Answer, Exhibit 10.

²⁷ *Id.*, p. 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).

²⁹ See DPM §2423.

2013, thus confirming receipt.³⁰ Further, Employee has not contested that he did not receive the required thirty (30) days notice.³¹ It is therefore undisputed that Employee was given the required thirty (30) days written notice prior to the effective date of the RIF.

RIF Rationale

Employee contends that the RIF was not enacted because of a budget crisis or to reduce duplication of work. In *Anjuwan v. D.C. Department of Public Works*,³² the D.C. Court of Appeals ruled that OEA's authority over RIF matters is narrowly prescribed. The Court ruled that OEA lacked authority to determine whether an Agency's RIF was *bona fide* and explained that OEA's authority is to determine whether the RIF complied with applicable District personnel statutes and regulations dealing with RIFs (emphasis added).³³ The Court further noted that OEA does not have the "authority to second guess ... management decisions about which position should be abolished in implementing the RIF."³⁴

OEA has interpreted the ruling in *Anjuwan* to include that this Office has no jurisdiction over the issues of whether an Agency's budgetary shortfall or curtailment of duplicative work in support of a RIF was bona fide, nor can OEA entertain an employees' claim regarding how an agency elects to use its monetary resources for personnel services or chooses which position are subject to a RIF. In this case, how Agency elected to reorganize internally was a management decision, over which neither OEA nor this Administrative Judge has any control.³⁵

Vacant Positions

Employee argues that there were vacant positions available that he should have been offered in lieu of being separated via the instant RIF. Pursuant to DPM § 2403.2, "[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" (emphasis added). Examples include filling vacancies with temporary employees to perform essential work, or contracting out such work, until the reduction in force takes place. Additionally, DPM §2405.2 provides that, "[p]ersonnel authorities and agencies may, in order to minimize the adverse impact of a reduction in force, offer a released employee a vacant position for which he or she qualifies" (emphasis added). These provisions give Agency the discretion to offer employees affected by a RIF vacant positions if available, but are not mandatory.

The undersigned finds Employee's claim that he should have been placed into one of the open positions in his old office unpersuasive. The mere fact that there may have been available positions within Employee's old department does not grant a right that he should be placed into one of those positions. Employee is only entitled to one round of lateral competition and there is

³⁰ Agency Answer, Exhibit 11.

³¹ Post Prehearing Conference Order (June 13, 2014); Employee Brief, p. 3 (September 3, 2014).

³² 729 A.2d 883 (December 11, 1998).

³³ The applicable RIF regulations are contained in D.C. Code §§1-624.08(d)-(f).

³⁴ *Anjuwan*, 729 A.2d at 885.

³⁵ *Gatson v. DCPS*, OEA Matter No. 2401-0166-09 (June 23, 2010).

no credible supporting documentation to show that any of these alleged positions were in Employee's competitive level.

Accordingly, I find that while Agency had the discretion to offer Employee and any other employees affected by the RIF vacant positions when implementing the instant RIF, *they were not required to do so* (emphasis added). While it is unfortunate that Agency had to release any employee as a result of budgetary constraints, there is nothing within the record that would lead the undersigned to believe that the RIF was conducted unfairly. In addition, this Office has previously held that it lacks jurisdiction to entertain any post-RIF activity, including hiring, which may have occurred at an agency.³⁶ I therefore, find that Agency did not abuse its discretion in not offering Employee a position after being separated via the instant RIF.

Collateral Issues

Employee asserts that Agency is not in compliance with the D.C. Public Records Act, which requires digital conversion of paperwork, by not filling the position of Director of Records Management. OEA has no jurisdiction to hear claims regarding the enforcement of the D.C. Public Records Act, which are collateral issues in terms of this RIF appeal. The undersigned reiterates the District of Columbia Court of Appeals' finding in *Anjuwan*,³⁷ which states that OEA lacks the authority to determine broadly whether the RIF violated any law except whether "the Agency has incorrectly applied...the rules and regulations issued pursuant thereto."³⁸

Further, Employee has failed to provide any statutory or case law requirement, nor any credible analysis showing how enforcement of the D.C. Public Records Act falls within the purview of this Office's jurisdiction. Even assuming *arguendo* that Agency was required to fill the position of Director of Records Management, this was not Employee's position at the time of the instant RIF, and thus has no impact on whether he received one round of lateral competition or thirty (30) days notice.

This Office has held that an "employee raising collateral issues when challenging a RIF does not confer additional authority upon [this] Office to enforce all laws and regulations, as such would clearly exceed both the limited statutory authority and jurisdiction of this Office."³⁹ Furthermore, OEA has long held that the jurisdiction for RIF appeals is limited to the authority granted by the plain language of the OPRAA statute, and particularly the specific provisions of D.C. Code §§1-624.08(d)-(e).⁴⁰

³⁶ *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).

³⁷ 729 A.2d 883.

³⁸ See also *Gilmore v. Board of Trustees of the University of the District of Columbia*, 695 A.2d 1164.

³⁹ *Scott-Gilchrist v. D.C. Department of Human Services*, OEA Matter No. 2401-0177-09.

⁴⁰ *Id.*

Employee's Tenure

Employee asserts that the Supreme Court ruled in *Cleveland Board of Education v. Loudermill*,⁴¹ that a tenured public employee is entitled to a pre-termination hearing and has a right to a full-scale adversarial post-termination hearing. However, this differs from Employee's case because he is currently appealing this matter under the provisions provided by D.C. statute and regulations. Additionally, pursuant to OEA Rule 619.2,⁴² an Administrative Judge can "require an evidentiary hearing, if appropriate." Additionally, OEA Rule 624.2 indicates that it is within the discretion of the Administrative Judge ("AJ") to either grant or deny a request for an evidentiary hearing based on whether or not the AJ believes that a hearing is necessary.⁴³ After reviewing the record, the undersigned has determined that there are no material facts in dispute and therefore, an evidentiary hearing has not been granted in this matter.

The undersigned also disagrees with Employee's assertion that D.C. Code §1-602.03(b) is applicable in this matter. This provision details the coverage for educational employees under the Merit Personnel System. However, this provision does not address Employee's rights in a RIF or how the applicable statutes in this matter, including D.C. §1-624.08, relates to Employee's separation via the instant RIF.

Grievances

Employee also argues that he was unfairly demoted in 2010, did not receive severance pay, and took issue with the assignment of his duties to interns. Generally, complaints of this nature are grievances, and do not fall within the purview of OEA's scope of review. Further, 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. 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 his claims elsewhere, but rather that OEA currently lacks the jurisdiction to hear Employee's other claims.

CONCLUSION

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

⁴¹ 470 U.S. 532 (1985).

⁴² 59 DCR 2129 (March 16, 2012); *See also* OEA Rule 619.2, 59 DCR 2129 (March 16, 2012).

⁴³ *See Gray-Avent v. D.C. Department of Human Resources*, OEA Matter No. 2401-0145-08, *Opinion and Order on Petition for Review* (July 30, 2010).

ORDER

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

FOR THE OFFICE:

STEPHANIE N. HARRIS, Esq.
Administrative Judge