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**THE DISTRICT OF COLUMBIA**

**BEFORE**

**THE OFFICE OF EMPLOYEE APPEALS**

_____	)	
In the Matter of:	)	
	)	
WILLIE SMITH,	)	
Employee	)	OEA Matter No. 2401-0289-09
	)	
v.	)	Date of Issuance: October 13, 2011
	)	
OFFICE OF PUBLIC EDUCATION	)	
FACILITIES MODERNIZATION,	)	
Agency	)	ERIC T. ROBINSON, Esq.
	)	Administrative Judge
_____	)	
Willie Smith, Employee <i>Pro-Se</i>		
Charles J. Brown, Jr., Esq., Agency Representative		

**INITIAL DECISION**

**INTRODUCTION AND PROCEDURAL BACKGROUND**

On September 24, 2009, Willie Smith (“Employee”) filed a petition for appeal with the Office of Employee Appeals (“OEA” or “the Office”) contesting the Office of Public Education Facilities Modernization’s (“OPEFM” or “the Agency”) action of abolishing his position through a Reduction-In-Force (“RIF”). The effective date of the RIF was September 21, 2009. At the time his position was abolished, Employee’s official position of record within the Agency was Maintenance – Plumber Helper. The Agency asserts that Employee’s entire competitive level and area was abolished.

I was assigned this matter on or around June 6, 2011. Thereafter, a prehearing conference was convened in order to assess the parties’ arguments. I then issued an Order dated July 1, 2011, wherein I required the Employee to address whether the Agency properly conducted the RIF in this matter. I decided that an evidentiary hearing was not required. 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.

### BURDEN OF PROOF

OEA Rule 629.1, 46 D.C. Reg. 9317 (1999) 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 629.3 *id.* states:

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

### FINDING OF FACTS, ANALYSIS, AND CONCLUSIONS

The following findings of facts, analysis, and conclusions of law are based on the documentary evidence presented by the parties during the course of the Employee's appeal process with this Office. Agency contends that it followed all applicable rules and regulations with respect to the instant matter. I find that in a RIF matter that I am guided primarily 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.

This Office has consistently held that when a separated employee is the only member of his/her competitive level or *when an entire competitive level is abolished pursuant to a RIF* (emphasis added by this AJ), “the statutory provision affording [him/her] one round of lateral competition was inapplicable.” *See, e.g., Fink v. D.C. Public Schools*, OEA Matter No. 2401-0142-04 (June 5, 2006), \_\_ D.C. Reg. \_\_ ( ); *Sivolella v. D.C. Public Schools*, OEA Matter No. 2401-0193-04 (December 23, 2005), \_\_ D.C. Reg. \_\_ ( ); *Mills v. D.C. Public Schools*, OEA Matter No. 2401-0109-02 (March 30, 2003), \_\_ D.C. Reg. \_\_ ( ). *See also Cabaniss v. Department of Consumer & Regulatory Affairs*, OEA Matter No. 2401-0156-99 (January 30, 2003), \_ D.C. Reg. \_\_ ( ). Based on the documents of record, I find that the entire unit in which Employee’s position was located was abolished. I further find that no further lateral competition efforts were required and that the Agency was in compliance with the lateral competition requirements of the law. I further find that Employee was properly afforded 30 days written notice prior to the abolishment of his position through a RIF.

According to *Anjuwan v. D.C. Department of Public Works*, 729 A.2d. 883 (12-11-98), the OEA’s authority over RIF matters is narrowly prescribed. The Court explained that the OEA does not have jurisdiction to determine whether the RIF at the Agency was bona fide or violated any law, other than the RIF regulations themselves. 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, the OEA no longer has jurisdiction over grievance appeals. Based on the above discussion, Employee has failed to proffer any credible evidence that would indicate that the RIF was improperly conducted and implemented. Employee’s other ancillary arguments are best characterized as grievances and outside of the OEA’s jurisdiction to adjudicate. That is not to say that Employee may not press his claims elsewhere, but rather that the OEA currently lacks the jurisdiction to hear Employee’s other claims. Based on the foregoing, I conclude that the Agency’s action of abolishing Employee’s position was done in accordance with all applicable laws, rules and regulations.

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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ERIC T. ROBINSON, ESQ.  
ADMINISTRATIVE JUDGE