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THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	OEA Matter No.: 2401-0111-10
JOHN FREIMAN,)	
Employee)	
)	Date of Issuance: July 12, 2012
v.)	
)	
DISTRICT OF COLUMBIA)	
PUBLIC SCHOOLS,)	
Agency)	STEPHANIE N. HARRIS, Esq.
_____)	Administrative Judge

John Freiman, Employee *Pro-Se*
W. Iris Barber, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On October 30, 2009, John Freiman (“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”) action of terminating his employment through a Reduction-in-Force (“RIF”). The effective date of the RIF was November 2, 2009. Agency listed Employee’s position of record at the time his position was abolished as Special Education Teacher at Coolidge Senior High School (“Coolidge”). Employee was serving in Educational Service status at the time he was terminated.

I was assigned this matter on February 6, 2012. On February 15, 2012, I ordered the parties to submit briefs on the issue of whether Agency conducted the instant RIF in accordance with applicable District laws, statues, and regulations (“February 15th Order”). On March 28, 2012, Employee requested an extension of time to file his brief, which was granted in an Order issued the same day. Both parties timely submitted briefs in response to the February 15th Order.

Thereafter, upon further review of the record, on June 15, 2012, the undersigned issued an Order directing Agency to submit a written brief by June 26, 2012, along with supporting documentation addressing Employee’s contention that he was placed in the wrong competitive level. On June 25, 2012, Agency orally requested an extension of time to file their brief. I issued an Order on June 29, 2012, granting Agency’s request for an extension of time. Agency timely submitted its brief on July 2, 2012. After reviewing the record, I have determined that there are no

material facts in dispute and therefore, a hearing is not warranted in this matter. 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 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:

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.

FINDINGS OF FACTS, ANALYSIS, AND CONCLUSIONS OF LAW

On September 10, 2009, former D.C. Public School Chancellor Michelle Rhee authorized a Reduction-in-Force ("RIF") pursuant to D.C. Code § 1-624.02, 5 DCMR Chapter 15, and Mayor's Order 2007-186. Chancellor Rhee stated that the RIF was necessitated for budgetary reasons, explaining that the 2010 DCPS fiscal year budget was not sufficient to support the current number of positions in the schools¹.

Although the instant RIF was authorized pursuant to D.C. Code § 1-624.02², which encompasses more extensive procedures, for the reasons explained below, I find that D.C. Official Code § 1-624.08 ("Abolishment Act") is the more applicable statute to govern this RIF.

¹ See *Agency's Answer*, Tab 1 (January 7, 2010).

² 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;

Specifically, 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 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.

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.”³ 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.”⁴

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- (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.

³ *Mezile v. District of Columbia Department on Disability Services*, No. 2010 CA 004111 (D.C. Super. Ct. February 2, 2012).

⁴ *Id.* at p. 5.

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."⁵ 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."⁶ 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."⁷

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.⁸ 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."⁹ 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."¹⁰

The Abolishment Act was enacted after § 1-624.02, and thus, is a more streamlined statute for use during times of fiscal emergency.¹¹ 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.

Employee's Position

In his Petition for Appeal, Employee states that he is "challenging the RIF on the grounds that DCPS failed to follow appropriate procedures as required by D.C. Code §1-624.08." Employee also lists his position title at the time of the instant RIF as a Special Education Teacher serving in the Educational Service and requests reinstatement of his teaching position.¹²

⁵ *Washington Teachers' Union, Local #6 v. District of Columbia Public Schools*, 960 A.2d 1123, 1125 (D.C. 2008).

⁶ *Id.*

⁷ *Id.*

⁸ *Id.* at 1125.

⁹ *Burton v. Office of Employee Appeals*, 30 A.3d 789 (D.C. 2011).

¹⁰ *Id.*

¹¹ *Mezile v. D.C. Department on Disability Services*, No. 2010 CA 004111 (D.C. Super. Ct. February 2, 2012).

¹² Petition for Appeal (October 30, 2009).

In his brief, Employee alleges that he was erroneously placed in the competitive level for Special Education Teachers, and should have been placed in the competitive level for Special Education Coordinators. In support of his contention that he was placed in the incorrect competitive level, Employee provided copies of paystubs from late August 2009 to early September 2009 showing his job title as Special Education Coordinator. He also submits paystubs from early August 2009, which show his job title as Special Education Teacher. He further acknowledges that he was on administrative leave and did not teach in the classroom from March 2009 until the effective date of the RIF on November 2, 2009. Additionally, Employee alleges that “there is no basis for the CLDF since there had been no communication, observation, or evaluation by school administrators from May 2008 up to the RIF date.” He also claims that the “new principal had no objective data to base the CLDF” and provides a detailed rebuttal to the comments presented in his CLDF.¹³

Agency’s Position

Agency submits that it conducted the RIF in accordance with the District of Columbia Municipal Regulations and the D.C. Official Code by affording Employee one round of lateral competition and thirty (30) days written notice prior to the effective date of his termination. Agency further maintains that it utilized the proper competitive factors in implementing the RIF and that the lowest ranked Special Education Teacher, Employee, was terminated as a result of the round of lateral competition.¹⁴

In response to Employee’s contention that he was placed in the incorrect competitive level, Agency asserts that Employee never worked as a Special Education Coordinator at Coolidge and was in fact being paid as a Special Education Teacher. Agency provides Employee’s Standard Form 50 (“SF-50”) at the time of the instant RIF, which lists Employee’s position as Special Education Teacher.¹⁵

Analysis

Under Title 5 DCMR § 1501.1, the Superintendent of DCPS Schools is authorized to establish competitive areas when conducting a RIF so long as those areas are based “upon all or a clearly identifiable segment of the mission, a division or a major subdivision of the Board of Education, including discrete organizational levels such as an individual school or office.” For the 2009/2010 academic school year, former DCPS Chancellor Rhee determined that each school would constitute a separate competitive area. In accordance with Title 5, DCMR § 1502.1, competitive levels in which employees subject to the RIF competed were based on the following criterion:

1. The pay plan and pay grade for each employee;
2. The job title for each employee; and

¹³ Employee Brief (April 11, 2012).

¹⁴ Agency Brief (March 7, 2012).

¹⁵ Agency Brief Addressing Employee Competitive Level (July 2, 2012).

3. In the case of specialty elementary teachers, secondary teachers, middle school teachers and teachers who teach other specialty subjects, the subject taught by the employee.¹⁶

Here, Coolidge was identified as a competitive area, and Special Education Teacher was determined to be the competitive level in which Employee competed. According to the Retention Register provided by Agency, there were eleven (11) Special Education Teacher positions subject to the RIF. Of the eleven (11) positions, one (1) position was identified to be abolished.

In response to Employee's contention that he was placed in the incorrect competitive level, I find that Employee was properly placed in the Special Education Teacher competitive level. Employee's pay stub documentation displays the following pay period ending dates and position titles: August 1, 2009-Special Education Teacher; August 15, 2009-Special Education Teacher; August 29, 2009-Special Education Coordinator; September 12, 2009-Special Education Coordinator.¹⁷ While Employee is correct in his assertion that coordinators could not be assigned to the same competitive level as classroom teachers, he has failed to provide any credible evidence that he *actually* worked as a Special Education Coordinator.¹⁸ By his own admission, Employee states that he was on administrative leave and did not work at Agency from March 2009 through the RIF effective date of November 2, 2009.¹⁹ Additionally, Employee stated in his Petition for Appeal that his position at the time of the instant RIF was Special Education Teacher, which is also corroborated by his SF-50 showing his separation via the instant RIF.²⁰ Further, at the time Employee was placed on administrative leave in March 2009, his position was listed as an ET-15 Teacher at Coolidge, which corresponds with the SF-50 and Retention Register submitted by Agency, which lists Employee as a grade level fifteen (15) teacher.²¹ Moreover, the paystubs showing Employee's position as a Special Education Coordinator in August and September 2009, occurred during the start of the 2009/2010 school year, and as stated above, Employee was still on administrative leave and did not perform any teaching or coordinating duties for Agency.²²

The undersigned further finds that despite there being a discrepancy in the titles listed in Employee's payroll records, the SF-50 at the time of the instant RIF provides a more accurate picture of Employee. In *Grigsby v. U.S. Department of Commerce*,²³ the Federal Circuit has held that an SF-50 may be used in determining employment status, as it is an official personnel document issued by Agency. Further, an Employee's job title was only one of the factors used to determine an employee's competitive level; the pay plan, grade, and the subject taught by the

¹⁶ Agency Brief at pp. 2-3 (March 7, 2012). School-based personnel constituted a separate competitive area from nonschool-based personnel and are precluded from competing with school-based personnel for retention purposes.

¹⁷ See Employee Brief at pp. 5-8 (April 11, 2012).

¹⁸ See Agency Answer, Tab 1 (December 9, 2009).

¹⁹ See Employee Brief at pp. 1-4 (April 11, 2012).

²⁰ See Petition for Appeal at p. 2; Agency Brief Addressing Competitive Level, Exhibit B (July 2, 2012).

²¹ See Employee Brief at p. 4 (April 11, 2012); Brief Addressing Competitive Level, Exhibit B (July 2, 2012).

²² See Employee Brief at pp. 1-4 (April 11, 2012).

²³ 729 F.2d 772, 776 (Fed. Cir. 1984).

employee were also considered.²⁴ Thus, in light of all of the evidence of record, I find that Employee was properly placed in the Special Education Teacher competitive level.

Since Employee was not the only Special Education Teacher within his competitive level, he was required to compete with other employees in one round of lateral competition.

According to Title 5, DCMR § 1503.2 *et al.*:

If a decision must be made between employees in the same competitive area and competitive level, the following factors, in support of the purposes, programs, and needs of the organizational unit comprising the competitive area, with respect to each employee, shall be considered in determining which position shall be abolished:

- (a) Significant relevant contributions, accomplishments, or performance;
- (b) Relevant supplemental professional experiences as demonstrated on the job;
- (c) Office or school needs, including: curriculum, specialized education, degrees, licenses or areas of expertise; and
- (d) Length of service.

Based on § 1503.1, Agency gave the following weights to each of the aforementioned factors when implementing the RIF:

- (a) Office or school needs, including: curriculum, specialized education, degrees, licenses or areas of expertise - (75%)
- (b) Significant relevant contributions, accomplishments, or performance – (10%)
- (c) Relevant supplemental professional experiences as demonstrated on the job – (10%)
- (d) Length of service – (5%)²⁵

²⁴ See Agency Answer, Tab 1 (December 9, 2009).

²⁵ It should be noted that OEA has consistently held that DCPS is allowed discretion to accord different weights to the factors enumerated in 1503.2. Thus, Agency is not required to assign equal values to each of the factors. See *White v. DCPS*, OEA Matter No. 2401-0014-10 (December 30, 2001); *Britton v. DCPS*, OEA Matter No. 2401-0179-09 (May 24, 2010).

Agency argues that nothing within the DCMR, applicable case law, or D.C. Official Code prevents it from exercising its discretion to weigh the aforementioned factors as it sees fit.²⁶ Agency cites to *American Federation of Government Employees, AFL-CIO v. OPM*, 821 F.2d 761 (D.C. Cir. 1987), wherein the Office of Personnel Management was given “broad authority to issue regulations governing the release of employees under a RIF...including the authority to reconsider and alter its prior balance of factors to diminish the relative importance of seniority.” I agree with this position and find that Agency had the discretion to weigh the factors enumerated in 5 DCMR 1503.2, in a consistent manner throughout the instant RIF.

Competitive Level Documentation Form

Agency employs the use of a Competitive Level Documentation Form (“CLDF”) in cases where employees subject to a RIF must compete against each other in lateral competition. In conducting the instant RIF, the principal of Coolidge was given discretion to assign numerical values to the first three factors enumerated in Title 5, DCMR § 1503.2, *supra*, as deemed appropriate, while the “length of service” category was completed by the Department of Human Resources (“DHR”).

Employee received a total of ten (10) points on his CLDF, and was, therefore, ranked the lowest Special Education Teacher in his respective competitive level. Employee’s CLDF stated, in pertinent part, the following:

“Mr. Freiman is punctual which is the minimal expectation of all staff members. Mr. Freiman does not meet the needs of the school primarily because he fails to model appropriate professional behavior. He does not interact positively with students...Additionally, Mr. Freiman is unable to manage the behavior of his students. The administration often intervenes with behavior issues. Mr. Freiman fails to develop classroom routines and procedures that would minimize disruptions and maximize learning. Mr. Freiman does not create an environment that is conducive to learning. Students often walk out of class and the environment is very disruptive. Mr. Freiman fails to follow the goals outlined in his students’ IEP. Students in his class are not engaged in learning because they are often working far beyond their cognitive levels, leaving them frustrated and confused. Mr. Freiman does not use data to inform instruction and rarely uses re-teaching strategies for students who have difficulty learning the concepts taught. Mr. Freiman does not make an effective contribution to the school. Mr. Freiman has not participated in professional development and training outside of the local school.”²⁷

²⁶ Agency Brief at pp. 4-5 (March 7, 2012).

²⁷ Agency Answer, Tab 3 (December 9, 2009).

Needs of the School

Employee received a total of one (1) point out of a possible ten (10) points in this category, resulting in a weighted score of seven and a half (7.5) points; a score much lower than the other employees within his competitive level who were retained in service.²⁸ This category is weighted at 75% on the CLDF and accounts for any factor that may have an impact on the success of the school or the achievement of the students at school. Some of the factors used in consideration for this category include: student learning skills, training, experience, school culture contributions, teaching and learning framework, leadership roles, licensure or certifications, and advanced degrees that pertain specifically to the needs of the school.

Employee alleges that there is no basis for his CLDF since there had been no communication, observation, or evaluation by school administrators. He also claims that the new principal of Coolidge had no objective data to base the comments in his CLDF. However, Employee has failed to provide credible evidence that would bolster a score in this area. The undersigned further notes that the criteria Agency instructed principals to use in ranking employees did not require a formal observation of employees.²⁹ Specifically, in the Needs of the School category, principals were instructed to assign scores “reflect[ing] [the] best judgment of the extent to which the person meets the particular needs of [the] school.”³⁰ Further, while principals were instructed not to consider the fact that a staff member was out on approved leave in their rating process, Agency noted that approved leave status would not protect a staff member from getting a low rating if it was based on examples of activities when the staff member was present in the school. In this case, I find that the principal of Coolidge, had wide latitude to invoke her managerial discretion in assessing Employee in this category.

Relevant significant contributions, accomplishments, or performance

Employee received zero (0) points in this category, which is weighted at 10% on the CLDF. This category evaluates any clear, significant contributions made by employees, above what would normally be expected of an employee in his or her competitive level. Employee has not provided any supplemental evidence suggesting that he should have earned a higher score in this category.

Relevant supplemental professional experiences as demonstrated on the job

Employee also received zero (0) points in this category, which is weighted at 10% on the CLDF, and awards points to employees for any additional training or professional experiences outside standard training required by Agency or required to maintain licensure; and application of said training or experience at the school in a way that positively impacted student or school performance. Employee has not provided any documentation to supplement additional points being awarded in this area.

²⁸ Agency Brief, Exhibit A, Retention Register (March 7, 2012).

²⁹ Agency Answer, Tab 2, Attachment B (December 9, 2009).

³⁰ *Id.*

Length of service

This category, which was completed by DHR, includes credit for years of service, District residency, veterans' preference, and prior outstanding or exceeds expectation performance rating within the past year. Employees were granted an additional five (5) years of service for D.C. residency, four (4) years of service for veterans' preference, and four (4) years of service for performance evaluations of 'outstanding' or 'exceeds expectations' for the last school year.³¹ The length of service calculation, in addition to the other factors, were weighted and added together, resulting in a ranking for each competing employee.

Here, the record shows that Employee's tenure with DCPS began in 2002, resulting in seven (7) years of service being credited in this category.³² He received zero (0) points for D.C. residency, veterans preference, and outstanding' or 'exceeds expectations' performance evaluations. The record shows that Employee resided in Maryland during the instant RIF.³³ Employee states that she received a 'meets expectation' rating for the 2008/2009 school year performance evaluation.³⁴ Employee received a total weighted score of two and a half (2.5) points in this category. Further, Agency has provided an affidavit from Peter Weber, who served as the Interim Director of Human Resources during the time of the instant RIF.³⁵ Mr. Weber states that he was responsible for computing employees' length of service for the instant RIF and used the DHR official Peoplesoft system to obtain data for the calculations, which appear in Employee's CLDF. Employee has not specifically contested the points awarded in this category and a review of Employee's personnel file does not reveal any evidence that would necessitate a recalculation of the points awarded in this category.³⁶ Therefore, based on the evidence of record, I find that Agency properly calculated this number.

While Employee has provided a detailed rebuttal to the comments in his CLDF, he has not proffered any statutes, case law, or other regulations to refute Agency's position regarding the principal's authority to utilize discretion in completing an employee's CLDF during the course of the instant RIF. In *Washington Teachers' Union Local No. 6, Am. Fed'n of Teachers, AFL-CIO v. Bd. of Educ. of the Dist. of Columbia*,³⁷ the D.C. Court of Appeals, in evaluating several union arguments concerning a RIF, stated that "school principals have total discretion to rank their teachers" and noted that performance evaluations are "subjective and individualized in nature."³⁸ Further, there is no indication that any supplemental evidence would supplant the higher scores received by the remaining employees in Employee's competitive level who were not separated from service. This Office cannot substitute its judgment for that of the principal at Coolidge, who was given discretion to complete Employee's CLDF and had wide latitude to invoke her managerial discretion.

³¹ Agency Answer, Tab 2, Attachment B at p. 4 (December 9, 2009).

³² See Agency Brief, Employee Personnel File (March 7, 2012).

³³ *Id.*; see also Agency Answer, Tab 4 (December 9, 2009).

³⁴ See Employee Brief (April 11, 2012).

³⁵ Agency Brief, Exhibit B (March 7, 2012).

³⁶ *Id.*, Employee Personnel File.

³⁷ 109 F.3d 774 (D.C. Cir. 1997).

³⁸ See also *American Fed'n of Gov't Employees, AFL-CIO v. Office of Pers. Mgmt.*, 821 F.2d 761, 765 (D.C. Cir. 1987) (noting that the federal government has long employed the use of subjective performance evaluations to help make RIF decisions).

According to the CLDF, Employee received a total score of ten (10) points after all of the factors outlined above were tallied and scored. The next lowest scoring Special Education Teacher, who remained in service with Agency, received a total score of eighteen (18). Employee has not proffered any evidence to suggest that a re-evaluation of his CLDF scores would result in a different outcome in this case.³⁹

Moreover, the primary responsibility for managing and disciplining Agency's work force is a matter entrusted to the Agency, not to OEA.⁴⁰ This Office will not substitute its judgment for that of an agency when determining whether a penalty imposed against an employee should be sustained. Rather, this Office limits its review to determining if “managerial discretion has been legitimately invoked and properly exercised.”⁴¹ Accordingly, I find that the Principal of Coolidge had discretion in completing Employee’s CLDF, as she was in the best position to observe and evaluate the criteria enumerated in DCMR §1503.2, *supra*, when implementing the instant RIF. Therefore, I find that Agency did not abuse its discretion in completing the CLDF, and Employee was properly afforded one round of lateral competition as required by D.C. Official Code § 1-624.08.

Thirty (30) Days Written Notice

Title 5, §1506 of the DCMR provides the notice requirements that must be given to an employee affected by a RIF. Section 1506.1 states that “an employee selected for separation shall be given specific written notice at least thirty (30) days prior to the effective date of the separation. The notice shall state specifically what action is taken, the effective date of the action, and other necessary information regarding the employee’s status and appeal rights.” Additionally, the D.C. Official Code § 1-624.08(e) which governs RIFs provides that an Agency *shall* (emphasis added) give an employee thirty (30) days notice *after* such employee has been *selected* (emphasis added) for separation pursuant to a RIF.

Here, the record shows that Employee received his RIF notice on October 2, 2009, and the RIF effective date was November 2, 2009.⁴² The RIF notice states that Employee’s position was eliminated as part of a RIF. The RIF notice also provided Employee with information about his appeal rights. Further, Employee has not alleged that he did not receive thirty (30) days notice prior to the effective date of the RIF. Accordingly, I find that Employee was given the required thirty (30) days written notice prior to the effective date of the RIF.

CONCLUSION

Based on the foregoing, I find that Employee’s position was abolished after he properly received one round of lateral competition and a timely thirty (30) day legal notification was

³⁹ See *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) (stating that a material fact is one which might affect the outcome of the case under governing law.)

⁴⁰ 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).

⁴¹ See *Stokes v. District of Columbia*, 502 A.2d 1006, 1009 (D.C. 1985).

⁴² Agency Answer, Tab 4 (December 9, 2009).

properly served. I therefore conclude that Agency's action of abolishing Employee's position was done so in accordance with D.C. Official Code § 1-624.08 and the Reduction-in-Force which resulted in his removal is upheld.

ORDER

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

FOR THE OFFICE:

STEPHANIE N. HARRIS, ESQ.
ADMINISTRATIVE JUDGE