THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	OEA Matter No.: 2401-0040-12
CHARLES JOLLEY,	)	
Employee	)	
	)	Date of Issuance: May 7, 2014
v.	)	
	)	
D.C. DEPARTMENT OF MENTAL HEALTH,	)	
Agency	)	
	)	
	)	Arien P. Cannon, Esq.
	)	Administrative Judge

Charles Jolley, Employee, *Pro se*
Lindsay M. Neinast, Esq., Agency's Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

Charles Jolley ("Employee") filed a Petition for Appeal with the Office of Employee Appeals ("OEA" or "Office") on December 16, 2011, challenging a Reduction-in-Force ("RIF") conducted by the Department of Mental Health ("Agency"). At the time Employee's position was abolished pursuant to the RIF, he was an Information Technology Specialist (Customer Service Support) with Agency.[1] Agency filed its Answer on January 19, 2012. I was assigned this matter on August 8, 2013.

A Prehearing Conference was held on November 19, 2013; thereafter, a Post-Prehearing Conference Order was issued which required the parties to address which RIF statute should be applicable in the instant case, D.C. Code § 1-624.02 or § 1-624.08. Employee was also required to assert why he believed his one round of lateral competition was defective. Both parties submitted their briefs accordingly. In Employee's brief, he argued that he should not have been the only individual in his competitive area and he provided another Agency employee's name that he believed should have been in his competitive area for one round of lateral competition. Subsequently, Agency was ordered to provide the pertinent information on the individual whom Employee believed should have been included in his competitive area. Agency responded to this order accordingly. Based on the submissions by the parties, an Evidentiary Hearing is not warranted in this matter. The record is now closed.

[1] *See* Petition for Appeal (December 16, 2011); *See also* Agency's Response to Petition for Appeal, Tab 2, 3, and 5 (January 19, 2012).

JURISDICTION

This Office has jurisdiction in this matter pursuant to D.C. Official Code § 1-606.03 (2001).

ISSUE

Whether Agency complied with the applicable laws, rules, and regulations in implementing the RIF.

FINDING OF FACTS, ANALYSIS AND CONCLUSIONS OF LAW

In *Washington Teacher's Union v. DCPS*[2], the Court of Appeals held that the Abolishment Act procedures (D.C. Code § 1-624.08) applied to the RIF in that case because the RIF was imposed for budgetary reasons, rather than the general RIF provisions (D.C. Code § 1-624.02) of the Comprehensive Merit Protection Act. In *Washington Teacher's Union*, the Court stated that the RIF effectuated by the Board of Education was authorized for budgetary reasons, to ensure balanced budgets rather than deficits; to "maintain fiduciary responsibility"; and to "address and eliminate a longstanding structural budgetary problem." Based on the justification of the RIF in that case (budgetary reasons), the Court found that the RIF triggered the Abolishment Act provisions (D.C. Code § 1-624.08). D.C. Code § 1-624.08 plainly limits the procedural protections to which an employee is to entitled when they are affected by a RIF.[3] These procedures include: (1) one round of lateral competition…limited to the positions in the employee's competitive level; (2) written notice of at least 30 days before the effective date of the RIF; and (3) rights under either the Agency Reemployment Priority Program or the Displaced Employee Program.

Here, the Administrative Order which authorized Agency to conduct a RIF was "as a result of a realignment in the Mental Health Authority."[4] The order does not provide any mention of budgetary reasons for the RIF, nor does Agency's letter notifying Employee that he was being subjected to the RIF provide mention of any budgetary reasons. Despite the contention by both parties that D.C. Official Code § 1-624.08 is applicable here, I find that D.C. Official Code § 1-624.02 is the more appropriate provision to govern the RIF effectuated in this appeal.

A RIF pursuant to D.C. Official Code § 1-624.02 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;

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[2] *See* 960 A.2d 1123 (D.C 2008).
[3] *Id.*
[4] *See* Agency's Response to Petition for Appeal, Tab 2 (January 19, 2012).

(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

One round of lateral competition

The prescribed order mentioned in subsection (1) above is for the purpose of developing a Retention Register so that employees may be afforded one round of lateral competition when an agency intends to effectuate a RIF. The factors mention in subsection (1) above shall determine the retention standing of each competing employee. Together these factors shall determine whether an employee is entitled to compete with other employees for employment retention and, if so, with whom, and whether the employee is retained or released. According to the District Personnel Manual ("DPM"), assignment to a competitive level shall be based upon an employee's position of record. *See* 6-B DCMR § 2410.2. Additionally, the DPM specifies that competitive levels shall include positions in the same grade (or occupational level) and classification series, and which are sufficiently alike in qualifications requirements, duties, responsibilities, and working conditions so that the incumbent of one (1) position could successfully perform the duties and responsibilities of any of the other positions without any loss of productivity beyond that normally expected in the orientation of any new but fully qualified employee. *See* 6-B DCMR § 2410.4.

Here, Employee argues that Soammes Williams, another employee at Agency, should have been included in the one round of lateral competition to determine which employee Agency should have retained, and which employee Agency should have released, pursuant to the RIF.[5] At the time of the RIF in this case, Mr. Williams occupied the position number 0165335, series 2210, grade 12, Information Technology Specialist (System Administration) position.[6] This position contained the competitive level code of "DS-2210-12-06-N." Employee's position of record at the time of the RIF was Information Technology Specialist (Customer Service Support), with a competitive level code of "DS-2210-12-05-N."[7]

DPM section 2411.2[8] provides that employees whose official position description have the same title, series, and grade, but who have specialties which are identified on their position descriptions by parenthetical titles in accordance with applicable classification standards, shall be assigned to separate competitive levels. Here, Employee and Mr. Williams both held the position of Information Technology Specialist. However, their positions were differentiated by the description in parenthesis. Employee's title is followed by "CUSTSPT", whereas Mr. Williams' title is followed by "System Admin."[9] Thus, Employee was not entitled to compete with Mr. Williams pursuant to the applicable D.C. Personnel Regulations. *See* 6-B DCMR §§

[5] *See* Employee's Brief at 3 (January 15, 2014).
[6] *See* Agency's Brief, Attachment A, p. 2-3 (February 25, 2014).
[7] *See* Agency's Response to Petition for Appeal, Tab 1 (January 19, 2012).
[8] 6-B DCMR § 2411.2
[9] "CUSTPST" is an abbreviation for "Customer Service;" "System Admin." is an abbreviation for "System Administration." *See* Agency's Brief at 2 (February 25, 2014).

2410.2, 2408.1. As provided in the Retention Register, Employee was the only individual who occupied his competitive level.[10] Therefore, the requirement under D.C. Code § 1-624.02(2) for one round of lateral competition is inapplicable in the instant case.

Priority Reemployment Consideration

D.C. Code § 1-624.02(a)(3) provides that employees separated pursuant to a RIF shall be given consideration for priority reemployment. In the RIF Notice, Agency states, "[e]mployees in tenure group I and II who have received a notice of separation by reduction in force have a right to priority placement consideration through the Agency Reemployment Priority Program."[11] Thus, it is clear that Agency complied with the RIF procedure to consider Employee for priority reemployment.

Consideration of job sharing and reduced hours

Under D.C. Code § 1-624.02(a)(4) and DPM Section 2404, when a RIF is effectuated, an Agency *may* consider job sharing and reduced hours for employees separated pursuant to the RIF. The DPM addresses Agency's responsibility for considering job sharing and reduced working hours. Specifically, DPM section 2404.1 provides:

> An employee *may* be assigned to job sharing or reduced working hours, provided the following conditions are met:
>
> (a) The employee is not serving under an appointment with specific time limitation; and
>
> (b) The employee has voluntarily requested such an assignment in response to agency's request for volunteers for the purpose of considering the provisions of subsection 2403.2(a) of this chapter in order to preclude conducting, or to minimize the adverse impact of, a reduction in force.

DPM section 2403.2 provides that, "[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." An example given for an action that could minimize the adverse impact on an employee is "job sharing and reduced working hours."[12] DPM section 2403.2 *does not require* an Agency to make certain considerations prior to planning a RIF, rather it gives Agency the discretion to implement various actions that may mitigate the adverse impact on employees or the agency in anticipation of effectuating a RIF. Here, it is apparent that Agency elected not to request volunteers for the purpose of considering job sharing and reduced working hours. Thus, I find that Agency did not violate the RIF procedures and regulation under D.C. Code § 1-624.02(4).

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[10] *See* Agency's Response to Petition for Appeal, Tab 3 (January 19, 2012).
[11] *Id.* at Tab 4.
[12] *See* DPM Section 2403.2(a).

Employee appeal rights

D.C. Code § 1-624.02(a)(5) provides Agency must provide employees, separated pursuant to a RIF, their appeal rights. Here, in the RIF Notice issued to Employee on November 1, 2011, Agency clearly provides that Employee may "appeal this action to the Office of Employee Appeals…" Agency also provides that Employee may appeal the RIF "no later than 30 calendar days after the effective date of [the RIF]." While it should be noted that Employee refused to sign the RIF Notice, he does not contend that he was not afforded his appeal rights. Thus, I find that Agency properly afforded Employee his appeal rights. Accordingly, I find that Agency has complied with all applicable laws, rules, and regulations in implementing the RIF.

ORDER

Based on the foregoing, it is hereby **ORDERED** that Agency's decision to separate Employee pursuant to the RIF is **UPHELD**.

FOR THE OFFICE:

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Arien P. Cannon, Esq.
Administrative Judge