THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	
LINDA D. QUATTLEBAUM	**OEA Matter No. 2401-0028-05**
DIANNE PAYNE	**OEA Matter No. 2401-0029-05**
MONIQUE SMITH	**OEA Matter No. 2401-0030-05**
THEODORA M. BUTLER	**OEA Matter No. 2401-0031-05**
BERNADETTE LEE	**OEA Matter No. 2401-0032-05**
ARETHA HOLLAND	**OEA Matter No. 2401-0033-05**
NORLETTA JONES	**OEA Matter No. 2401-0034-05**
MICHAEL NANCE	**OEA Matter No. 2401-0035-05**
Employees	
	Date of Issuance: March 24, 2006
v.	
	Rohulamin Quander, Esq.
DISTRICT OF COLUMBIA	**Senior Administrative Judge**
DEPT. OF EMPLOYMENT SERVICES	
Agency	

Lathal Ponder, Esq., Employees Representative
Thelma Chichester Brown, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION

Between March 10, and 11, 2005, each of the above-noted Employees filed eight separate Petitions for Appeal with the Office of Employee Appeals (the "Office"), challenging the D.C. Department of Employment Services' (the "Agency") final decision separating them from government service pursuant to a reduction-in-force ("RIF"). The eight matters were assigned to me. I conducted eight separate Prehearing Conferences on October 5, and 11, 2005, and advised each party that I was considering joining all of the claims into one unified matter. Each of the parties respectively agreed that the cases

should be consolidated due to the identical nature of both the central issue and the various alleged Agency errors that were committed prior to the RIF. On October 6, 2005, I issued an Order joining all of the cases into one proceeding, pursuant to OEA Rule 612, 46 D.C. Reg. 9305 (1999).

During each of the initial Prehearing Conferences, counsel for Employees indicated that he wished to conduct discovery and anticipated requesting the production of documents incidental to the RIF. Therefore, the above-noted Order issued on October 6, 2005, also provided for Agency and the Employees' respective representatives to conduct discovery. On October 12, 2005, Employees filed *Employees' First Set Of Interrogatories* and *Employees' Request for Production of Documents*, with an anticipated response from Agency within 30 days.

Agency did not substantively respond to the interrogatories or provide the documents requested. Instead, on October 27, 2005, Agency filed *Agency's Motion to Dismiss For Lack Of Jurisdiction.* Agency asserted that the jurisdiction of the Office in RIF matters is limited to the authority granted to it by the governing law, enumerated at D.C. Code § 1-624.08 (2001) and implementing regulations set forth in Chapter 24 of the District Personnel Manual, 32 D.C. Reg. 1182 (3/1/85), as amended, and pursuant to Administrative Order DOES-2005-1, dated November 29, 2004, under which authority this RIF was conducted. Agency maintained that the key issues in the RIF were whether the Employees herein received 30-day notices of their respective RIFs and likewise also received one round of lateral competition within each Employee's competitive level, unless that individual(s) happened to be a member of a single person competitive unit, in which latter case, there was no right to receive the single round of lateral competition.

Agency further resisted the interrogatories and request for documents, by asserting that this Office has no jurisdiction to address every claimed wrong or to enforce every perceived violation of the RIF law if to do so specifically exceeds the narrowly prescribed jurisdiction granted under the law. Despite having previously declined to answer Employees' interrogatories, on December 5, 2005, Agency filed a limited response to the 13 interrogatories, i.e., *Agency's Response To Interrogatories*, the nature of which response reinforced Agency's earlier position in this matter.

Employees' interrogatories were essentially the same for all eight cases, and posed questions concerning: a) the procedures used to select the employees subject to the RIF; b) the names of all individuals involved in the decision to RIF employees and the input each of them had in reaching that decision; c) the reason the RIF was necessary; d) the list of all employees in tenure groups I and II who received a RIF notice on or about January 3, 2005; e) whether any of the above-referred to employees was rehired; f) whether Agency has hired any employees since the RIF lists were issued, and if so, describe in detail what positions they occupy and in what departments; g) the details of any conversations between Agency and DC Department of Human Services personnel, stating the names and titles of the individuals involved in said conversations; h) a list of the names of all employees in tenure groups I and II who did not receive separation by RIF notices, and requesting in detail why they did not receive a notice; i) whether the

position of Claims Examiner was abolished, and if not, state who remained in said position and the reason why they remained in that position; j) whether the above-named Employees were considered for other agency wide positions prior to the RIF, and if not why not, and if so, state for what position(s) they were considered; and k) whether city residency and veteran's preferences were used in the decision to RIF selected employees.

I convened a Status Conference on January 24, 2006, to receive the parties' respective oral arguments on the issue of discovery. At that time Agency elected to renew its *Motion to Dismiss for Lack of Jurisdiction*, which had previously been filed with this AJ on October 27, 2005. Agency underscored that clearly its motion should be granted, because, now that the nature of Employees' discovery efforts was fully unfurled, it was abundantly clear that whatever information Employees were seeking to obtain as a result of their discovery efforts were all outside of the jurisdiction of this Office to address.

Agency further emphasized that its initially staked position as recited in several of its responses to the interrogatories was still correct, and that, pursuant to the provisions and limitation imposed by D.C. Code, § 1-624.08, the Motion to Dismiss should be granted. In a nutshell, those positions were: a) that the subject matter of the particular enumerated interrogatories in question were outside of the jurisdictional mandate of this Office; b) the information sought to be obtained was irrelevant; c) the information sought was not reasonably calculated to lead to the discovery of any admissible evidence for these proceedings; and d) the information sought was overly broad, vague, and unduly burdensome to provide.

Since this case could be decided based upon the documents of record, no additional proceedings were conducted. The record is closed.

JURISDICTION

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

ISSUE

Whether Agency's action separating Employees pursuant to a RIF was conducted in accordance with applicable law, rule or regulation.

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS

In accordance with D.C. Official Code § 1-624 *et seq.* (2001) and the implementing regulations set forth at Chapter 24 of the District Personnel Manual, 32 D.C. Reg. 1182 (3/1/85) as amended, and pursuant to Administrative Order DOES-2005-1, dated November 29, 2004, the D.C. Department of Employment Services (the "Agency") established lesser competitive areas for conducting its RIF of 40 identified positions. Pursuant to the Administrative Order, the positions encumbered by the

Employees were all identified for abolishment. All of the Employees herein were employed by the Agency as career service employees at the time of the RIF.

Employee Linda D. Quattlebaum was an Unemployment Compensation Claims Examiner, DS-994/09. Employee Dianne Payne was an Unemployment Compensation Claims Examiner, DS-994/07. Employee Monique Smith was a Contact Representative, DS-962/06. Employee Theodora Butler was a Manpower Development Specialist, DS-142/11. Employee Bernadette Lee was a Claims Examiner, DS 994/09. Employee Aretha Holland was a Manpower Development Specialist, DS-142/07. Employee Norletta Jones was an Unemployment Compensation Claims Examiner, DS-994-09. Employee Michael Nance was an Unemployment Compensation Claims Examiner, DS-994/07.

On or about January 3, 2005, each Employee received a detailed letter of final action from the Agency, advising them that, effective February 11, 2005, their employment positions of record were being abolished due to a RIF. In addition to the above, the letter also provided to each of the Employees: a) a listing of their respective competitive area and competitive level, tenure group and RIF service computation dates; b) the location where the official regulations and records pertinent to their respective cases may be reviewed; c) the Employee's appeal rights; and d) information concerning priority placement consideration. Providing this information was in compliance with the requirements of 6 DCMR 2423 (2002).

In their respective Petitions for Appeal, during the Prehearing and Status Conferences, and subsequently in documents filed by Employees' counsel, they raised several alleged Agency procedural errors incidental to the RIF, none of which challenged the Employee's right to one round of lateral competition within his or her own respective competitive level and at least a 30-day notice.

In response to Employees' assertions, the Agency denied that it had committed any violations, but reemphasized that the Office's jurisdiction is clearly stated by the provisions of D.C. Official Code § 1-624.08 (d) and (e) (2001), and limited to determining whether the Employees have each received one round of lateral competition for positions in each Employee's respective competitive level, and at least 30 days prior written notice before the effective date of his or her separation.

Although the RIF statute has been amended a number of times, the controlling language addressing the abolishment of positions for fiscal year 2000 and subsequent years has not changed, and the above-noted provisions have remained intact since FY 98. The Omnibus Personnel Reform Amendment Act of 1998 ("OPRAA") amendments clearly provided that RIFed employees are entitled to one round of lateral competition within his/her competitive level and 30 days' advance notice of the effective day of the RIF. Therefore, an employee's appeal rights to this Office are limited to allegations that s/he was not afforded the mandated one round of competitive-level lateral competition and/or that s/he was not given the required 30-day notice. Of specific relevance to this case are D.C. Official Code § 1-624.02, which tracks OPRAA § 101(x). This section reads in pertinent part as follows:

§ 1-624.02. Procedures.

> (a) Reduction-in-force procedures shall apply to the Career . . . [Service] and shall include:
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> . . . .
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> (2) One round of lateral competition limited to positions within the employee's competitive level.
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> . . . .
>
> (5) Employee appeal rights.
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> . . . .
>
> (d) A reduction-in-force action may not be taken until the employee has been afforded at least 30 days advance notice of such an action.[1] The notification required by this subsection must be in writing and must include information pertaining to the employee's retention standing and appeal rights.

Employees have not alleged that Agency violated their right to a single round of lateral competition within their respective competitive levels, or that they were denied at least 30 days advance written notice prior to the effective date of the RIF. The allegations which they do make are all pre-RIF, and outside of the scope of my jurisdiction over RIF appeals, pursuant to § 144(b) of District of Columbia Appropriations Act of 1999 (the DCAA-99), which is codified at D.C. Official Code § 1-624.08 (2001). Therefore, I find that Employees have made no claim of relief cognizable before this Office. The actions separating them must be upheld.

The issue of whether pre-RIF conditions at an employee's former agency can be addressed by this Office has been raised previously, and likewise long ago decided. In *In the Matter of Teteja*, 2405-0013-91, (7-2-92), 39 D.C.Reg. 7213, a seminal case in the subject area, the Temporary Appeals Panel (the "TAP") determined that the TAP does not have jurisdiction to hear a claim of a prior job misclassification in the process of adjudicating an employee's RIF appeal, and that permitting job classifications to be challenged under the guise of a RIF appeal, would be incompatible with the limited scope of review of RIF determinations. Further, TAP emphasized that its role is limited to

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[1] The only substantive change that occurred in this area was taken in the 1999 OPRAA amendments, which increased the RIF notice period from 15 days to 30 days, to universally align notification time conflicts within D.C. personnel regulation notice provisions of various RIF-related amendments.

reviewing the validity of matters covered by the RIF regulations. See also *Anjuwan v. D.C. Department of Public Works,* 729 A.2d. 883 (12-11-98), which held that this Office's authority is narrowly prescribed, and did not have jurisdiction to determine whether the RIF at the agency was bona fide or violated any law, other than the RIF regulations themselves.

In *David A. Gilmore v. University of the District of Columbia,* 695 A.2d 1164, (D.C.1997), the court held that Gilmore could not use the RIF process to belatedly contest the process utilized in his job being reclassified, which position was subsequently abolished during a RIF. The court further noted that Gilmore could have filed a timely grievance with his employer, challenging what he believed was a misclassification of his position. Had he done so, the grievance would have afforded his employer the opportunity to redefine the duties the position entailed, so as to remove uncertainty about its classification and the grounds for any future legal disputes that might arise. As well and depending upon the outcome of the grievance process, a timely grievance would have enabled Gilmore to decide whether to accept the "good" with the "bad", i.e., the increased vulnerability of his new job reclassification and the promotion that came with it, rather than accepting the benefits when given, and challenging his status only later when the burdens of the higher position, including the ultimate RIF, materialized. *Id* at 1168.

In maintaining this position, this Office is adhering to prior determinations previously made by the federal courts. In *Menoken v. Department of Health and Human Services,* 784 F.2d 365, 368-369 (Fed.Cir.1986), the court held that:

> In determining the retention rights of the former employees of the Community Services Administration, the [Merit Systems Protection] Board necessarily had to look at the situation as it actually existed in that agency when the reduction in force took place on September 30, 1981, and not to the situation that might or should have existed on that date. It would be almost impossible to determine the retention rights of employees affected by a reduction in force or transfer of function if the correctness of the classification of the positions the employees held had to be reexamined. Reductions in force deal with actual and not theoretical or possible situations.

See also *Biddle v. United States,* 195 U.S.App.D.C. 263, 602 F.2d 441 (1979), holding that complaints of pre-RIF treatment are not a proper issue of RIF appeal subject to review of the Federal Employee Appeals Authority. Instead, those issues had to be raised within the agency's own grievance procedures. For further discussion of this same issue, see *Wharton v. District of Columbia Public Schools,* OEA Matter J-0111-02 (Mar. 3, 2003), __ D.C. Reg. __ ( ); *Levitt v. District of Columbia Office of Personnel*, OEA Matter No. 2401-0001-00, *Opinion and Order on Petition for Review* (Nov. 21, 2002), __ D.C. Reg. __ ( ); *Powell v. Office of Property Management,* OEA Matter No. 2401-0127-00 (Feb. 3, 2003), __ D.C. Reg. __ ( ); *Booker v. Department of Human Services,* OEA Matter No. 2401-0190-97 (Oct. 11, 2000), __ D.C. Reg. __ ( ).

Therefore, I find that an Employee raising collateral issues when challenging a RIF does not confer additional authority upon the Office to enforce all laws and regulations, as such would clearly exceed both the limited statutory authority and the AJ's jurisdiction. Having reviewed the current status of the RIF law and governing regulations, I conclude that the jurisdiction of this Office in conducting RIF appeals is limited to the authority granted by the plain language of the statute, and particularly the provisions of D.C. Official Code § 1-624.08 (d) (one round of lateral competition which shall be limited to positions in his/her competitive level), and (e) (at least 30 days written notice before the effective date of his/her separation). Anything else is beyond both the statute's and this Office's authority to address.

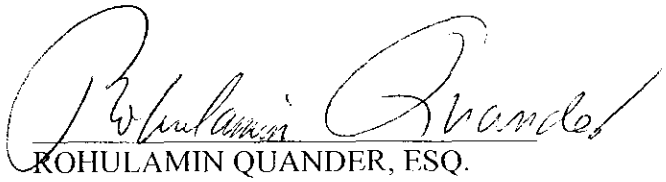
ORDER

The foregoing having been considered, it is hereby,

ORDERED that Agency's Motion to Dismiss the consolidated appeal filed by the Employees in this matter is GRANTED, due to this Office's lack of jurisdiction to hear and decide on the additional issues that the Employees, through their representative, sought to raise; and it is

FURTHER ORDERED that Agency's action separating Employees through the RIF process is UPHELD.

FOR THE OFFICE



ROHULAMIN QUANDER, ESQ.
Senior Administrative Judge