

THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
FRED LATTIMORE)	OEA Matter No. 2401-0074-03
DARNELL WHEELER)	2401-0072-03
WALDO JOHNSON)	2401-0070-03
LORI McDONALD,)	2401-0069-03
Employees)	
)	Date of Issuance: December 17, 2008
)	
)	
DEPARTMENT OF MENTAL HEALTH,)	
Agency)	
_____)	

OPINION AND ORDER
ON
PETITION FOR REVIEW

Fred Lattimore, Darnell Wheeler, Waldo Johnson, and Lori McDonald (“Employees”) all worked for the Department of Mental Health (“Agency”).¹ On January 24, 2003, each Employee received a reduction-in-force (“RIF”) notice from Agency. The notice provided that as a result of a major reorganization, a RIF was conducted and they were released from their positions.²

Employees filed Petitions for Appeal with the Office of Employee Appeals

¹ Fred Lattimore worked as an Electrician; Darnell Wheeler was a Maintenance Mechanic; Waldo Johnson held the position of Supply Management Officer; and Lori McDonald was a Management Analyst.

² Agency’s Response to Employee’s Petition for Appeal, Tab 4 (December 17, 2003).

("OEA") on March 27 and 28, 2003. In their petitions they argued that Agency failed to follow RIF procedures.³ Therefore, it was their positions that they should be reinstated to their positions.⁴

On December 17, 2003, Agency filed its Response to Employees' Petitions for Appeal. Its response addressed those arguments raised by Employee, Lori McDonald. Agency asserted that the Department of Mental Health Establishment Amendment Act of 2001 was approved by the Mayor and D.C. City Council and established the Department of Mental Health and granted the Agency head with independent personnel authority for all employees within the Department. Agency went on to provide that the competitive areas and retention registers for the RIF action was determined in accordance with Chapter 24 of the D.C. Personnel Regulations. Furthermore, Agency stated that timely performance ratings were give to Employees; residency preferences were applied when determining who would be RIFed; and placement options were examined through the

³ Employee, Lori McDonald, raised the following arguments in her Petition for Appeal:

- (a) Agency failed to obtain approval for the 2002 Reorganization from the Mayor, Chief Financial Officer, and the DC Council.
- (b) Agency failed to justify the use of smaller competitive areas and failed to publish the competitive area before separating employees.
- (c) The competitive levels were not properly developed.
- (d) The RIF registers were not properly developed.
- (e) Agency failed to ensure that competing employees received timely performance ratings.
- (f) Agency failed to review and enforce District personnel regulations on residency preference before the RIF.
- (g) Agency failed to maintain correct records to determine retention standing.
- (h) Agency failed to properly grade its positions.
- (i) Agency failed to adhere to District personnel regulations and merit principles in its hiring. Agency violated its Reemployment Priority Program.

⁴ *Petition for Appeal* (March 27 and 28, 2003).

Displaced Employee Program for all Employees.⁵

The Administrative Judge (“AJ”) issued her Initial Decision on May 11, 2006. She held that in accordance with D.C. Official Code § 1-624.08, the only legal conclusions that were relevant in this appeal were whether Employees received one round of lateral competition and whether they received thirty days written notice before the effective RIF dates. She found that no Employee presented any arguments that they received untimely notice of the RIF. Moreover, none of the Employees argued that they were incorrectly placed in their competitive levels. The AJ found that most of the arguments presented by Employees were outside the scope of OEA’s authority because they were personnel issues that occurred in the years preceding the RIF action. Therefore, the AJ upheld Employee’s removals.⁶

Employees then filed a Petition for Review with the OEA Board. In their Petitions, they alleged that Agency’s action was improper and defective; that the RIF notice was issued without the proper authority and approval of the Mayor through reorganization; that the 30-day notice was defective because Agency failed to justify its use of the designated competitive levels; that the competitive levels and retention register were not properly established; and that the Initial Decision did not address all issues of law and fact properly raised on appeal.⁷

⁵ *Agency’s Response to Employee’s Petition for Appeal*, Tab 7 (December 17, 2003).

⁶ *Initial Decision*, p. 3-4 (May 11, 2006).

⁷ *Petition for Review* (June 14, 2006).

On July 11, 2006, Agency filed its Response to Employees' Petitions for Review. It argued that the Initial Decision was based on substantial evidence. It also asserted that Employees offered no arguments in their Petitions for Review that address that it failed to provide one round of lateral competition or that they lacked sufficient notice of the RIF action. Therefore, Agency requested that Employees' Petitions for Review be denied.⁸

In an attempt to clearly define OEA's authority, D.C. Official Code § 1-624.08(d), (e), and (f) establishes the circumstances under which the OEA may hear RIFs on appeal.

“(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 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.”

⁸ Agency's Response to Employees' Petitions for Review, p. 3 (July 11, 2006).

Therefore, this Office is only authorized to review RIF cases where an employee claims the Agency did not provide one round of lateral competition, or where an employee was not given a 30-day written notice prior to their separation.

Employees provided in their Petitions for Review that Agency's action was improper and defective because it failed to provide a valid 30-day written notice and one round of lateral competition within each Employee's competitive level. In accordance with D.C. Official Code § 1-624.08, OEA is authorized to review RIF cases where an employee claims Agency did not provide one round of lateral competition, or where an employee was not given a 30-day written notice prior to their separation. The RIF notices were dated January 24, 2003, with an effective RIF date of February 28, 2003. Therefore, Employees received the requisite thirty days notice prior to their separation.

Employees also claim that Agency failed to justify its use of designated competitive areas and that the competitive levels were not properly established. However, Agency properly asserted that in accordance with Chapter 24 of the D.C. Personnel Regulations and pursuant to Administrative Order DMH-2001-10, that it could establish lesser competitive areas for conducting its RIF. Section 2409.2 of the D.C. Personnel Regulations provides that lesser competitive areas within an Agency may be established by the personnel authority. Agency is the personnel authority, therefore, it could designate the competitive areas.

Many of the issues raised by Employees in their Petitions for Review are pre-RIF

issues. They concede this point in their Petitions.⁹ In addressing pre-RIF issues raised on appeal, OEA has consistently held that it cannot consider anything outside of its authorized scope concerning RIF appeals.¹⁰

Because Employees failed to prove that they were not afforded one round of lateral competition and that they did not receive thirty days notice of the RIF action taken against them, this Board must deny their Petitions for Review.

⁹ *Petition for Review*, p. 7 (June 14, 2006).

¹⁰ *Wharton v. District of Columbia Public Schools*, OEA Matter No. J-0111-02 (March 3, 2003), ___ D.C. Reg. ___ (); *Powell v. Office of Property Management*, OEA Matter No. 2401-0127-00 (February 3, 2003), ___ D.C. Reg. ___ (); *Booker v. Department of Human Services*, OEA Matter No. 2401-0190-97 (October 11, 2000), ___ D.C. Reg. ___ ().

ORDER

Accordingly, it is hereby **ORDERED** that Employees' Petitions for Review are **DENIED**.

FOR THE BOARD:

Sherri Beatty-Arthur, Chair

Barbara D. Morgan

Richard F. Johns

The Initial Decision in this matter shall become a final decision of the Office of Employee Appeals 5 days after the issuance date of this order. An appeal from a final decision of the Office of Employee Appeals may be taken to the Superior Court of the District of Columbia within 30 days after formal notice of the decision or order sought to be reviewed.

