THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	OEA Matter No.: 2401-0162-13
ANITHA DAVIS,	)	
Employee	)	
	)	Date of Issuance: December 30, 2014
v.	)	
	)	
DISTRICT OF COLUMBIA	)	
PUBLIC SCHOOLS,	)	
Agency	)	Eric T. Robinson, Esq.
	)	Senior Administrative Judge

Stephen White, Union Representative
Carl K. Turpin, Esq., Agency's Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On September 13, 2013, Anitha Davis ("Employee") filed a petition for appeal with the Office of Employee Appeals ("the OEA" or "the Office") contesting the District of Columbia Public School's ("Agency" or "DCPS") action of terminating her employment through a Reduction-in-Force ("RIF"). According to the documents of record, the effective date of the RIF was August 16, 2013. Employee's position of record at the time her position was abolished was EG-7 Administrative Aide at Terrell Elementary School ("Terrell").

I was assigned this matter on May 14, 2014. On May 30, 2014, 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. The parties have complied with this order. After reviewing the parties' submission along with the other documents of record, I have determined that no further proceedings are warranted. 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

Pursuant to a letter dated May 24, 2013, ("RIF Letter") Employee was informed that her position as an Administrative Aide at Terrell was being abolished pursuant to a RIF. Agency, in its Answer dated October 16, 2013, explained that the reason for the instant RIF was that the entire competitive area (Terrell) was being closed and that all positions located therein were subjected to the RIF.

OEA was given statutory authority to address RIF cases in D.C. Official Code §1-606.03(a). This statute provides that:

> An employee may appeal a final agency decision affecting a performance rating which results in removal of the employee (pursuant to subchapter XIIII-A of this chapter), an adverse action for cause that results in removal, reduction in grade, or suspension for 10 days or more (pursuant to subchapter XXIV of this chapter), or a reduction-in-force (pursuant to subchapter XXIV of this chapter) to the Office upon the record and pursuant to other rules and regulations which the Office may issue. Any appeal shall be filed within 30 days of the effective date of the appealed agency action.

In an attempt to more clearly define OEA's authority, D.C. Official Code § 1-624.08(d), (e), and (f) establish 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:
>
> > (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.

As a result of the above-referenced statutes, this Office is authorized to review RIF cases where an employee claims an agency did not provide one round of lateral competition or where an employee was not given a thirty-day written notice prior to their separation.

Employee's Position

In her petition for appeal, Employee contends that the instant RIF violated the District Personnel Manual ("DPM") and the Collective Bargaining Agreement ("CBA"). The crux of the violation centers on the fact that Employee was not provided with one round of lateral completion system wide. Seemingly, Employee is contending that she should have competed in a lateral completion with all administrative aides under the employ of DCPS.

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. Employee was given thirty (30) days written notice prior to the effective date of her termination. Moreover, Agency avers that it was not required to provide Employee with one round of lateral competition since she was in a single person competitive level at the moment her position was abolished

Analysis

Under Title 5 DCMR § 1501.1, the Chancellor of DCPS 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. Here, Terrell was identified as a competitive area. According to the Agency, all positons at Terrell were RIFFED. As provided in D.C. Official Code § 1-624.08(f), it was acceptable for Agency to establish a competitive area smaller than the entire agency. Terrell was a division within Agency, and therefore, it was a legitimate competitive area. OEA has consistently held that where an entire competitive level is eliminated, there is no one against whom an employee can compete.[1] Because the entire competitive level was abolished, D.C. Official Code § 1-624.08(d) is inapplicable in this matter. I conclude that Employee was properly placed into a single-person competitive level and that the Agency was not required to rank or rate Employee according to the rules specified in D.C. Official Code § 1-624.08(e) pertaining to multiple-person competitive levels when it implemented the instant RIF.

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* give an employee thirty (30) days' notice *after* such employee has been *selected* for separation pursuant to a RIF. Emphasis added. Here, Employee received her RIF Letter on May 23, 2013, and the effective date of the RIF was August 16, 2013.[2] The RIF Letter states that Employee's position is being abolished as a result of a RIF and it also provides Employee with information about her appeal rights. It is therefore undisputed that Employee was given the required thirty (30) days written notice prior to the effective date of the RIF.

Grievances

Additionally, it is an established matter of public law that the OEA no longer has jurisdiction over grievance appeals.[3] 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 her claims elsewhere, but rather that the OEA currently lacks the jurisdiction to hear Employee's other claims.

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[1] *Laura Smart v. D.C. Child and Family Services Agency*, OEA Matter No. 2401-0328-10, *Opinion and Order on Petition for Review* (March 4, 2014) ; *Jessica Edmond v. Department of Consumer and Regulatory Affairs*, OEA Matter No. 2401-0344-10, p. 6 (November 6, 2012); and *Nicole Sivolella v. D.C. Public Schools*, OEA Matter No. 2401-0193-04, p. 3 (December 23, 2005).

[2] According to a letter dated June 20, 2013, Employee was detailed to Aiton Elementary School from June 25, 2013, until the effective date of her RIF, August 16, 2013. The letter stated in pertinent part "[Employee's] detail will not exceed August 16, 2013." I find that that this temporary detail has no bearing on the legality of the abolishment of Employee's position pursuant to the instant RIF.

[3] Omnibus Personnel Reform Amendment Act of 1998 (OPRAA), D.C. Law 12-124.

Conclusion

Based on the foregoing, I find that Employee's position was abolished after she was properly placed in a single person competitive level and a timely thirty (30) day legal notification was properly served. Therefore, I conclude that Agency's action of abolishing Employee's position was done in accordance with D.C. Official Code § 1-624.08 and the Reduction-in-Force which resulted in her removal should be upheld.

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.
SENIOR ADMINISTRATIVE JUDGE