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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
)	
CAROLYN WILLIAMS,)	OEA Matter No. 2401-0124-10R13
Employee)	
)	
v.)	Date of Issuance: February 16, 2016
)	
D.C. PUBLIC SCHOOLS,)	
Agency)	
)	

OPINION AND ORDER
ON REMAND

As provided by both parties, this matter has been before the Office of Employee Appeals’ (“OEA”) Board previously. On September 18, 2013, the Board held in its Opinion and Order on Petition for Review that Carolyn Williams (“Employee”) involuntarily retired from her position with D.C. Public Schools (“Agency”). Therefore, it remanded the matter to the Administrative Judge (“AJ”) to determine Employee’s position of record and to consider the merits of Agency’s Reduction-in-Force (“RIF”) action.¹

The AJ issued an Order Requesting Briefs on November 26, 2013. She specifically asked the parties to provide supporting documentation of Employee’s position of record during the RIF; whether Employee was properly placed in the Hospitality Teacher’s competitive level; whether Agency followed the District Personnel Manual (“DPM”); and whether there were any

¹ *Carolyn Williams v. D.C. Public Schools*, OEA Matter No. 2401-0124-10, *Opinion and Order on Petition for Review*, p. 6-10 (September 18, 2013).

jurisdictional arguments to be made.² Agency made several of the same arguments previously presented to the AJ and OEA Board regarding OEA's lack of jurisdiction. Agency contended that because Employee voluntarily retired, OEA could not consider the merits of the RIF action. As for Employee's position of record, it explained that Employee was teaching hospitality at the time; therefore, this was her position of record. Moreover, it asserted that Employee's qualifications, requirements, duties, responsibilities, pay schedule, and working conditions were that of a Hospitality Teacher. Therefore, she was within the proper competitive level. However, because Employee was in a single-person competitive level, Agency opined that it was not required to provide her with one round of lateral competition.³

Employee filed her Response Brief on March 21, 2014. She argued that she helped to develop the Academy of Hospitality and Tourism at Agency and was offered the position of Coordinator of Travel and Tourism. However, she declined the promotion due to personal and family issues. Employee contended that although she taught hospitality classes, her position of record was a Social Studies teacher and she was required to maintain her certification in social studies. Moreover, Employee provided that Agency listed her as a Social Studies teacher during its 2003 and 2004 RIFs. Employee posited that none of the Social Studies teacher positions were eliminated during the 2009 RIF. Hence, because she should have competed within that competitive level, Employee argued that her position may not have been eliminated at all or that she would have survived the round of lateral competition. Thus, Employee requested that she be

² *Post-hearing Conference Order* (November 26, 2013).

³ *District of Columbia Public Schools' Brief on Remand*, p. 6-11 (February 12, 2014). In addition to the arguments presented by Agency, it submitted Employee's performance evaluations for 2005-2006, 2002-2003, 1998-1999, and 1997-1998. All of the evaluations have Employee's position listed simply as "Teacher;" the subject matters listed on the evaluation are either "Hospitality and Tourism" or "Travel and Tourism." Further, Agency submitted a Request for Personnel Action with an effective date of December 18, 1997, which changes Employee's position from a Social Studies Teacher to Coordinator of Travel and Tourism. *Id.*, Exhibit #1.

reinstated to her position with back pay and benefits.⁴

The AJ issued her Initial Decision on Remand on April 22, 2014. She held that Employee's retirement was involuntary. Additionally, she provided that an employee's position of record is generally shown by the issuance of a Standard Form 50 ("SF-50"). The AJ found that, based on the submissions of several Personnel Action forms, Employee's position of record was a Social Studies teacher. She ruled that Agency's submissions of performance evaluations which listed Employee as a Hospitality teacher were not compelling because they were not official documents like the Personnel Action forms which listed Employee as a Social Studies teacher. The AJ provided that because Employee should have been in the competitive level with other Social Studies teachers, Agency failed to meet its burden of proof that it properly conducted the RIF. Therefore, she ordered that Employee be reinstated with back pay and benefits.⁵

On May 27, 2014, Agency filed a Petition for Review of the AJ's Decision on Remand. It presents the same arguments as those previously raised regarding Employee's retirement being voluntary. Agency also submitted documentation of the definition of involuntary retirement as provided in its Summary Plan Description. Moreover, it presents a new argument that the AJ should not have relied on Employee's SF-50 when making a determination about the voluntariness of her retirement because it was generated after she elected to retire. Further, Agency provided that the AJ improperly relied on D.C. Official Code § 1-624.08, when she should have relied on D.C. Official Code § 1-624.02.⁶

Employee disagreed with Agency's petition and filed a response on July 1, 2014. She explains that her retirement was involuntary and that her position of record was a Social Studies

⁴ *Carolyn Williams' Response Brief on Remand* (March 21, 2014).

⁵ *Initial Decision on Remand*, p. 5-13 (April 22, 2014).

⁶ *District of Columbia Public Schools' Petition for Review* (May 27, 2014).

teacher. Employee highlights that the performance evaluations relied upon by Agency simply lists Hospitality as the subject matter she taught, not her position of record. Moreover, she suggests that even if she were a Hospitality teacher, she should have remained in the competitive level with the other Social Studies teachers because the positions were so similar. Therefore, Employee requests that she be reinstated because Agency's misclassification that she was a Hospitality teacher cannot be deemed harmless error.⁷

Retirement

Agency presented the same arguments previously considered by this Board as it relates to Employee's retirement. Because this Board has previously addressed and ruled on the issue of Employee's retirement, we will not offer additional analysis on the matter. This Board has ruled that Employee involuntarily retired.⁸ Thus, we uphold the AJ's determination on this issue.

Additionally, Agency presented new arguments regarding Employee's SF-50. These arguments were not raised before the AJ. This Board has consistently held that, in accordance with OEA Rule 633.4, any objections or legal arguments which could have been raised before the AJ, but were not, are considered waived by the Board.⁹ Moreover, the Superior Court for the

⁷ *Carolyn Williams' Response to DCPS' Petition for Review* (July 1, 2014).

⁸ It should be noted that Agency references a Personnel Action form that lists Employee's retirement as voluntary. However, Agency failed to address the SF-50 which designated Employee's retirement as involuntary. As we previously held, Agency does not dispute the validity of the document. Instead, it concedes that Employee involuntarily retired, but it contends that "she was eligible for involuntary retirement solely because she met the requirements for involuntary retirement as defined by the Agency's Summary Plan Description for Teachers ("SPD")." *District of Columbia Public Schools' Response to Employee's Petition for Review*, p. 3 (July 30, 2012). Both documents are signed by Peter Weber and dated November 22, 2009. Therefore, Agency's submission does not nullify Employee's submission which provides that her retirement was involuntary.

⁹ *Calvin Braithwaite v. D.C. Public Schools*, OEA Matter No. 2401-0159-04, *Opinion and Order on Petition for Review* (September 3, 2008); *Collins Thompson v. D.C. Fire and EMS*, OEA Matter No. 1601-0219-04, *Opinion and Order on Petition for Review* (November 13, 2008); *Beverly Gurara v. Department of Transportation*, OEA Matter No. 1601-0080-09, *Opinion and Order on Petition for Review* (December 12, 2011); *Dominick Stewart v. D.C. Public Schools*, OEA Matter No. 2401-0214-09, *Opinion and Order on Petition for Review* (June 4, 2012); *Darlene Redding v. Department of Public Works*, OEA Matter No. 1601-0112-08R11, *Opinion and Order on Petition for Review* (April 30, 2013); *Markia Jackson v. D.C. Public Schools*, OEA Matter No. 2401-0138-10, *Opinion and Order on Petition for Review* (August 2, 2013); *Latonya Lewis v. D.C. Public Schools*, OEA Matter No. 1601-0046-08, *Opinion and Order on Petition for Review* (April 15, 2014); *Sharon Jeffries v. D.C. Retirement Board*, OEA Matter No. 2401-0073-11, *Opinion and Order on Petition for Review* (July 24, 2014) and *Pamela Dishman v. D.C.*

District of Columbia held in *Bonita Brown v. Office of the Chief Medical Examiner*, 2012 CA 007394 P(MPA)(D.C. Super. Ct. February 4, 2015)(citing *Brown v. Watts*, 993 A.2d 529, 535 (D.C. 2010)) that “in order for a factual issue to be preserved for appeal, it must be raised before the ALJ and be a part of the evidentiary record.” Therefore, we will not consider Agency’s new retirement arguments.

D.C. Official Code § 1-624.08 versus § 1-624.02

On Petition for Review, Agency claimed that the AJ improperly relied on D.C. Official Code § 1-624.08, when she should have relied on D.C. Official Code § 1-624.02. As this Board held in *Webster Rogers v. D.C. Public Schools*, OEA Matter No. 2401-0255-10R14, *Opinion and Order on Petition for Review* (July 21, 2015), the Superior Court for the District of Columbia specifically addressed the conflict between the two statutes in its remand decision as well as in a previous case it decided. On remand, the Superior Court held in *Webster Rogers, Jr. v. District of Columbia Public Schools*, Civil Case No. 2012 CA 006364 P(MPA) (D.C. Super. Ct. Dec. 9, 2013) the following:

It is undisputed that the 2009 RIF in question was conducted for budgetary reasons. Respondent states in its brief in opposition that, “Chancellor Rhee authorized the RIF to eliminate positions within DCPS that the final school-based budgets for the 2010 fiscal year could not support.” Opposition at 2. Respondent argues in its opposition that 5 DCMR § 1500.2 also lists “budgetary reasons” as grounds for DCPS conducting a RIF. However, respondent cites no legal authority that gives reason to supersede the clear precedent set forth in *Washington Teachers’ Union*. The 2009 RIF was conducted in order to ensure a balanced budget. Therefore, OEA was correct in relying on the precedent set in *Washington Teachers’ Union* and determining that the Abolishment Act, rather than D.C. Code § 1-624.02, applies to the present case.

Moreover, the Court in *Sheila Gill and Rhonda Robinson v. District of Columbia Office of Employee Appeals and District of Columbia Public Schools*, 2012 CA5844 and 5883 (MPA)

Public Schools, OEA Matter No. 2401-0028-11, *Opinion and Order on Petition for Review* (July 21, 2015).

(D.C. Super. Ct. October 23, 2013), affirmed OEA's holding and ruled that although Agency conducted the RIF actions pursuant to D.C. Official Code §1-624.02, D.C. Official Code §1-624.08 was the appropriate statute for the 2009 RIF matters. The Court upheld OEA's assessment that in accordance with *Washington Teachers' Union v. District of Columbia Public Schools*, 960 A.2d 1123, 1132 (D.C. 2008), a RIF authorized for budgetary reasons triggers D.C. Official Code §1-624.08. Specifically, it found that Agency's budget for fiscal year 2010 was not sufficient to support the number of positions that existed in 2009. Accordingly, principals were given the authority to eliminate positions within competitive levels based on budget reductions. The Court held that D.C. Official Code §1-624.08 was triggered because the RIF was authorized for budgetary reasons.¹⁰ Thus, in accordance with the previous Superior Court rulings in the *Rogers* case, as well as the ruling in *Gill and Robinson*, Agency's contention that the AJ incorrectly relied on D.C. Official Code §1-624.08 lacks merit.

Position of Record

Agency spent a great deal of time on the voluntariness of Employee's retirement and the relevancy of D.C. Official Code §1-624.08. However, the real issue pending before the AJ and this Board is Employee's position of record. Agency relies on performance evaluations to prove that Employee was a Hospitality teacher. However, the AJ correctly concluded that a performance evaluation is not an official personnel document. Only Personnel Action forms can alter the position of record for an employee. Even if we consider Agency's position that the evaluations could have been used, every evaluation it submitted lists Employee's position as

¹⁰ The Court noted that a September 10, 2009 Memorandum from Chancellor Michelle Rhee cited that the reason for the 2009 RIFs were due to budget constraints, requiring the elimination of positions at schools that the 2010 budget could not support. It went on to note that D.C. Official Code §1-624.08 placed restrictions on what employees could appeal. However, D.C. Official Code §1-624.02 did not present restrictions. Thus, in accordance with D.C. Official Code §1-624.08, OEA was authorized to consider if there was one round of lateral competition and if employee was provided a thirty-day notice. *Sheila Gill and Rhonda Robinson v. District of Columbia Office of Employee Appeals and District of Columbia Public Schools*, 2012 CA5844 and 5883 (MPA), p. 2 and 5-6 (D.C. Super. Ct. October 23, 2013).

Teacher and the subject matter as Hospitality or Tourism. Therefore, these evaluations do not support Agency's argument that Employee's position of record was a Hospitality teacher.

This Board remanded the matter to the AJ to determine if Agency could provide proof that the 1997 Request for Personnel Action form which provided that Employee was a Hospitality Teacher, was actually processed. Employee claims that she declined the promotion and offered a litany of Agency documents which provide that she remained a Social Studies Teacher after 1997. Agency offered no proof that the 1997 action form was processed. Therefore, this Board agrees with the AJ's determination that Employee's position of record remained a Social Studies teacher. Employee's certification licenses from 2001-2006 reflect that she was a Social Studies Teacher for Agency.¹¹ More importantly, she provided Personnel Action forms from 1993-1997 which listed her position title as "Teacher Social Studies."¹² Furthermore, Agency provided Employee's personnel record which indicates that from 1991-2004, she was a Social Studies Teacher.¹³

Conclusion

Because Agency failed to prove that Employee's position of record was a Hospitality teacher, it improperly placed her in a single-person competitive level. Employee was a Social Studies teacher and should have competed against teachers within that competitive level. Accordingly, we must uphold the AJ's decision to reinstate Employee to her position of record with back pay and benefits. Therefore, Agency's Petition for Review is denied.

¹¹ *Response Brief of Carolyn Williams*, Exhibits #4, 5, and 6 (April 11, 2012). Although not official Personnel Action forms, Employee provided performance evaluations from 2000-2004 that identified her position as a Social Studies Teacher. *Id.*, Exhibits #7 and 8. Further, she provided a 2004 CLDF which provided that she was a Social Studies Teacher. *Id.*, Exhibits #2. Employee also submitted a 2003 CLDF which listed her position as "Social Studies/Travel and Tourism." *Id.*, Exhibits #9.

¹² *Id.*, Exhibits #1, 11, and 14. Employee claims that there were no Personnel Action forms completed for her after 1997. The personnel record provided by Agency supports that claim.

¹³ *Carolynn Williams Personnel File*, p. 12, 14, 54, 111, 113, 115, 117, 255, 351, 352, 366, 367, 368, 369, 376, 400, 401, 403, 405, 407, 408, 410, 418, 420, 423, and 451 (February 29, 2012).

ORDER

Accordingly, it is hereby **ORDERED** that Agency's Petition for Review is **DENIED**. Therefore, Agency's termination action is REVERSED. Accordingly, Agency shall reinstate Employee to her last position of record or a comparable position. Additionally, it must reimburse Employee all back-pay and benefits lost as a result of the termination action. Agency shall file with this Board within thirty (30) days from the date upon which this decision is final, documents evidencing compliance with the terms of this Order.

FOR THE BOARD:

Sheree L. Price, Vice Chair

Vera M. Abbott

A. Gilbert Douglass

Patricia Hobson Wilson

This decision of the Office of Employee Appeals shall become the final decision 5 days after the issuance date of this order. Either party may appeal this decision on Petition for Review to the Superior Court of the District of Columbia. To file a Petition for Review with the Superior Court, the petitioning party should consult Superior Court Civil Procedure Rules, XV. Agency Review, Rule 1.