THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
MICHAEL CHAMBERS,	)	
Employee	)	OEA Matter No. 2401-0287-09
	)	
v.	)	Date of Issuance: October 6, 2011
	)	
DISTRICT DEPARTMENT OF TRANSPORTATION,	)	
Agency	)	ERIC T. ROBINSON, Esq.
	)	Administrative Judge

Clifford Lowery, Union Representative
Melissa D. Williams, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On September 21, 2009, Michael Chambers ("Employee") filed a petition for appeal with the Office of Employee Appeals ("OEA" or "the Office") contesting the District Department of Transportation ("DDOT" or "the Agency") action of abolishing his position through a Reduction-In-Force ("RIF"). According to the Retention Register created in anticipation of the instant RIF, Employee's last position of record with DDOT was Electrical Worker. I was assigned this matter on or around June 6, 2011. A Prehearing Conference was held on June 30, 2011. After considering the parties' positions as stated during the conference, I decided that an evidentiary hearing was unwarranted in this matter. I then issued an Order dated July 1, 2011, wherein the parties were required to submit their final written briefs in this matter. To date, Employee has not submitted his brief. The record is now closed.

JURISDICTION

The 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 629.1, 46 D.C. Reg. 9317 (1999) 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 629.3 *id.* states:

> For appeals filed on or after October 21, 1998, the Agency shall have the burden of proof, except for issues of jurisdiction.

FINDING OF FACTS, ANALYSIS, AND CONCLUSIONS

The following findings of facts, analysis, and conclusions of law are based on the documentary evidence presented by the parties during the course of the Employee's appeal process with this Office.

DDOT contends that the abolishment of Employee's last position of record pursuant to a RIF was conducted within the bounds of the law. In defending its action before this Office, Agency contends that it conducted the instant RIF in accordance with Chapter 24 of the District Personnel Manual which outlines all applicable RIF procedures for the Agency.

Agency contends that Employee was given 30 days written notice informing him that his position was going to be abolished due to the RIF. Included within Agency's Answer at Exhibit A is a copy of the aforementioned notice provided to Employee ("RIF Notice"). The RIF Notice is dated July 17, 2009. Agency was unable to serve Employee in person due to an incident that occurred the day the RIF notice was issued. *See* Agency's Answer at Exhibit B. According to an e-mail sent from the agency representative in this matter to Mr. David Kelly[1] the RIF notice was sent via certified mail to Employee on July 18, 2009. *See* Agency's Answer at Exhibit C. Also, another copy of the RIF Notice was sent to Employee's attorney Mr. David Kelly. *Id*. According to the RIF Notice, Employee's position was abolished effective on August 21, 2009.

[1] Employee's attorney with respect to the matter described within Agency's Answer at Exhibit C. Mr. Kelly is not listed as employee's representative in OEA Matter No. 2401-0287-09.

Agency further contends that a District government employee, whose position has been abolished, is generally entitled to one round of lateral competition for positions within their competitive area and level that survive the RIF. However, said requirement is nullified if the employee was the only person within his/her competitive level and area at the time the RIF occurred **or** when all of the positions of the competitive level and area are excised via a RIF. Agency contends that the latter circumstance occurred in Employee's particular case. Employee's entire unit was abolished and according to the Retention Register[2], one other similarly ranked employee had his position abolished along with Employee. Agency points out that no lateral competition could occur because the entire unit was abolished and therefore there were no positions remaining in which Employee could compete for.

Employee did not submit his final legal brief in this matter. I find that Employee was afforded a fair opportunity to address DDOT's contentions in this matter but opted instead to remain silent.

Discussion

I am guided primarily by D.C. Official Code § 1-624.08, which provides in pertinent part that:

> (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... 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 a 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.

According to the preceding statute, I find that a District of Columbia government employee whose position was abolished pursuant to a RIF may only contest before this Office:

[2] The retention register may be found in Agency's Answer at Exhibit D.

1. That s/he did not receive written notice thirty (30) days prior to the effective date of his/her separation from service; and/or

2. That s/he was not afforded one round of lateral competition within his/her competitive level.

This Office has consistently held that when a separated employee is the only member of his/her competitive level or *when an entire competitive level is abolished pursuant to a RIF* (emphasis added by this AJ), "the statutory provision affording [him/her] one round of lateral competition was inapplicable." *See, e.g., Fink v. D.C. Public Schools*, OEA Matter No. 2401-0142-04 (June 5, 2006), __ D.C. Reg. __ ( ); *Sivolella v. D.C. Public Schools*, OEA Matter No. 2401-0193-04 (December 23, 2005), __ D.C. Reg. __ ( ); *Mills v. D.C. Public Schools*, OEA Matter No. 2401-0109-02 (March 30, 2003), __ D.C. Reg. __ ( ). *See also Cabaniss v. Department of Consumer & Regulatory Affairs*, OEA Matter No. 2401-0156-99 (January 30, 2003), _ D.C. Reg. __ ( ). In the matter at hand, I find that the entire unit in which Employee's position was located was abolished, after a RIF had been properly structured and a timely 30-day legal notification was properly served.

I find that no further lateral competition efforts were required and that the Agency was in compliance with the lateral competition requirements of the law. I further find that Employee was properly afforded 30 days written notice prior to the abolishment of his position through a RIF as evidenced by his signature acknowledging his receipt of the RIF Notice.

According to *Anjuwan v. D.C. Department of Public Works*, 729 A.2d. 883 (12-11-98), the OEA's authority over RIF matters is narrowly prescribed. The Court explained that the OEA does not have jurisdiction to determine whether the RIF at the Agency was bona fide or violated any law, other than the RIF regulations themselves. Further, it is an established matter of public law, that as of October 21, 1998, pursuant to the Omnibus Personnel Reform Amendment Act of 1998 (OPRAA), D.C. Law 12-124, the OEA no longer has jurisdiction over grievance appeals. 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 say that Employee may not press his claims elsewhere, but rather that the OEA currently lacks the jurisdiction to hear Employee's other claims. Based on the foregoing, I conclude that the Agency's action of abolishing Employee's position was done in accordance with all applicable laws, rules and regulations.

ORDER

It is hereby ORDERED that Agency's action of abolishing Employee's position through a Reduction-In-Force is UPHELD.

FOR THE OFFICE:

_____
ERIC T. ROBINSON, ESQ.
ADMINISTRATIVE JUDGE