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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
SHARON JEFFRIES,)	OEA Matter No.: 2401-0073-11
Employee)	
)	Date of Issuance: January 30, 2013
v.)	
)	Sommer J. Murphy, Esq.
DISTRICT OF COLUMBIA)	Administrative Judge
RETIREMENT BOARD,)	
Agency)	
_____)	
Sharon Jeffries, Employee, <i>Pro Se</i>		
Erie Sampson, Esq., Agency Representative		

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On February 24, 2011, Sharon Jeffries (“Employee”), an Executive Legal Assistant, filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the D.C. Retirement Board’s (“Agency” or “DCRB”) action of abolishing her position through a Reduction-in-Force (“RIF”). The effective date of the RIF was February 28, 2011. Employee was serving in Career Service at the time she was terminated.

I was assigned this matter in July of 2012. On August 8, 2012, I issued an Order scheduling a Status Conference for the purpose of assessing the parties’ arguments regarding the RIF. On September 10, 2012, Agency filed a Motion for Summary Disposition, requesting that this appeal be decided as a matter of law, or in the alternative, that the Status Conference be scheduled for a later date. In a September 20, 2012, Order, I denied Agency’s Motion for Summary Disposition, and ordered the parties to submit brief on the issue of whether Agency’s RIF was properly implemented. Both parties complied with the Order. After examining their respective arguments and reviewing the record, I determined that an Evidentiary Hearing was not 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.

FINDINGS OF FACT, ANALYSIS, AND CONCLUSIONS OF LAW

Employee believes that this Office should reverse Agency's action of terminating her employment under the RIF based on the following arguments:

1. Agency did not follow proper RIF procedures under D.C. Official Code § 1-624.08 and § 2409.3 of the D.C. Municipal Regulations.
2. Agency failed to comply with Section 2409 of the D.C. Personnel Manual ("DPM") because it failed to include: 1) A description of the proposed competitive area to be established under the RIF; 2) An organizational chart of the agency which identifies the proposed competitive areas; and 3) A justification for a need to establish a lesser competitive area.
3. Agency incorrectly calculated Employee's severance pay.
4. Agency posted new job vacancies after Employee was terminated; however, these positions were not offered to her. Employee argues that she was not properly considered for rehire after being placed on Agency's retention list for possible future employment opportunities.

In response, Agency argues that it conducted the RIF in accordance with the District of Columbia Municipal Regulations and the D.C. Official Code. Agency further stated that it provided Employee with the proper written notification. Because Employee's termination was the result of a RIF, I am guided by D.C. Official Code § 1-624.08 (2001), which states 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.

Accordingly, the issues to be decided in this matter under the aforementioned statute are: 1) whether an employee received written thirty (30) days notice prior to the effective date of their separation from service; and 2) whether the employee was afforded one round of lateral competition within his/her competitive level.

In this case, DCRB's Legal Department was the competitive area in which Employee was placed and DS-0303-05-01N-Legal Executive Assistant constituted Employee's competitive level. The Administrative Order which authorized the RIF identified one (1) Legal Executive Assistant position to be abolished.¹ This Office has consistently held that when a separated employee is the only member of his or her competitive level, or when an entire competitive level is abolished pursuant to a RIF, "the statutory provision affording [him/her] one round of lateral competition was inapplicable."²

According to the Retention Register produced by Agency, Employee was the sole Legal Executive Assistant within her competitive level. Accordingly, I conclude that Employee was properly placed into a single-person competitive level and 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. Moreover, Employee has not provided any compelling evidence to support the contention that other employees should have been placed in her competitive area.

The notice of termination letter was dated January 28, 2011. The effective date of the RIF was February 28, 2011. I find that Employee received thirty (30) days written notice prior to the effective date of her termination as required by D.C. Official Code § 1-624.08. Furthermore, Employee concedes that she did receive adequate notice of her termination.³

Employee argues that the wrong severance pay worksheet was sent to the Department of Human Resources ("DHR") for severance pay processing and contained no identifying personal

¹ Agency Response to Petition for Appeal (March 31, 2011).

² See e.g., *Fink v. D.C. Public Schools*, OEA Matter No. 2401-0142-04 (June 5, 2006), *Sivolella v. D.C. Public Schools*, OEA Matter No. 2401-0193-04 (December 23, 2005).

³ Employee Submission (March 31, 2011).

information such as her social security number or employee identification number.⁴ Employee asks that this Office review her severance pay worksheet; however, this is a matter best reserved for DHR, as the calculation of an employee's severance pay falls outside the scope of OEA's jurisdiction.

According to Employee, Agency did not properly consider her for rehire after she was terminated under the RIF, even though she had been placed on Agency's priority reemployment list. Specifically, Employee cites to at least two (2) job vacancy announcements for which she was not contacted by Agency for an interview.⁵ Agency notified Employee in her Notice of Termination that she would be placed on its Priority Reemployment Program and that she was entitled to assistance through the Department of Employment Services Dislocated Worker Program.⁶ An employee's placement on Agency's Priority Reemployment list; however, does not guarantee that such individual will be rehired by Agency. Although Employee applied for positions after being terminated under the RIF, there is no evidence in the record to indicate that Agency did not consider her applications for rehire. As such, I find no compelling merit to Employee's arguments to the contrary.

Lastly, Employee argues that Agency failed to comply with Section 2409 of the DPM, which states in pertinent part:

2409.3 An agency head may request the personnel authority to establish lesser competitive areas within the agency by submitting a written request which includes all of the following:

- (a) A description of the proposed competitive area or areas which includes a clearly stated mission statement, the operations, functions, and organizational segments affected;
- (b) An organizational chart of the agency which identifies the proposed competitive areas; and
- (c) A justification for the need to establish a lesser competitive area.

2409.4 Any lesser competitive area shall be no smaller than a major subdivision of an agency or an organizational segment that is clearly identifiable and distinguished from others in the agency in terms of mission, operation, function, and staff.

Employee contends that Agency violated the aforementioned sections of the DPM because it failed to include: 1) A description of the proposed competitive area to be established under the RIF; 2) An organizational chart of the agency which identifies the proposed competitive areas; and 3) A justification for a need to establish a lesser competitive area.

⁴ Employee Submission (March 11, 2011).

⁵ *Id.*

⁶ Final Notice of Termination (January 28, 2011).

There is no evidence in the record to support a finding that Agency failed to comply with Section 2409 of the DPM. In its 'Request for Approval of Reduction in Force in the Legal Department' memorandum, Agency requested the approval to abolish one (1) position in the Legal Department based on a lack of work.⁷ The written request further referred to Agency's organizational chart as well as a summary of why the General Counsel's office did not have a need for a clerical Legal Executive Assistant.⁸ I therefore find that Agency complied with Section 2409 of the DPM as they relate to the approval of the instant RIF.

Based on the record, I find the Agency complied with D.C. Official Code § 1-624.08. Agency properly implemented the RIF which resulted in Employee's termination. Accordingly, this matter should be dismissed.

ORDER

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

FOR THE OFFICE:

Sommer J. Murphy, Esq.
Administrative Judge

⁷ Agency Answer to Petition for Appeal, Tab 1 (March 31, 2011).

⁸ *Id.*