

Notice: This decision may be formally revised before it is published in the *District of Columbia Register*. Parties should promptly notify the Office Manager of any formal errors so that this Office can correct them before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

	)	
	)	
ALLEN MORA,	)	OEA Matter No. 2401-0227-09
Employee	)	
	)	Date of Issuance: June 4, 2012
	)	
OFFICE OF PUBLIC EDUCATION	)	
FACILITIES MODERNIZATION,	)	
Agency	)	
	)	

OPINION AND ORDER
ON
PETITION FOR REVIEW

Allen Mora (“Employee”) worked as a Maintenance Worker with the Office of Public Education Facilities Modernization (“Agency”). On August 20, 2009, Agency notified Employee that he was being separated from his position pursuant to a Reduction-in-Force (“RIF”). The effective date of the RIF was September 21, 2009.¹

Employee challenged the RIF by filing a Petition for Appeal with the Office of Employee Appeals (“OEA”) on August 20, 2009. He argued that the RIF was an unjust termination because it did not consider his fourteen years of service with Agency. He reasoned that there were other employees with less seniority whose positions were not eliminated and that Agency was hiring new employees. Therefore, he requested that he be reinstated and provided back pay

¹ *Petition for Appeal*, p. 6-7 (August 20, 2009).

and benefits.²

Agency objected to Employee's assertions and explained that a budgetary crisis forced it to abolish eighty-five excess positions through a RIF.³ Agency explained that it followed the RIF regulations as defined in Chapter 24 of the District Personnel Manual ("DPM") and the District of Columbia Personnel Act of 1978, which provided that it give Employee one round of lateral competition along with a thirty-day written notice prior to his separation date. Therefore, Agency requested that its RIF action against Employee be upheld.⁴

Employee submitted a Pre-hearing Statement on October 12, 2010, which contested Agency's budgetary crisis claim. He believed that there was no budgetary crisis, and therefore, there was no statutory basis for the RIF.⁵ He reasoned that since the budget crisis was false, Agency did not properly apply the RIF regulations. As a result, he requested that OEA reverse Agency's RIF action.⁶

On January 6, 2011, the OEA Administrative Judge ("AJ") issued his Initial Decision. He found that Employee's arguments were legally insufficient, and therefore, the RIF could not be overturned. He explained that pursuant to D.C. Official Code § 1-624.08, Employee could only contest that he did not receive a thirty-day written notice prior to his separation or that he did not receive one round of lateral competition within his competitive level. The AJ reasoned that because Employee was the only person within his competitive level, the requirement of one round of lateral competition was inapplicable. As a result, he upheld Agency's action against

² *Petition for Appeal*, p. 3-5 (August 20, 2009).

³ *Agency's Answer*, p. 1 (October 29, 2009).

⁴ *Id.*, 2-3.

⁵ Employee relied on the *Washington Post's* publication that highlighted an alleged budget surplus, not a shortfall. *Employee's Prehearing Statement*, Exhibit A (October 12, 2010).

⁶ *Employee's Prehearing Statement* (October 12, 2010).

Employee.⁷

Employee filed a Petition for Review with the OEA Board on January 20, 2011. Employee did not present any legal arguments or claims for which relief could be granted. The petition simply states “please consider this letter for petition for review.”⁸

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

“An employee may appeal a final agency decision affecting a performance rating which results in removal of the employee (pursuant to subchapter XIII-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 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

⁷ *Initial Decision* (January 6, 2011).

⁸ *Employee’s Petition for Review* (January 20, 2011).

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.”

As a result of above-referenced statutes, this Office is 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 thirty-day written notice prior to their separation.

As the AJ provided in his Initial Decision, this office has consistently held that one round of lateral competition does not apply to employees in a single-person competitive level.⁹ Agency provided the retention register which lists Employee as the only person who held the Maintenance Worker II position.¹⁰ Therefore, one round of lateral competition is inapplicable to this case.

Employee does not dispute that Agency provided the RIF notice on August 20, 2009. The notice clearly states that the RIF is effective on September 21, 2009, thirty-two days after the date of the letter. Therefore, Agency provided the requisite thirty-day notice as required by the D.C. Official Code. Accordingly, Employee’s Petition for Review is denied.

⁹ *Cabaniss v. Department of Consumer & Regulatory Affairs*, OEA Matter 2401-0156-99 (January 30, 2003); *Robert T. Mills*, OEA Matter 2401-0109-02 (March 20, 2003); *Deborah J. Bryant*, OEA Matter 2401-0086-01 (July 14, 2003); *Robert James Fagelson*, OEA Matter 2401-0137-99 (August 28, 2003); and *Richard Dyson, Jr. v. Department of Mental Health*, OEA Matter No. 2401-0040-03, *Opinion and Order on Petition for Review* (April 14, 2008).

¹⁰ The notice lists the maintenance department as the competitive area, and Employee’s position, Maintenance Worker II, was the competitive level. Since Employee occupied the only position within his competitive level, his position was abolished. *Agency’s Answer*, Tab #5 (October 29, 2009).

ORDER

Accordingly, it is hereby **ORDERED** that Employee's Petition for Review is
DENIED.

FOR THE BOARD:

Clarence Labor, 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.