THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	
DEATRICE BROWN Employee	OEA Matter No. 2401-0103-02
	Date of Issuance: April 5, 2006
D.C. PUBLIC SCHOOLS Agency	

OPINION AND ORDER
ON
PETITION FOR REVIEW

Ms. Deatrice Brown ("Employee") worked as a Food Program Specialist with the D.C. Public Schools ("Agency"). On July 31, 2002, Agency issued a reduction-in-force ("RIF") notice removing Employee from her position. Employee filed a Petition for Appeal on August 19, 2002, alleging that she was placed in the wrong tenure group when she was reinstated from a previous RIF action. She also argued that she was forced to compete with another employee for a position which was offered to that employee. Lastly, she provided that she was not retained by Agency because she successfully reversed a previous RIF action filed against her.[1]

[1] *Employee's Petition for Appeal*, attachment to p. 5 (August 19, 2002).

On October 28, 2002, Agency filed a response to Employee's Petition for Appeal. It argued that Employee received proper notice of the RIF action and that the current RIF action was not filed in retaliation from a previous RIF. Agency contends that the job performed by Employee prior to the first RIF action was under the control of the District of Columbia and not under the school system's authority or control. Accordingly, all positions that were not a part of the school system were subject to transformation for austerity and accountability purposes. Agency denied Employee's argument that the RIF was taken because she successfully reversed a prior RIF action. According to Agency, the current RIF was filed as a result of a restructuring plan to address budget deficits and increase workplace accountability.[2]

The Administrative Judge ("AJ") issued an Initial Decision on May 18, 2004. The Initial Decision provided that Employee was on notice of the RIF action. As for the one round of lateral competition, Employee provided that all positions within her office were abolished *en masse*. As a result of Employee's admission, the AJ held that the one round of lateral competition was inapplicable.

On June 22, 2004, Employee submitted a Petition for Review to the OEA Board alleging that the AJ erroneously interpreted the statutory regulations; that the Initial Decision was not based on substantial evidence; and that the AJ failed to address all issues raised in her Petition for Appeal. Employee argued that the burden should rest on the Agency to prove all issues other than jurisdiction.[3]

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[2] *Agency's Response to Employee's Petition for Appeal*, p. 2 (October 28, 2002).
[3] *Employee's Petition for Review*, p. 2 (June 22, 2004).

The Office of Employee Appeals ("OEA") was given statutory authority to address RIF cases. According to D.C. Code Ann. §1-606.3(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. 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:
>
> > (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 30-day written notice prior to their separation. Employee concedes that she received written notice 30 days prior to the effective RIF date. However, she does argue that she was not allowed one round of lateral competition.

This office has consistently held that one round of lateral competition does not apply to employees in a single-person competitive level.[4] Agency provides that Employee was the only person within her position title.[5] If this is the case, then as stated -- one round of lateral competition is inapplicable to this case. Employee, however, asserts that she was one of two people within her position title.[6] If the position was held by someone in addition to Employee, then she was entitled to one round of lateral competition. However, Employee does not provide any information about this additional employee; she does not even reference a name. She also fails to provide how the outcome would have differed if she were allowed the opportunity to compete. At no point does she address how she would have been successful in competing against this other employee.

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[4] *Cabaniss v. Department of Consumer & Regulatory Affairs*, OEA Matter 2401-0156-99 (January 30, 2003), ___ D.C. Reg. ___ ( ); *Robert T. Mills*, OEA Matter 2401-0109-02 (March 20, 2003), ___ D.C. Reg. ___ ( ); *Deborah J. Bryant*, OEA Matter 2401-0086-01 (July 14, 2003), ___ D.C. Reg. ___ ( ); *Robert James Fagelson*, OEA Matter 2401-0137-99 (August 28, 2003), ___D.C. Reg. ___ ( ).

[5] *Agency's Answer to Employee Petition for Review*, p. 1 (July 21, 2004).

[6] *Employee's Petition for Appeal*, p. 5 (August 19, 2002).

Even if we assume for the sake of argument that Employee was within the position level with another, her petition lacks key requirements for a RIF reversal. Accordingly, we hereby deny Employee's Petition for Review.

ORDER

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

FOR THE BOARD:

Brian Lederer, Chair

Horace Kreitzman

Jeffrey J. Stewart

Keith E. Washington

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.