

THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

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In the Matter of:	)	
	)	
BENJAMIN FREEMAN, JR.	)	OEA Matter No. 2401-0148-09
Employee	)	
	)	Date of Issuance: March 16, 2010
v.	)	
	)	Rohulamin Quander, Esq.
	)	Senior Administrative Judge
DEPARTMENT OF HUMAN SERVICES	)	
<hr/> Agency	)	

Benjamin Freeman, Jr., *Pro se*  
Ross Buchholz, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION

On July 1, 2009, Employee, a Maintenance Mechanic, WS-7 in the Career Service with the D.C. Department of Human Services (the “Agency”), filed with the Office of Appeals (the “Office” or “OEA”) a petition for appeal from Agency’s final decision, effective July 6, 2009, separating him from government service pursuant to an Agency-wide reduction-in-force (RIF). Agency was notified of the appeal, and filed a response that included nine (9) attachments. This matter was assigned to me on January 11, 2010. I convened a Prehearing Conference on February 23, 2010. Agency’s counsel of record is Ross Buchholz, Esq. Due to his illness, Pamela Smith, Esq., stood in on his behalf at the Prehearing. Since the matter could be decided based upon the documentary evidence and the parties’ respective positions as set forth at the Prehearing, no further proceedings were conducted. The official 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 separating Employee from service as a result of the RIF was in accordance with applicable law, rule or regulation.

## FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS

Employee, *pro se*, had approximately 25 years of government service at the time of his separation, and was the recipient of many commendations, including excellent or better performance evaluations. In addition, he was union president at the time that the Agency was considering some reorganization. For several years before the RIFs were implemented, Employee, in his capacity as both a Maintenance Mechanic and as union president, was negotiating with management to upgrade the three (3) Maintenance Mechanics from their WS-7 level to the WS-10 level. In 2006, prior to the upgrades, Employee went out on temporary disability. During his absence, the other two positions were elevated to the WS-10 level. However the third position, which Employee encumbered, was not upgraded. Once Employee returned to work in 2007, he was not able to get his position upgraded to the same WS-10 level as the other two Maintenance Mechanics, although he asserted that he was doing the exact same work. Employee filed a grievance on the failure to promote issue, which was still pending at the time of his RIF separation, and to date still has not been resolved. He attributed Agency's inattention to a combination of personal retaliation and the lack of attention to his situation, due to multiple staff changes at the management level.

Agency responded to the petition for appeal, noting that Employee's then pending grievance at the time that the RIF took effect is a non-related matter. As such, Employee cannot now raise these additional issues at this OEA forum, even if there remains some legitimate unresolved issues from his grievance matter. Given Employee's assertion that management allegedly failed to address his grievance, he might still have an available option in another forum, but not at OEA. Agency met all the legal prerequisites at the time the RIF was imposed, pursuant to the directives of Administrative Order DMH-09-05, and the determination for the need of alignment of the delivery of services. It was determined that 15 positions of record at the St. Elizabeth's Hospital site would be abolished. Among those positions identified for abolishment was that of the sole WS-07 Maintenance Mechanic, the position that Employee encumbered.

Consistent with D.C. personnel regulations, a Retention Register was prepared, which reflected that Employee was the sole incumbent of a WS 7 Maintenance Mechanic at the St. Elizabeth Hospital. Therefore, despite his RIF Service Computation Date (SCD) of December 27, 1980, which also reflected D.C. residency, he was still eligible for a RIF separation, without further entitlement to compete in lateral completion. There were no other persons who were also on his Retention Register against whom he might compete for job retention. As well, the entire job class of WS 7 Maintenance Mechanic has been abolished.

As the deciding AJ, I note that Section 149 of the District of Columbia Appropriations Act of 1996 (DCAA-96), Pub. L. 104-134 (April 26, 1996), 110 Stat. 1321-77, amended certain sections of the Comprehensive Merit Personnel Act (CMPA) pertaining to RIFs for the 1996 fiscal year. Prior to the passage of DCAA-96, an entire agency was considered to be a “competitive area” for RIF purposes. Section 149 of DCAA-96 permitted an agency to establish, for the first time, competitive areas less than the entire agency.<sup>1</sup> These changes to the CMPA remained in effect for RIFs conducted during “the fiscal year ending September 30, 2000, and each subsequent fiscal year. . . .” *See D.C. Official Code* § 1-624.08 (2001). Thus, these changes were in effect for the RIF at issue in this matter, which took place during Fiscal Year 2009. Further, consistent with the earlier modifications to the CMPA, § 1-624.08 limited an employee’s appeal rights to this Office to the following areas: 1) that an agency had violated an employee’s entitlement to one (1) round of lateral competition within his or her competitive level; and 2) that an employee had not been given thirty (30) days specific notice prior to the effective date of the RIF.

Addressing first the 30-day notice requirement, it is undisputed that Employee received the requisite notice.<sup>2</sup> Regarding the one round of lateral competition requirement, it is uncontroverted that Employee’s competitive level was Maintenance Mechanic, WS 7. It is likewise uncontroverted that he was properly the only person in this competitive level. This Office has previously decided that in cases involving a single-person competitive level that was abolished pursuant to a RIF, “the statutory provision affording [the employee] one round of lateral competition was inapplicable.” *Cabaniss v. Department of Consumer & Regulatory Affairs*, OEA Matter No. 2401-0156-99 (January 30, 2003), \_ D.C. Reg. \_\_ ( ); *Mills v. D.C. Public Schools*, OEA Matter No. 2401-0109-02 (March 20, 2003), \_ D.C. Reg. \_\_ ( ). I conclude that the holding in these cases applies here.

Employee has made no other claims cognizable by this Office in an appeal from a RIF.<sup>3</sup> Therefore, I conclude that Agency’s action separating Employee from service as a result of the RIF was in accordance with applicable law, rule and regulation and must therefore be upheld.

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<sup>1</sup> Section 149(a) amended § 2401 of the CMPA as follows: “A personnel authority may establish lesser competitive areas within an agency on the basis of all or a clearly identifiable segment of an agency’s mission or a division or major subdivision of an agency.”

<sup>2</sup> Employee received a specific notice of RIF on June 4, 2009. The notice advised him that he would be separated from service on July 6, 2009, over 30 days after her receipt of the notice.

<sup>3</sup> Employee’s additional claims involved: 1) a failure to promote him to WS 10, despite his efforts on behalf of all three Maintenance Mechanics, the other two of whom were promoted during his disability-related absence; 2) Agency retaliation for Employee’s aggressiveness in his capacity as union president

ORDER

It is hereby ORDERED that Agency's action separating Employee from service as a result of the RIF is UPHELD.

FOR THE OFFICE:

/ s /  
ROHULAMIN QUANDER Esq.  
Senior Administrative Judge