THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	
VALERIE JONES GERALD WHITMORE EMMANUEL L. PEAKS, Employees	OEA Matter No. 2401-0064-03 2401-0065-03 2401-0066-03
	Date of Issuance: May 15, 2007
D.C. DEPARTMENT OF MENTAL HEALTH, Agency	

OPINION AND ORDER
ON
PETITION FOR REVIEW

Valerie Jones, Gerald Whitmore, and Emmanuel L. Peaks ("Employees") worked at the D.C. Department of Mental Health ("Agency"). Valerie Jones worked as a mail clerk; Gerald Whitmore was an electrician; and Emmanuel Peaks was a locksmith at Agency. On January 24, 2003, they all received notices stating that as a result of a reorganization their positions were terminated under a reduction-in-force ("RIF").

All Employees filed Petitions for Appeal on March 27, 2003, with the Office of Employee Appeals ("OEA"). Their petitions alleged ten reasons why their terminations

were improper.[1] Agency responded by filing its reply to Employees' allegations. It provided each allegation raised and argued that OEA lacked jurisdiction over all the pre-RIF issues raised by Employees.

In its response, Agency provided that the reorganization was approved by the federal court and was enacted by the D.C. City Council. It argued that it was granted independent personnel authority over all employees. Agency also provided that the competitive areas for the RIFs were in accordance with Chapter 24 of the D.C. Personnel Regulations.[2] Moreover, Agency argued that the D.C. Personnel Regulations were used to develop its competitive levels;[3] to develop its retention registers;[4] to ensure that the competing employees received timely performance ratings;[5] to enforce residency

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[1] Employees argued the following:

(a) Agency failed to obtain approval for the 2002 Reorganization from the Mayor, Chief Financial Officer, and the DC Council.
(b) Agency failed to justify the use of smaller competitive areas and failed to publish the competitive area before separating employees.
(c) The competitive levels were not properly developed.
(d) The RIF registers were not properly developed.
(e) Agency failed to ensure that competing employees received timely performance ratings.
(f) Agency failed to review and enforce District personnel regulations on residency preference before the RIF.
(g) Agency failed to maintain correct records to determine retention standing.
(h) Agency failed to properly grade its positions.
(i) Agency failed to adhere to District personnel regulations and merit principles in its hiring.
(j) Agency violated its Reemployment Priority Program.

[2] *Agency's Response to Employee's Petition for* Appeal, Tab # 6 (December 17, 2003). Agency relied on Section 2409.2 which provides that lesser competitive areas within an Agency may be established by the personnel authority. It also relied on Section 2409.6 which states that employees in one competitive area shall not compete with employees of another area.

[3] *Id.* Agency sites to Sections 2410.1-2410.4.

[4] *Id.* Agency sites to Section 2412.

[5] *Id.* Agency does not specifically cite to actual performance evaluations. However, it provided that managers and supervisors of Employees were instructed on how to complete and submit timely performance evaluations.

preferences;[6] to maintain records to determine retention standing;[7] to implement proper grading of positions;[8] to adhere to District Personnel regulations and merit principles for its hiring;[9] and to comply with the Agency Reemployment Priority Program.[10]

On October 26, 2004, the Administrative Judge ("AJ") at OEA issued his Initial Decision. He found that the issues outlined by Employees were outside the scope of OEA's purview. The AJ sited a number of cases that limit OEA's jurisdiction to hear pre-RIF issues as those alleged by Employees. He concluded that OEA could only determine if Agency granted Employees one round of lateral competition and if it provided them with thirty (30) days written notice prior to their RIFs. Employees did not allege that Agency violated either of these requirements. Therefore, Agency's RIF actions against Employees were upheld.

Employees disagreed with the AJ's ruling and filed a Petition for Review on November 29, 2004. The petition alleged that Agency failed to provide a 30-day written notice and to provide one round of lateral competition. However, they asserted the same pre-RIF arguments from their Petition for Appeal as justification that they did not receive

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[6] *Id.* Agency provided that prior to the RIFs, all Employees were sent data verification sheets to verify their residency. All employees who resided within the District received an additional three (3) year service credit.
[7] *Id.* Agency provided that it was in strict conformance with Chapter 31A, the Records Management and Privacy of Records.
[8] *Id.* Agency provided that positions were established and classified by the standards, guides, and qualifications outlined by the D.C. Office of Personnel and the U.S. Office of Personnel Management.
[9] *Id.* Agency relied on Chapter 8, Appendix A of the Merit Staffing Plan to recruit and hire its employees.
[10] *Id.* Agency claimed it followed the District Personnel Manual ("DPM") Chapter 8, Appendix B, DPM Bulletin 4-15 and 24-8 from March 12, 2003 to remain in accordance with the Agency Reemployment Priority Program.

valid notice or one round of lateral competition.[11] Agency filed its response on January 14, 2005; it provided that Employees still failed to show that OEA had jurisdiction over the pre-RIF issues raised.[12]

OEA Rule 634.4 provides that "any objection of legal arguments which could have been raised before the Administrative Judge, but were not, may be considered waived by the Board." Prior to their Petition for Review, Employees never argued that Agency failed to provide them with a proper 30-day notice of the RIF, nor did they argue that they were not afforded one round of lateral competition. Therefore, the Board cannot consider those arguments.[13]

As for the pre-RIF arguments raised by Employees, this Board agrees with the AJ's assessment of the office's jurisdiction over the pre-RIF issues. Of the ten reasons why their RIFs were improper, Employees made several arguments that their positions were not properly classified. This is clearly an issue that existed before the RIF. As a result, we agree with the AJ and the court in *In the Matter of Teteja,* 2405-0013-91 (July 2, 1992), 39 D.C. Reg. 7213. The court provided that the Temporary Appeals Panel could only review the validity of RIFs and not job classifications.[14]

Employees also took issue with Agency's failure to gain approval for the reorganization. This is also a pre-RIF issue. The Court of Appeals in *Anjuawan v. D.C.*

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[11] *Petition for Review*, p. 3-7 (November 29, 2004). Employees raised the same ten reasons why their RIFs were improper.
[12] *Agency's Response to Employees Petition for Review*, p. 3-4 (January 14, 2005).
[13] It should be noted that it appears that Employees raised no new arguments. Employees Petition for Review asserts the same pre-RIF arguments already presented.
[14] TAP was established to help OEA AJs handle the backlog of cases pending before the office.

Department of Public Works, 729 A.2d. 883 (December 11, 1998), provided that OEA does not have jurisdiction to make any decisions pertaining to the shortage of funds that an agency may face. The court provided that as long as an agency can show that there was a shortage of funds to justify the RIFs, then it is within its discretion to do so. Consequently, OEA could not second guess a Mayor's decision about a shortage of funds or an agency's management decisions about which positions needed to be abolished. The court was clear in its ruling that OEA only has authority to determine if the RIF complied with DC Personnel statutes and regulations.

As for the other pre-RIF issues raised on appeal by Employees, OEA has consistently held that it cannot consider anything outside of its authorized scope concerning RIF appeals.[15] The proper place for Employees to have raised the pre-RIF issues may have been at the agency level by filing a grievance. Because the office lacks authority to consider these pre-RIF issues and because Employees failed to prove that Agency did not provide 30 days notice and one round of lateral competition, Employees' Petition for Review is DENIED.

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[15] *Wharton v. District of Columbia Public Schools,* OEA Matter No. J-0111-02 (March 3, 2003), __ D.C. Reg. __ ( ); *Powell v. Office of Property Management,* OEA Matter No. 2401-0127-00 (February 3, 2003), __ D.C. Reg. __ ( ); *Booker v. Department of Human Services*, OEA Matter No. 2401-0190-97 (October 11, 2000), __ D.C. Reg. __ ( ).

ORDER

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

FOR THE BOARD:

Brian Lederer, Chair

Horace Kreitzman

Keith E. Washington

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.