THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	
LILLIAN RANDOLPH Employee	OEA Matter No. 2401-0085-02
v.	Date of Issuance: June 16, 2006
DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY Agency	

OPINION AND ORDER
ON
PETITION FOR REVIEW

Lillian Randolph ("Employee") worked as a water billing assistant at the D.C. Water and Sewer Authority ("Agency"). On March 8, 2001, Agency issued a letter informing Employee that it would implement a Customer Information System ("CIS"). The letter went on to say that the new system would result in changes to job duties and responsibilities that could lead to the abolition of jobs. As a means to help employees retain their jobs, Agency offered training on the CIS. Evaluations were also provided to allow employees assessments of their strengths and weaknesses.[1]

[1] *D.C. Water and Sewer Record*, Exhibit #1 (October 23, 2002).

On October 4, 2001, Agency held a meeting with Employee to discuss the effects of the CIS on her job. Agency told Employee that her position would be eliminated. She was also given an explanation of how to apply for other positions and the selection process for those positions. Employee was advised that if she was not selected for any of the new positions, she would remain in her current positions until the effective RIF date. [2]

Employee received a letter on November 15, 2001, informing her that she was not selected for any of the new positions because she failed the customer service and telephone skill tests necessary for the job. She was to report to the Office of the Chief Financial Officer on December 10, 2001, where she was assigned unclassified duties. Employee's temporary assignment was to last through March 31, 2002. Agency encouraged Employee to apply for internal and external positions.[3]

Finally, on March 15, 2002, Employee received a RIF notice from Agency. The RIF was to become effective on April 19, 2002.[4] On May 17, 2002, Employee filed a Petition for Appeal with the Office of Employee Appeals ("OEA") alleging that she did not receive documentation of her test results for the new positions.
Moreover, she argued that she was tested on skills which Agency did not provide in its training.[5]

Agency filed a response to the Petition for Appeal on October 23, 2002. It provided that Employee did not allege that Agency failed to provide her with a 30-day written notice of the RIF action or at least one round of lateral competition. Therefore,

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[2] *Id.*, Exhibit #2.
[3] *Id.*, Exhibit #4.
[4] *Id.*, Exhibit #5.
[5] *Petition for Appeal*, p. 6 (May 17, 2002).

her Petition for Appeal should be dismissed for failure to state a claim upon which relief could be granted.

The Administrative Judge ("AJ") issued his Initial Decision on July 9, 2004. He held that the Employee did not establish OEA's jurisdiction because she failed to prove that she was not afforded one round of lateral competition or that she failed to receive 30 days' notice prior to the effective RIF date. The AJ also found that Employee could not prove, as she alleged, that the position that she once held was reclassified and not abolished. The AJ held that Agency clearly proved that the new positions had new descriptions and requirements.

Employee then filed a Petition for Review alleging that there was new evidence not available at the time of pleadings that Agency hired new employees with identical job codes and descriptions. Employee also argued that, according to *Armstead v. D.C.*, 810 A.2d 398 (2002), OEA has the authority to adjudicate unlawful terminations, adverse actions, and grievances.

D.C. Code § 1-624.08(d), (e), and (f) clearly establishes the circumstances under which the OEA may hear RIFs on appeal.[6]

> (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 position in the employee's competitive level.
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> (e) Each employee selected for separation pursuant to this section shall be given written notice of at least 30 days before

[6] As the AJ provided in the Initial Decision, 21 DCMR § 5207.23 provides the same requirements for appeal of a RIF action as D.C. Code § 1-624.08.

> 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:
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> > (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.

Thus, this Office is only 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 30-days written notice prior to their separation. Employee does not advance either of these arguments. Instead she provides that the process was unfair because she did not receive documentation of her test results for the new positions offered by Agency. As the AJ provided in his Initial Decision, statutorily OEA is not authorized to address issues of fairness. Those issues are considered grievances and should be raised at the Agency level.

Employee's RIF notice was dated March 15, 2002. The RIF was to become effective on April 19, 2002. Therefore, the 30 day notice requirement was met by Agency.[7] Furthermore, because the positions in Employee's competitive level were abolished, then there were no positions for which to compete. Although Employee

[7] *D.C. Water and Sewer Record*, Exhibit #5 (October 23, 2002).

provides that there is now new evidence to prove that new employees were hired under identical job codes and descriptions, she fails to provide any supporting evidence.

The AJ provided in his Initial Decision that Agency "clearly demonstrated that significant changes were forthcoming [] to move WASA away from its then combination of manual and computer assisted service delivery, to a much higher level of technology."[8] The AJ further found that:

> despite Employee assertions to the contrary, the duties previously discharged by the WBA's [Water Billing Assistants] were only partially the same as those now discharged by the CCA's [Customer Care Associate], as the realignment of WASA also required that new operational policies be put in place, and that staff's qualifications be likewise upgraded through training on new systems. . . .[9]

Additionally, Employee fails to show how providing this information pertaining to the job descriptions and codes would have prevented or reversed the RIF action taken against her. Consequently, she is unable to prove that the RIF procedures used by Agency were improper.

Employee also asserts that OEA has authority to hear grievance matters according to *Armstead.* However, no such language exists in *Armstead* or in the Comprehensive Merit Personnel Act ("CMPA"). The section of the CMPA that Employee is referencing is 1-616.02. This section was actually repealed on June 10, 1998. OEA has not been authorized to hear grievances since that time. Furthermore, D.C. Official Code §1-606.02(b) provides OEA's authority. This section clearly provides that:

> Any performance rating, grievance, adverse action or reduction-in-force review, which has been included within a collective

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[8] *Initial Decision*, p. 6 (July 9, 2004).
[9] *Id.* at p. 7.

> bargaining agreement under the provisions of subchapter XVII of this chapter, shall **not** be subject to the provisions of this subchapter.

Employee failed to prove that the RIF procedures used by Agency were improper and failed to prove OEA's authority to hear grievance matters. Accordingly, we uphold the Judge's decision and 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

Keith E. Washington

Jeffrey J. Stewart

Barbara D. Morgan

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.