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THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	OEA Matter No.: 2401-0279-09
ELAINE SCOTT-WILLIAMS,)	
Employee)	
)	Date of Issuance: June 20, 2011
v.)	
)	
OFFICE OF PUBLIC EDUCATION)	
FACILITIES MODERNIZATION,)	
Agency)	Sommer J. Murphy, Esq.
_____)	Administrative Judge

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On September 21, 2009, Elaine Scott-Williams, a Supervisory Information Technology Specialist, filed a petition for appeal with the Office of Employee Appeals (“OEA” or “the Office”) contesting the Office of Public Education Facilities Modernization’s (“Agency”) action of abolishing her position through a Reduction-in-Force (“RIF”). The effective date of the RIF was September 21, 2009.

I was assigned this matter on or around January 2011. On March 25, I issued an order rescheduling a status hearing for April 20, 2011, to determine whether a hearing was required in this case. Both parties appeared at the status conference. On April 22, 2011, I issued an order directing parties to submit written briefs regarding RIF. Employee did not submit a post-status conference brief. Subsequently, on June 9, 2011, I issued an Order for Statement of Good Cause. The Employee was ordered to submit a statement of cause based on her failure to submit a post-conference brief. Employee had until June 17, 2011, to respond. Employee submitted a response to the order on June 17, 2011. After reviewing the record, I have determined that a hearing is not warranted. The record is now closed.

JURISDICTION

This Office has jurisdiction in this matter pursuant to D.C. Official Code § 1-606.03 (2001).

ISSUE

Whether Agency's action of separating Employee from service pursuant to a RIF was done in accordance with all applicable laws, rules, or regulations.

BURDEN OF PROOF

OEA Rule 629.1, 46 D.C. Reg. 9317 (1999) states:

The burden of proof with regard to material issues of fact shall be by a preponderance of the evidence. "Preponderance of the evidence" shall mean:

That degree of relevant evidence which a reasonable mind, considering the record as a whole, would accept as sufficient to find a contested fact more probably true than untrue.

OEA Rule 629.3 *id.* states:

For appeals filed on or after October 21, 1998, the Agency shall have the burden of proof, except for issues of jurisdiction.

FINDINGS OF FACTS, ANALYSIS, AND CONCLUSIONS OF LAW

In her appeal, Employee argues that she should not have been terminated because she had seniority over other employees who were not separated as a result of the RIF. Employee also questioned the accuracy of the competitive level in which she was placed. In response, Agency argued that it conducted the RIF in accordance with the District of Columbia Municipal Regulations and the D.C. Official Code. Agency further stated that it provided Employee with the proper notification and one round of lateral competition. Because Employee's termination was the result of a RIF, I am guided by D.C. Official Code § 1-624.08, which states in pertinent part that:

(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... 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 a 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.

Accordingly, the issues to be decided in this matter under the aforementioned statute are: 1) whether an employee received written thirty (30) days notice prior to the effective date of their separation from service; and 2) whether the employee was afforded one round of lateral competition within his/her competitive level.

In her response to the June 9, 2011, Order for Statement of Good Cause, Employee conceded that the RIF was properly executed. Employee further stated that this Office was not the correct venue to address the grievances that she had pertaining to her termination. I agree.

Based on the record, I find the Agency complied with D.C. Official Code § 1-624.08. Employee was afforded one round of lateral competition and received thirty (30) days written notice of her termination. Therefore, Agency properly implemented the RIF which resulted in Employee's termination. Accordingly, this matter should be dismissed.

ORDER

It is hereby ORDERED that Agency's action of abolishing Employee's position through a Reduction-in-Force is UPHOLD

FOR THE OFFICE:

Sommer J. Murphy, Esq.
Administrative Judge