THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	
EDMOND K. SHEFFIELD Employee	
	OEA Matter No. 2401-0078-94
v.	Date of Issuance: May 4, 2001
DEPT. OF PUBLIC WORKS Agency	

OPINION AND ORDER
ON
PETITION FOR REVIEW

As a result of a reduction-in-force, implemented due to a shortage of funds, Agency abolished Employee's position and reassigned him to a lower grade position. Employee appealed that action to this Office. In his appeal, Employee contended that Agency should have abolished the position of an employee with less seniority and that non-union employees, such as himself, should have been reinstated and given back pay just as union employees were.

The Administrative Judge upheld Agency's action and dismissed Employee's appeal. The Administrative Judge held that "once an agency has implemented a [reduction-in-force] for a legitimate reason, i.e., a shortage of funds, [this Office] lacks the authority to review [an] agency's decision regarding which positions to preserve or to abolish. . . ." *Initial Decision* at 4. Further the Administrative Judge found that because Agency had implemented the reduction-in-force for a legitimate reason, the fact that Agency chose not to abolish a position occupied by an employee having less seniority than Employee did not render its decision subject to this Office's scrutiny. With respect to Employee's second contention, that non-union employees should have been reinstated and given back pay as were union employees, the Administrative Judge found that an arbitrator had determined that, based on the terms of a collective bargaining agreement, Agency had erroneously applied the reduction-in-force to union employees. Thus, the arbitrator overturned the reduction-in-force as it had been applied to union employees. Because Employee was not a member of the union, the Administrative Judge held that Employee was not entitled to the benefits of the negotiated agreement. Therefore, Employee's Petition for Appeal was dismissed.

Subsequently, Employee filed a timely Petition for Review. In it Employee argues that Agency abused its discretion when it chose his position to abolish pursuant to the reduction-in-force. Essentially Employee is again arguing that Agency should have abolished the Traffic Signal position of an employee with less seniority than he. As Agency has stated, and the Administrative Judge reiterated in the Initial Decision, an employee's level of seniority is

relevant only when there are two or more employees within the same competitive level. In such cases, an agency may factor in seniority when deciding which employees, within the same competitive level, will be released. If, however, there is only one employee within a competitive level and the agency decides to release that employee, then the seniority of another employee within another competitive level is irrelevant. The record in this case reveals that Employee was the only person within his competitive level. Therefore, Employee's claim that someone with less seniority should have been released is without merit.

Secondly, Employee argues that Agency's decision to abolish his position through the reduction-in-force "was based on [a] perceived bias" against him. The District of Columbia Court of Appeals, in *Anjuwan v. D.C. Dep't of Public Works*, 729 A.2d 883 (D.C. 1998), addressed a similar issue when the employee in that case argued that the agency's reduction-in-force, and subsequent abolishment of his position, was a pretext for retaliation. The court held that the employee had not offered any evidence "to support his suspicion that the agency-wide [reduction-in-force] was a sham to retaliate against him. . . ." *Id.* at 885-886. As the court found in *Anjuwan*, we find in this appeal that Employee has not offered any evidence to substantiate his claim. Because there is substantial evidence in the record to uphold the Initial Decision, we deny Employee's Petition for Review.

ORDER

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

FOR THE BOARD:

Keith E. Washington, Chair

Gwendolyn Hemphill

Michael Wolf, Esq.

The initial decision in this matter shall become a final decision of the Office of Employee Appeals 5 days after the issuance 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.