THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
NICOLE SIVOLELLA	)	**OEA Matter No. 2401-0193-04**
Employee	)	
	)	**Date of Issuance: December 23, 2005**
v.	)	
	)	**Rohulamin Quander, Esq.**
DISTRICT OF COLUMBIA	)	**Senior Administrative Judge**
PUBLIC SCHOOLS	)	
Agency	)	

INITIAL DECISION

Nicole Sivolella, Employee, *pro se*
Harriet Segar, Esq., Agency Representative

INTRODUCTION

On July 30, 2004, Employee, an ET-15 French Teacher at Ballou Senior High School, part of the D.C. Public Schools (the "Agency"), filed a Petition for Appeal with the Office of Employee Appeals (the "Office"), contesting Agency's decision separating her from educational service pursuant to a reduction-in-force (the "RIF") for financial reasons, effective June 30, 2004. Agency was served a copy of the Employee's Petition for Appeal on December 23, 2004, and filed its timely reply with the Office. In its response, Agency asserted that there were two French teachers at the school site, one of whom was the Employee herein, and that both positions were abolished. As such, Agency noted that no Competitive Level Documentation Form (the "CLDF") was either prepared or required under the governing regulations. This matter was assigned to me on June 2, 2005, and on that date, I issued an *Order* convening a Status Conference on July 13, 2005.

The Employee, *pro se,* appeared at the Status Conference and reasserted, as she had initially indicated in her petition, that she could not understand how the Agency could abolish her job without first evaluating her credentials using the CLDF process to evaluate and assess her credentials. She also questioned why, after the RIF had supposedly taken effect, Louise Friedman-Jennings ("Friedman-Jennings"), the other French teacher who was also RIFed, was subsequently called back in September 2004 to teach French at Ballou. Noting that Friedman-Jennings only stayed there for about two weeks of the school year before electing to resign, Employee took exception to her not

being then called back by the Agency to be reinstated into her old position as Friedman-Jennings's successor. Instead, when she left, Agency hired someone else for the position without first according Employee a notification of the vacancy or the opportunity to be returned to her old job. Employee did not indicate whether the selectee had D.C. residency, veteran's preference, or years-in-service seniority over her own job status.

Because a decision could be made in this matter based upon the record, as well as the governing laws, regulations, and prior decisions issued by this Office, no evidentiary hearing was held. The 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 was one of two ET-15 French teachers at Ballou Senior High School, when Agency elected to implement a RIF, effective June 30, 2004, which abolished their jobs, as well as the French teaching department at the school. One position was later restored, and the other French teacher was reinstated, although she elected to resign in September 2004, after serving for about two weeks. Someone else was selected in her place and assigned to teach French at Ballou, without Employee being accorded the opportunity to return there as a French teacher.

D.C. Official Code § 1-624.08(f) reads as follows:

> 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 action shall be subject to review except that . . . (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.

Section 1-624.08(d) states in part that:

> An employee affected by the abolishment of a position pursuant to this section . . . shall be entitled to one round of lateral competition pursuant to Chapter 24 of the District of Columbia Personnel Manual [DPM],[1] which shall be limited to positions

[1] Chapter 24 of the DPM contains the regulations implementing the RIF law.

in the employee's competitive level.

Section 1-624.08(e) states that:

> 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.

5 DCMR § 1503.3 states that:

> When an entire competitive level within a competitive area is eliminated, these factors need not be considered in determining which positions will be abolished.[2]

Thus, an employee whose position was abolished as a result of a RIF may only contest before this Office: 1) that she was not afforded one round of lateral competition within her competitive level; and/or 2) that she was not given 30 days notice prior to the effective date of her separation.

Regarding the lateral competition requirement, the record shows that Employee and one other French teacher were the only French teachers in their competitive level of a department where French was scheduled to no longer be offered, and that the entire competitive level and competitive area, i.e., teachers of French at Ballou Senior High School, was being abolished. Therefore, in light of the law and the above-noted governing regulations, I conclude that the statutory provision of Code § 1-624.08(d), according Employee one round of lateral competition, as well as the related RIF provisions of 5 D.C. Municipal Regulations 1503.2, are both inapplicable.

As such, Agency was not required to go through the rating and ranking process described in that chapter relative to abolishing Employee's position, since the entire unit was dissolved. See *Leona Cabiness v. Department of Consumer and Regulatory Affairs*, OEA Matter No. 2401-0156-99 (January 30, 2003), __ D.C. Reg. __; *Robert T. Mills v. D.C. Public Schools*, OEA Matter No. 2401-0109-02 (March 20, 2003), __ D.C. Reg. __; *Deborah J. Bryant v. D.C. Department of Corrections,* OEA Matter No. 2401-0086-01 (July 14, 2003), __ D.C. Reg. __; and *R. James Fagelson v. Department of Consumer and Regulatory Affairs,* OEA Matter No. 2401-0137-99 (December 3, 2001), __ D.C. Reg. __.

Although no CLDF evaluation occurred, this AJ does take administrative notice that at the time of the RIF, Friedman-Jennings had at least 34 years of service with the Agency, compared to Employee's approximately three years of service. This time in service information was gleaned from the information that Agency submitted to the Office as a component of the discovery process, which confirmed that, based upon a Certificate of Longevity which was on file with submitted documents,

---

[2] This section is the stated exception to 5 DCMR § 1503.2, which enumerates the objective evaluative process to be utilized when a position is to abolished and a decision must be made, between employees in the same competitive area and competitive level, who to retain and who to separate, based upon academic credentials, professional experience, job performance, length of service, veteran's preference, and D.C. residency, among other stated considerations.

Friedman-Jennings joined the Agency as a teacher of French on or about December 1, 1970, while the Employee herein joined the Agency as a teacher of French on or about August 29, 2001.

As set forth above, an employee who has been separated from service as a result of a RIF has limited appeal rights to this Office. She may contest whether she was properly afforded one (1) round of lateral competition within her competitive level, and/or whether she received 30 days written notice prior to the effective date of the RIF. However, when an entire competitive level within a competitive area is eliminated, the statutory provision of D.C. Official Code § 1-624.08(e), according Employee one round of lateral competition, as well as the related RIF provisions of 5 D.C. Municipal Regulations 1503.3, are both inapplicable.

On the issue of post RIF reinstatement rights, in addition to career seniority over the Employee, Friedman-Jennings also had whatever level of building seniority there might have been in place at the time. However, when she was reinstated, but elected to resign after serving for a very short while, there was no guarantee that Employee would be selected to return to her old work assignment as the alternate selection, if there were other qualified teachers of French employed by the Agency who had more seniority than Employee. Several agencies within the D.C. government have programs which undertake to provide priority reemployment or reinstatement assistance to its displaced employees. This Agency approaches that initiative by seeking to reinstate teachers and reassigning them to where they are most needed. If Employee's credentials were superior or equal to the other French teacher who was apparently reinstated or reassigned to Employee's old worksite as the hiree who was selected to fill the position after Friedman-Jennings elected to resign, Employee's remedy would have been to file a formal grievance with the Agency.

To the extent that Employee implies that she was entitled to some reemployment right, once Friedman-Jennings elected not to continue working at Ballou, this Office has held that our jurisdiction to consider any employee's petition is limited to what the governing law provides, and that post-RIF reinstatements have been determined to be outside of our jurisdiction. See *Wynn v. Department of Corrections,* OEA Matter No. 2401-0133-00 (Nov. 19, 2002), __ D.C. Reg. __.

Therefore, based on the record before me and the statutory requirements having been met, I conclude that Agency properly separated Employee from service as a result of the RIF, and that this action must be upheld. Agency's Motion to Dismiss should be **GRANTED.**

ORDER

It is hereby ORDERED that Agency's action separating Employee from service as a result of the RIF is UPHELD, and that Agency's Motion to Dismiss is **GRANTED.**

FOR THE OFFICE:

ROHULAMIN QUANDER, Esq.
Senior Administrative Judge