

THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
Adolfo Stamp)	OEA Matter No. 2401-0220-09
Employee)	
v.)	Date of Issuance: October 20, 2010
Office of Public Education Facilities Modernization)	Senior Administrative Judge
Agency)	Joseph E. Lim, Esq.
_____)	

Adolfo Stamp, Employee pro se
Charles Brown, Jr., Esq., Agency Representative

INITIAL DECISION

INTRODUCTION

On August 20, 2009, Employee, a Painter Worker, RW-4102-7, in the Career Service, filed a petition for appeal from Agency's final decision separating him from Government service pursuant to a modified reduction-in-force (RIF).

This matter was assigned to me on September 22, 2010. I conducted a Prehearing Conference on October 18, 2010. Since the matter could be decided based on the documentary evidence and the parties' positions as set forth at the conference, no further proceedings were conducted. The record is 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

The following facts are not subject to genuine dispute:

1. On September 21, 2009, the effective date of her RIF, Employee had occupied the

position of Painter Worker, RW-4102-7, in the Career Service. Pursuant to § 2412 of the RIF regulations, Agency established a retention register for Employee's competitive level. Because he was the only Painter Worker, RW-4102-7, then for purposes of the RIF, he was properly in a one-person competitive level.

2. Employee's Retention Register shows that his RIF service computation date is March 11, 1986. Because his position was eliminated and because he was the only one in his competitive level, Employee was terminated.
3. Employee received the requisite 30-day notice prior to the effective date of his separation.
4. At the conference, Employee alleged racial discrimination and that he was an outstanding employee for 23 years.

ANALYSIS AND CONCLUSIONS

D.C. Official Code § 1-606.03 (2001) gives this Office the authority to review, *inter alia*, appeals from separations pursuant to a RIF. Subchapter XXIV of the Code sets forth the law governing RIF's. Section 1-624.08 of subchapter XXIV pertains to RIF's for "the fiscal year ending September 30, 2000, and each subsequent fiscal year. . . ." Chapter 24 of the DPM, § 2410.4, 47 D.C. Reg. 2430 (2000), defines "competitive level" as:

All positions in the competitive area ... in the same grade (or occupational level), and classification series and which are sufficiently alike in qualification requirements, duties, responsibilities, and working conditions so that the incumbent of one (1) position could successfully perform the duties and responsibilities of any of the other positions, without any loss of productivity beyond that normally expected in the orientation of any new but fully qualified employee.

Section 2412 of the RIF regulations, 47 D.C. Reg. at 2431, requires an agency to establish a "retention register" for each competitive level, and provides that the retention register "shall document the final action taken, and the effective date of that action, for each employee released from his or her competitive level." Generally, employees in a competitive level who are separated as a result of a RIF are separated in inverse order of their standing on the retention register. An employee's standing is determined by his/her RIF service computation date (RIF-SCD), which is usually the date on which the employee began D.C. Government service. However, an employee's standing on the retention register can be enhanced by: 1) an "Outstanding" performance rating for the rating year immediately preceding the RIF (DPM § 2416, 47 D.C. Reg. at 2433); 2) Veteran's preference (DPM § 2417, 47 D.C. Reg. at 2434); and/or 3) D.C. residency preference (DPM § 2418, *id.*).

Regarding the lateral competition requirement, the record shows that Employee was the sole person in her competitive level that was subjected to the RIF. Therefore, I conclude that the statutory provision of 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, and that Agency is not required to go through the rating and ranking process described in that chapter relative to abolishing Employee's position. 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. __.

Employee's argued that he was an outstanding employee for 23 years and that he was discriminated against by Agency. As the deciding Administrative Judge, I note that none of Employee's arguments negate the legality of the RIF action. As discussed above, § 1-624.08(f)(2) limits the grounds upon which employee may contest his RIF, and the above arguments are not among them. This Office does not have jurisdiction over allegations of racial discrimination. However, Employee may appeal to a different forum to address his concerns regarding racial discrimination.

Based on the foregoing, I must uphold Agency's action of abolishing Employee's position through a RIF.

ORDER

It is hereby ORDERED that Agency's action separating Employee pursuant to a RIF is UPHELD.

FOR THE OFFICE:

Joseph Edward Lim, Esq.
Senior Administrative Judge