THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	
ANNETTE TERRY WILLIE TERRY VICKI DAVIS SHEILA ZINNERMAN DIANE MILLER Employees	OEA Matter Nos. 2401-0081-02 2401-0082-02 2401-0083-02 2401-0084-02 2401-0086-02
v.	Date of Issuance: October 18, 2006
DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY Agency	

OPINION AND ORDER
ON
PETITION FOR REVIEW

Willie Terry, Vicki Davis, Sheila Zinnerman, and Diane Miller ("Employees") worked as water billing assistants at the D.C. Water and Sewer Authority ("Agency"); Annette Terry (included in "Employees") worked as a mail and file clerk. On March 8, 2001, Agency issued a letter informing Employees 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]

On October 4, 2001, Agency held a meeting with Employees to discuss the effects of the CIS on their jobs. Agency told Employees that their position would be eliminated. They were also given an explanation of how to apply for other positions as well as the selection process for those positions. Employees were advised that if they were not selected for any of the new positions, they would remain in their current positions until their effective RIF dates.[2]

Each Employee received a letter on November 15, 2001, informing them that they were not selected for any of the new positions because they failed the basic skills test, customer service skills test, and/or telephone skill tests necessary for the new positions.[3] Each of them were informed to report to the Office of the Chief Financial Officer on December 10, 2001, where they would be assigned unclassified duties. Employees' temporary assignments were to last through March 31, 2002. Agency encouraged Employees to apply for internal and external positions.[4]

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[1] *District of Columbia Water and Sewer Authority's Consolidated Agency Response and Motion to Dismiss for Failure to State a Claim*, Exhibit #1 (October 23, 2002).
[2] *Id.*, Exhibit #2.
[3] Annette Terry did not meet the basic skills standards established for the new position created. Willie Terry failed to meet the customer service and telephone skills. Vicki Davis did not meet the basic skills standard. Sheila Zinnerman did not meet the basic, customer service, and telephone skills. Diane Miller failed to meet the customer service and telephone skills established. It should be noted that Annette Terry's notice was dated November 29, 2001.
[4] *Id.*, Exhibit #4, 7, 13, 16, and 19.

Finally, on March 15, 2002, Employees received RIF notices from Agency. The RIFs were to become effective on April 19, 2002.[5] On May 16, 2002, Employees filed Petitions for Appeal with the Office of Employee Appeals ("OEA") alleging that they did not receive documentation of their test results for the new positions.[6] Moreover, they argued that they were tested on skills that Agency did not provide in its training. Additionally, they provided that the new positions were very similar, if not the same, as the positions they once held.[7]

Agency filed a response to the Petitions for Appeal on October 23, 2002. It provided that Employees did not allege that Agency failed to provide them with a 30-day written notice of the RIF actions or at least one round of lateral competition. Therefore, their Petitions for Appeal should be dismissed for failure to state a claim upon which relief could be granted.[8]

The Administrative Judge ("AJ") issued his Initial Decision on July 9, 2004. He held that Employees did not establish OEA's jurisdiction because they failed to prove that they were not afforded one round of lateral competition or that they failed to receive 30 days' notice prior to their effective RIF dates. The AJ also found that Employees could not prove, as they alleged, that the positions that they once held were reclassified

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[5] *Id.*, Exhibit #5, 8, 14, 17, and 20.
[6] Diane Miller's Petition for Appeal was not filed until May 17, 2002.
[7] *Annette Terry's Petition for Appeal*, p. 5 (May 16, 2002); *Willie Terry's Petition for Appeal*, p. 4 (May 16, 2002); *Sheila Zinnerman's Petition for Appeal*, p. 4-5 (May 16, 2002); *Diane Miller's Petition for Appeal*, p. 5-6 (May 17, 2002); and *Vicki Davis' Petition for Appeal*, p. 6 (May 16, 2002).
[8] *District of Columbia Water and Sewer Authority's Consolidated Agency Response and Motion to Dismiss for Failure to State a Claim*, p. 12-14 (October 23, 2002).

and not abolished. Finally, the AJ held that Agency clearly proved that the new positions had new descriptions and requirements.[9]

Employees then filed Petitions for Review alleging that there was new evidence that was not available at the time of pleadings that Agency hired new employees with identical job codes and descriptions. Employees 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. Official Code § 1-624.08(d), (e), and (f) clearly establishes the circumstances under which the OEA may hear RIFs on appeal.[10]

> (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 the effective date of his or her separation.
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> (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

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[9] *Initial Decision* (July 9, 2004).
[10] 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.

> (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 his or her separation. Employees do not advance either of these arguments. Instead they provide that the process was unfair because they did not receive documentation of their 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 of review.

Employees' RIF notices were dated March 15, 2002. The RIF was to become effective on April 19, 2002. Therefore, the 30-day notice requirement was met by Agency.[11] Furthermore, because the positions in Employees' competitive levels were abolished, there were no positions for which they could compete. Although Employees provide that there is now new evidence to prove that new employees were hired under identical job codes and descriptions, they fail 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

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[11] *District of Columbia Water and Sewer Authority's Consolidated Agency Response and Motion to Dismiss for Failure to State a Claim*, Exhibit #5, 8, 14, 17, and 20 (October 23, 2002).

of manual and computer assisted service delivery, to a much higher level of technology."[12] 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. . . ."[13]

Additionally, Employees fail to show how providing the information pertaining to the job descriptions and codes would have prevented or reversed the RIF actions taken against them. Consequently, they are unable to prove that the RIF procedures used by Agency were improper.

Employees also assert 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 Employees reference 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 bargaining agreement under the provisions of subchapter XVII of this chapter, shall **not** be subject to the provisions of this subchapter.

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

Employees 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 Employees' Petitions for Review.

ORDER

Accordingly, it is hereby **ORDERED** that Employees' Petitions for Review are **DENIED**.

FOR THE BOARD:

Brian Lederer, Chair

Horace Kreitzman

Keith E. Washington

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.