

Notice: This decision is subject to formal revision before publication in the District of Columbia Register. The parties are requested to notify the Office Manager of any formal errors in order that corrections may be made prior to publication. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
IRENE WILKES,)	
Employee)	OEA Matter No. 2401-0011-10
)	
v.)	Date of Issuance: January 11, 2012
)	
DISTRICT OF COLUMBIA)	
PUBLIC SCHOOLS,)	
Agency)	ERIC T. ROBINSON, Esq.
)	Senior Administrative Judge
_____)	
Irene Wilkes, Employee <i>Pro-Se</i>)	
Harriet Segar, Esq., Agency Representative)	

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On October 6, 2009, Irene Wilkes (“Employee”) filed a petition for appeal with the Office of Employee Appeals (“OEA” or “the Office”) contesting the District of Columbia Public Schools (“DCPS” or “the Agency”) action of abolishing her position through a Reduction-In-Force (“RIF”). Employee received written notice of the RIF on October 2, 2009. The effective date of the RIF was November 2, 2009. At the time her position was abolished, Employee’s official position of record within the Agency was ET-15 General Education (Teacher). Relative to the RIF, Employee’s competitive level was General Education (Teacher) on the ET-15 pay plan and her competitive area was Stoddert Elementary School (“Stoddert”).

I was assigned this matter on or around October 17, 2011. Thereafter, a Prehearing Conference was convened on November 14, 2011, in order to assess the parties’ arguments. After considering the parties’ arguments, I decided that an Evidentiary Hearing was not required. On November 15, 2011, I issued an Order requiring both parties to submit final written briefs in this matter. Since then, both parties have submitted their respective written briefs. 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 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.

FINDING OF FACTS, ANALYSIS AND CONCLUSIONS OF LAW

The following findings of facts, analysis, and conclusions of law are based on the documentary evidence presented by the parties during the course of the Employee's appeal process with this Office. Agency contends that it followed all applicable rules and regulations with respect to the instant matter. Employee contends that she was a certified Reading Resource Specialist and that she was not given a fair opportunity to demonstrate her instructional effectiveness so that it could be properly reflected in the score she received that resulted in her position being abolished. Furthermore, Employee contends that the score she earned on the Competitive Level Documentation Form ("CLDF") was both inaccurate and erroneous. Agency counters that Employee was an ET-15 Teacher just like everyone else in her competitive level and area and that when the CLDF was scored and tallied she was the lowest ranked person in her competitive area and level. Consequently, her position was abolished.

I find that in a RIF matter that I am guided primarily 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.

According to the preceding statute, I find that a District of Columbia government employee whose position was abolished pursuant to a RIF may only contest before this Office:

1. That he/she did not receive written notice thirty (30) days prior to the effective date of his/her separation from service; and/or
2. That he/she was not afforded one round of lateral competition within his/her competitive level.

The District of Columbia Municipal Regulations (“DCMR”) provides further guidance regarding what factors DCPS may utilize during a RIF when choosing which employees to retain within a competitive level and area. Of note, 5 DCMR 1503.2 *et al* provides in relevant part:

1503.2 If a decision must be made between employees in the same competitive area and competitive level, the following factors, in support of the purposes, programs, and needs of the organizational unit comprising the competitive area, with respect to each employee, shall be considered in determining which position shall be abolished:

- (a) Significant relevant contributions, accomplishments, or performance;
- (b) Relevant supplemental professional experiences as demonstrated on the job;
- (c) Office or school needs, including: curriculum specialized education, degrees, licenses or areas of expertise; and
- (d) Length of service.

The Agency, when it instituted the instant RIF, did not accord equal weight to the four factors outlined within 5 DCMR 1503.2. The Agency weighed the aforementioned factors as follows:

- (a) 75% for office or school needs, including: curriculum specialized education, degrees, licenses or areas of expertise;
- (b) 10% for relevant significant contributions, accomplishments or performance;
- (c) 10% for relevant supplemental professional experience as demonstrated on the job; and
- (d) 5% for length of service.

Agency argues that nothing within the DCMR, applicable case law or D.C. Official Code prevents it from exercising its discretion to weigh the factors as it sees fit to do so. I agree, as long as the Agency weighs these factors fairly and consistently when it implements a RIF.

Just prior to the RIF, Stoddert had 14 General Education ET-15 (Teacher) positions. Employee and her 13 colleagues competed for 13 positions that would ultimately survive the instant RIF. Employee was the lowest ranked Teacher of the group and consequently her position was abolished. According to the CLDF, Employee was provided with one round of lateral completion. Despite Employee's protestations to the contrary, I find that there is nothing in the record that would credibly establish that Employee was unfairly ranked relative to her colleagues. According to the CLDF, Employee received a total score of 35 after all of the factors outlined above were tallied and scored. The next lowest colleague received a total score of 54.5. Employee did not credibly establish that a re-scoring of the CLDF would possibly result in a different outcome. While it is regrettable that DCPS would release an employee under these circumstances, nothing within the record would lead the Undersigned to believe that the RIF was conducted unfairly or that the information contained therein is erroneous. I find that the Agency complied with D.C. Official Code § 1-624.08 (d). I also find that Employee was properly afforded one round of lateral completion before her position was abolished through the RIF.

I find that Employee was properly afforded 30 days written notice prior to the abolishment of her position through a RIF. According to the documents of record, Employee received written notice of the RIF on October 2, 2009. The effective date of the RIF was November 2, 2009. Considering as much, I also find that the Agency complied with D.C. Official Code § 1-624.08 (e).

According to *Anjuwan v. D.C. Department of Public Works*, 729 A.2d. 883 (12-11-98), the OEA's authority over RIF matters is narrowly prescribed. The Court explained that the OEA does not have jurisdiction to determine whether the RIF at the Agency was *bona-fide* or violated any law, other than the RIF regulations themselves. Further, it is an established matter of public law, that as of October 21, 1998, pursuant to the Omnibus Personnel Reform Amendment Act of

1998 (OPRAA), D.C. Law 12-124, the OEA no longer has jurisdiction over grievance appeals. Based on the above discussion, Employee has failed to proffer any credible evidence that would indicate that the RIF was improperly conducted and implemented. Further, Employee's other ancillary arguments are best characterized as grievances and outside of the OEA's jurisdiction to adjudicate. That is not to say that Employee may not press her claims elsewhere, but rather that the OEA currently lacks the jurisdiction to hear Employee's other claims.

Based on the foregoing, I find that Employee's position was abolished after Employee properly received one round of lateral competition and a timely 30-day legal notification was properly served. I conclude that the Agency's action of abolishing Employee's position was done in accordance with D.C. Official Code § 1-624.08 (d) and (e) and that the OEA is precluded from addressing any other issue(s) in this matter.

ORDER

It is hereby ORDERED that Agency's action of abolishing Employee's position through a Reduction-In-Force is UPHeld.

FOR THE OFFICE:

ERIC T. ROBINSON, ESQ.
SENIOR ADMINISTRATIVE JUDGE