

UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD

JAY T. ADACHI, ET AL.,
Appellants,

v.

DEPARTMENT OF THE NAVY,
Agency.

DOCKET NUMBER
SE93518720243

DATE: JAN 28 1988

Chariss K. Y. Ediz, Esquire, Honolulu, Hawaii, for
the appellants.

Wayne L. Uesugi, Pearl Harbor, Hawaii, for the agency.

BEFORE

Daniel R. Levinson, Chairman
Maria L. Johnson, Vice Chairman
Dennis M. Devaney, Member

OPINION AND ORDER

The appellants' petition for review of an initial decision sustaining a reduction-in-force (RIF) action that resulted in their demotions. The petition for review is hereby DENIED. See 5 C.F.R. § 1201.115. For the following reasons, however, the Board hereby REOPENS this case on its own motion pursuant to 5 C.F.R. § 1201.117, and AFFIRMS the initial decision as MODIFIED herein.

* This appeal was filed by 31 appellants. A complete list of their names and MSPB docket numbers is attached.

BACKGROUND

The appellants were subjected to a RIF action resulting in their demotions. On appeal to the Board's Seattle Regional Office, the administrative judge found that the agency's stated reason for the RIF--lack of work--was supported by preponderant evidence and that the appellants' competitive level was properly constructed. He therefore affirmed the agency RIF action in an initial decision of August 11, 1987.

In their petition for review, the appellants contend that: (1) They were improperly singled out for the RIF; (2) there was no bona fide lack of work; (3) the competitive level was improperly designated; and (4) five of the appellants were "wrongfully denied their right to bump."

ANALYSIS

After full consideration, the Board finds that the first three of the appellants' contentions do not meet the criteria for review set forth at 5 C.F.R. § 1201.115. The last argument, however, was raised by the appellants in a post-hearing brief filed July 22, 1987, but was not addressed by the administrative judge in his initial decision.

The five appellants who claim that the agency denied them their bumping rights allege that this denial resulted from the agency's failure to inform them that they should review their personnel records prior to the RIF. An agency

witness testified, however, that all employees received three notifications that RIF determinations "were made based on the information contained in the official personnel folder," and that those notifications "advis[ed] employees to update their personnel folders if, for some reason, they felt they were not complete and up-to-date." Hearing Transcript at 10. This testimony was not challenged on cross-examination. We therefore find that this argument is without merit and does not warrant disturbing the administrative judge's conclusion that the RIF procedures were correctly applied to the appellants.

ORDER

This is the Board's final order in this appeal. See 5 C.F.R. 1201.113(c).

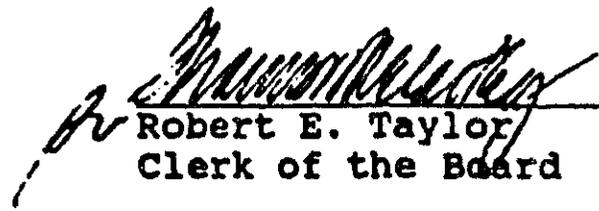
NOTICE TO APPELLANTS

You may petition the United States Court of Appeals for the Federal Circuit to review the Board's decision in your appeal if the court has jurisdiction. 5 U.S.C. § 7703. The address of the court is 717 Madison Place, N.W., Washington,

D.C. 20439. The court must receive the petition no later than thirty days after you or your representative receives this order.

FOR THE BOARD:

Washington, D.C.


Robert E. Taylor
Clerk of the Board

ADACHI ET AL.

(list of appellants)

1. Adachi, Jay T.	SE03518710243
2. AhChong, Donald B.	SE03518710244
3. Atiz, Allen R.	SE03518710247
4. Bacoro, Michael	SE03518710248
5. Bataya, Douglas	SE03518710250
6. Daniels, Danny L.	SE03518710251
7. Hayashi, Clyde T.	SE03518710253
8. Hess, Carl R.	SE03518710254
9. Hopkins, Wendell P., Jr.	SE03518710255
10. Kahalekomo, George	SE03518710256
11. Kimura, Collin M.	SE03518710257
12. Kiyabu, Carlton T.	SE03518710258
13. Labanon, Macario	SE03518710259
14. Lardizabal, Edward J.	SE03518710260
15. Lum, Colin L.	SE03518710261
16. Macapagal, Vitaliano	SE03518710262
17. Masuda, Wayne K.	SE03518710264
18. Neves, Leslie F.	SE03518710265
19. Nishikawa, Alan H.	SE03518710266
20. Ogawa, Darrell T.	SE03518710267
21. Pagan, Peter	SE03518710268
22. Pang, Cleveland K. W.	SE03518710269
23. Reyes, Lawrence P.	SE03518710270
24. Roth, Carl D.	SE03518710271
25. Sasaki, Kevin J.	SE03518710272
26. Scott, Regenal F.	SE03518710273
27. Takushi, Robert Y.	SE03518710274
28. Titus, Calvin T.	SE03518710275
29. Vause, Paul D.	SE03518710276
30. Wills, Eddy S.	SE03518710277
31. Worthington, John D.	SE03518710278