

Issue: Management Actions (recruitment/selection); Hearing Date: 02/11/13;
Decision Issued: 03/08/13; Agency: ABC; AHO: Carl Wilson Schmidt, Esq.; Case
No. 10005; Outcome: No Relief – Agency Upheld; **Administrative Review**: **EDR
Ruling Request received 03/22/13; EDR Ruling No. 2013-3568 issued 04/12/13;
Outcome: AHO's decision affirmed; Administrative Review: DHRM Ruling
Request received 03/22/13; DHRM Ruling issued 04/25/13; Outcome: AHO's
decision affirmed; Judicial Review: Appealed to Staunton Circuit Court
(05/21/13); Outcome: AHO's decision affirmed (02/11/14).**



COMMONWEALTH of VIRGINIA

Department of Human Resource Management

OFFICE OF EMPLOYMENT DISPUTE RESOLUTION

DECISION OF HEARING OFFICER

In re:

Case Number: 10005

Hearing Date: February 11, 2013

Decision Issued: March 8, 2013

PROCEDURAL HISTORY

On July 16, 2012, Grievant filed a grievance challenging the Agency's failure to post a job recruitment. On December 4, 2012, the Office of Employment Dispute Resolution issued Ruling No. 2013-3436 qualifying the grievance for hearing based on the issue of whether the Agency misapplied and/or unfairly applied policy. On January 8, 2013, the Office of Employment Dispute Resolution assigned this appeal to the Hearing Officer. On February 11, 2013, a hearing was held at the Agency's office.

APPEARANCES

Grievant
Grievant's Counsel
Agency Party Designee
Agency's Representative
Witnesses

ISSUES

1. Whether the Agency misapplied and/or unfairly applied policy?
2. Whether the Agency's transfer of Special Agent in Charge T (SAC T) was voluntary?

BURDEN OF PROOF

The burden of proof is on Grievant to show by a preponderance of the evidence that the Agency misapplied and/or unfairly applied policy. Grievance Procedure Manual (“GPM”) § 5.8. A preponderance of the evidence is evidence which shows that what is sought to be proved is more probable than not. GPM § 9.

FINDINGS OF FACT

After reviewing the evidence presented and observing the demeanor of each witness, the Hearing Officer makes the following findings of fact:

The Department of Alcoholic Beverage Control employs Grievant as an Assistant Special Agent in Charge (ASAC) in Region S. He began serving as Assistant Special Agent in Charge in 2006. He held position number 362.

Each region is headed by a Special Agent in Charge (SAC). The Assistant Special Agent in Charge reports to the Special Agent in Charge.

The Agency began a reorganization process. Agency managers created a new regional office, merged two offices, downgraded a regional office to a satellite office and moved staff to accomplish Agency objectives.

SAC S was the SAC in charge of Region S and held position number 43. Grievant reported to SAC S. In December 2011, the Agency asked SAC S to serve in a new role focusing on outreach to the alcoholic beverage industry and training newer members of the unit. The Bureau Director wanted SAC S to serve in the new position because of his experience and favorable work history. SAC S agreed to the transfer and he began working in another office as part of the Agency’s headquarters. If SAC S had not agreed to the transfer, the Bureau Director would not have transferred him. In December 2011, Grievant was temporarily elevated from the ASAC position to the Acting SAC position in Region S. He retained his position number 362. At that time, the Enforcement Division Director informed Grievant that the S region SAC position “would be posted in the near future and that he would have an opportunity to apply for the position on a permanent basis.”

Grievant’s work performance as Acting SAC was without complaint from the Agency. He was able to perform the duties of the SAC position while also performing the duties of the ASAC. He performed both jobs well. He was highly regarded by his subordinates in Region S.

The Bureau Director went to Region L to observe a roll call meeting at the firing range involving SAC T and his subordinates. The Bureau Director observed how the special agents were interacting with SAC T. He observed what he considered “strained

relations” between SAC T and the special agents. He saw special agents “rolling their eyes” when SAC T was speaking to them. He observed several special agents displaying “close body language” towards SAC T. His observation was consistent with what he had observed previously when visiting Region L. The Bureau Director concluded he had to intervene. He decided to move SAC T from Region L to Region S.

On July 3, 2012, the Bureau Director met with SAC T for dinner to tell SAC T about the transfer. The Bureau Director asked SAC T how he perceived his relationship with the agents in his region. SAC T said he felt animosity. The Bureau Director said he was glad that SAC T told him that because it was consistent with what the Bureau Director had observed. The Bureau Director said that he wanted to transfer SAC T to Region S so that SAC T could “start over” and move away from the group he had “grown up with”. The Bureau Director asked if SAC T would be willing to consider the transfer and SAC T said “yes.” The Bureau Director considered the transfer to be involuntary because if SAC T had said “no” the Bureau Director intended to transfer SAC T anyway. Later on, SAC T asked the Bureau Director what would have happened if SAC T had said “no” and the Bureau Director told SAC T that he would be transferred anyway.

On July 11, 2012, the Bureau Director met with Grievant and explained why he had made his decision to transfer SAC T. The Bureau Director told Grievant that the Agency would not be posting the position for recruitment and would be transferring SAC T to Region S. Grievant said he was disappointed with the decision and that he was concerned that the Bureau Director had eliminated any potential for Grievant to be promoted.

The Agency limits to 35 miles the driving distance that an employee with a State car can commute. Effective August 1, 2012, SAC T began working at the Region S office which was located more than 60 miles from the Agency’s office in Region L. SAC T did not file any forms with the Agency indicating he would park his State car within 35 miles of Region S.

Effective August 10, 2012, the Agency initiated Personnel Action Notices documenting the transfer of

SAC T from position 307 in Region L to position 43 in Region S.
SAC S from position 43 in Region S to the newly created position 164 in the Agency’s Headquarters.

Effective August 25, 2012, the Agency removed Grievant’s temporary pay. This resulted in a ten percent reduction in Grievant’s salary. His position number remained 362. He was neither demoted nor transferred as a result of the Personnel Action Notice.

Neither party called SAC T as a witness.

CONCLUSIONS OF POLICY

DHRM Policy 3.05 governs Compensation and its purpose is to “establish, maintain, and administer a compensation plan for positions covered by this policy.” Under DHRM Policy 3.05:

Reassignment Within The Pay Band is defined as, “[a]ction of agency management to move an employee from one position to a different position in the same Role or Pay Band.”

Temporary Pay is defined as:

This Pay Practice applies when an agency assigns an employee to perform different key (essential) duties on an interim basis, or for critical assignments associated with a special time-limited project, or for employees serving in an acting capacity in a higher level position, or for military pay supplements. Temporary pay is not added to an employee’s base pay.

Voluntary Transfer is defined as:

This personnel action occurs when an employee moves to a different position within the same or different Role within the same Pay Band. Voluntary Transfers may be accomplished through a Competitive or Non-competitive Process.

NOTE: Non-competitive transfers must be within the same agency or between agencies under a common parent agency. Transfers between *different* agencies must be accomplished through a competitive process.

DHRM Policy 3.05 defines the phrase, “Voluntary Transfer.” Although it is possible for an employee to be involuntarily transferred, DHRM Policy does not define the term “Involuntary Transfer”. A non-disciplinary transfer that is contrary to an employee’s request is best described as a reassignment within a pay band.

Divisions within the Agency are able to adopt their own policies. General Order 14 is one of these policies and it governs “Transfer Request.” The purpose of this policy is to, “formulate directives relative to the assignment and transfer of sworn personnel in the Bureau of Law enforcement.”

Section III provides:

A. The assignment and reassignment of employees will be consistent with Department policies.

B. Special Agents will be eligible for transfer after serving 24 months at their original area of assignment following initial employment. In all other cases, an employee may request a lateral transfer to another duty assignment after 12 months.

The above requirement will not apply whether a transfer is deemed to be in the best interest of the Bureau.

C. Transfer requests made by non-sworn employees and Special Agents will be submitted to the Bureau Director through the chain of command using a Transfer Request Form EB-02. Supervisors will ensure their recommendations are included on the floor before forwarding up the chain.

G. The Bureau Director reserves the right to transfer or reassign any and all personnel.

Section IV addresses "Transfer Request Procedures for SAC's ASAC's, and Senior Special Agent." This section provides:

A. SAC's, ASAC's and Special Agent's requesting voluntary transfers to another region shall utilize the following procedure.

1. When a position opens at the level of Senior Special Agent, ASAC, or SAC, current employee's holding these positions wishing to apply shall submit a State Application for the posted position.

2. Current personnel making application to fill the vacancy shall be interviewed along with other applicants for the position.

The Bureau Director had the authority to transfer any employees in the division including SAC T. General Order 14 governed how the transfer was to be accomplished if a SAC was seeking a voluntary transfer to another region. The effect of General Order 14 was that the transfer of a SAC from one region to another had to be completed by a competitive process if the transfer was a "voluntary transfer." Following a competitive process would mean that the Agency would have to open the competition to other employees as well as the SAC seeking the voluntary transfer.

In this case, the Agency did not follow a competitive process when it transferred SAC T from Region L to Region S because the Agency did not believe the transfer was voluntary. If the transfer was actually a voluntary transfer, then the Agency erred because it failed to open the selection process to other employees including Grievant. If

the transfer was not a voluntary transfer, then the Agency acted within its authority and the transfer of SAC T must be upheld.

In order for a transfer to be a voluntary transfer, there must be some evidence that the employee being transferred initiated and desired the transfer. Two people were involved in the transfer decision – the Bureau Director and SAC T. The Bureau Director’s testimony showed that he was the first one to form an opinion that SAC T should be transferred to Region S. SAC T did not seek out the Bureau Director and ask for a transfer. The Bureau Director formed his opinion that SAC T should be transferred prior to discussing the transfer with SAC T. He initiated the discussions regarding transferring SAC T. SAC T agreed to the transfer but even if SAC T had not agreed with being transferred, the Bureau Director intended to transfer SAC T. Based on this evidence, it is clear that SAC T’s transfer was not voluntary. Because the transfer was not voluntary, the Agency was free to transfer SAC T into position number 43 in Region S without opening the position to competition from other employees including as Grievant. The Agency did not fail to comply with General Order 14. Grievant’s request for relief to undo the transfer of SAC T to Region S must be denied.

Neither party called SAC T as a witness. The evidence remaining consists of the Bureau Director’s testimony and the hearsay testimony of those who spoke with SAC T. The Hearing Officer gives less weight to the hearsay statements made by witnesses who spoke with SAC T. The Hearing Officer gives greater weight to the testimony of the Bureau Director who was a party to the conversations with SAC T and his testimony was credible.

Grievant alleged that SAC T “lobbied” for the transfer by asking other employees to help him convince the Agency to transfer him to Region S. Insufficient persuasive evidence was presented to support this allegation.

Grievant argued that because SAC T was asked and agreed to be transferred, the transfer was a voluntary transfer. This argument fails. The Bureau Director only asked SAC T if he was willing to be transferred in order to lessen the appearance to SAC T that his transfer was being mandated. The Bureau Director was attempting to have SAC T “buy in” to the transfer so that the transition would be easier. When SAC T later asked the Bureau Director what would have happened if SAC T had said “no” to the transfer, the Bureau Director said that SAC T would have been transferred anyway.

Grievant argued that the transfer was voluntary because the Agency’s Personnel Action Notice for SAC T describes the action as a “Non-Competitive Voluntary Transfer.” Whether the transfer was voluntary depends more on the interaction between the Bureau Director and SAC T than on how the transfer was styled by the Agency’s Human Resource office. The better evidence of whether the transfer was voluntary is the testimony of the Bureau Director who testified that he made the decision to transfer SAC T. It appears that the Agency’s human resource staff incorrectly described the transfer as a non-competitive voluntary transfer when it should have been

described as a reassignment within a pay band. The Bureau Director did not have control over how the Agency's human resource staff characterized the transfer.

Grievant has raised reasonable questions about whether transferring SAC T was a wise management decision. Several employees of Region S testified that SAC T remained a poor manager. If the Hearing Officer assumes for the sake of argument that the Agency made a poor management decision to transfer SAC T instead of addressing his poor managerial skills while he remained in Region L, the outcome of this case does not change.¹ Nothing in the Grievance Procedure or the Rules for Conducting Grievance Hearings authorizes Hearing Officers to reverse poor management decisions in the absence of a policy violation by the Agency. The Hearing Officer does not have the authority to rescind the transfer of SAC T even if the Hearing Officer were to conclude that the transfer was not "for the betterment of the agency."

Grievant presented evidence showing that the Agency failed to enforce General Order 81 with respect to SAC T. Under this order, employees could drive their State vehicles only 35 miles from their offices. Since SAC T had not relocated to Region S, he had to drive his State vehicle more than 35 miles from the office thereby acting contrary to General Order 81. This issue was not qualified for hearing and, thus, the Hearing Officer does not have jurisdiction to address the issue.

DECISION

For the reasons stated herein, Grievant's request for relief is **denied**.

APPEAL RIGHTS

You may file an administrative review request within **15 calendar** days from the date the decision was issued, if any of the following apply:

1. If you believe the hearing decision is inconsistent with state policy or agency policy, you may request the Director of the Department of Human Resource Management to review the decision. You must state the specific policy and explain why you believe the decision is inconsistent with that policy. Please address your request to:

Director
Department of Human Resource Management
101 North 14th St., 12th Floor
Richmond, VA 23219

¹ Evidence was not presented regarding the effect of the transfer on employees in Region L. It may be the case that many problems existing in Region L were corrected by the transfer even though several problems were created in Region S by the transfer. If this were true, it may not have been a poor management decision to move SAC T when the transfer is viewed from the perspective of the Agency as a whole.

or, send by fax to (804) 371-7401, or e-mail.

2. If you believe that the hearing decision does not comply with the grievance procedure or if you have new evidence that could not have been discovered before the hearing, you may request that EDR review the decision. You must state the specific portion of the grievance procedure with which you believe the decision does not comply. Please address your request to:

Office of Employment Dispute Resolution
Department of Human Resource Management
101 North 14th St., 12th Floor
Richmond, VA 23219

or, send by e-mail to EDR@dhrm.virginia.gov, or by fax to (804) 786-1606.

You may request more than one type of review. Your request must be in writing and must be **received** by the reviewer within 15 calendar days of the date the decision was issued. You must provide a copy of all of your appeals to the other party, EDR, and the hearing officer. The hearing officer's **decision becomes final** when the 15-calendar day period has expired, or when requests for administrative review have been decided.

You may request a judicial review if you believe the decision is contradictory to law. You must file a notice of appeal with the clerk of the circuit court in the jurisdiction in which the grievance arose within **30 days** of the date when the decision becomes final.²

[See Sections 7.1 through 7.3 of the Grievance Procedure Manual for a more detailed explanation, or call EDR's toll-free Advice Line at 888-232-3842 to learn more about appeal rights from an EDR Consultant].

/s/ Carl Wilson Schmidt

Carl Wilson Schmidt, Esq.
Hearing Officer

² Agencies must request and receive prior approval from EDR before filing a notice of appeal.

POLICY RULING OF THE DEPARTMENT OF
HUMAN RESOURCE MANAGEMENT

In the Matter of
Department of Alcoholic
Beverage Control

April 25, 2013

The grievant has requested an administrative review of the hearing officer's decision in Case No. 10005. For the reasons stated below, we will not interfere with the application of this decision. The agency head of the Department of Human Resource Management (DHRM), Ms. Sara R. Wilson, has directed that I conduct this administrative review.

The hearing officer listed, in part, the following in the Procedural History of this case:

On July 16, 2012, Grievant filed a grievance challenging the Agency's failure to post a job recruitment.

FINDINGS OF FACT

After reviewing the evidence presented and observing the demeanor of each witness, the Hearing Officer makes the following findings of fact:

The Department of Alcoholic Beverage Control employs Grievant as an Assistant Special Agent in Charge (ASAC) in Region S. He began serving as Assistant Special Agent in Charge in 2006. He held position number 362.

Each region is headed by a Special Agent in Charge (SAC). The Assistant Special Agent in Charge reports to the Special Agent in Charge.

The Agency began a reorganization process. Agency managers created a new regional office, merged two offices, downgraded a regional office to a satellite office and moved staff to accomplish Agency objectives.

SAC S was the SAC in charge of Region S and held position number 43. Grievant reported to SAC S. In December 2011, the Agency asked SAC S to serve in a new role focusing on outreach to the alcoholic beverage industry and training newer members of the unit. The Bureau Director wanted SAC S to serve in the new position because of his experience and favorable work history. SAC S agreed to the transfer and he began working

in another office as part of the Agency's headquarters. If SAC S had not agreed to the transfer, the Bureau Director would not have transferred him. In December 2011, Grievant was temporarily elevated from the ASAC position to the Acting SAC position in Region S. He retained his position number 362. At that time, the Enforcement Division Director informed Grievant that the S region SAC position "would be posted in the near future and that he would have an opportunity to apply for the position on a permanent basis."

Grievant's work performance as Acting SAC was without complaint from the Agency. He was able to perform the duties of the SAC position while also performing the duties of the ASAC. He performed both jobs well. He was highly regarded by his subordinates in Region S.

The Bureau Director went to Region L to observe a roll call meeting at the firing range involving SAC T and his subordinates. The Bureau Director observed how the special agents were interacting with SAC T. He observed what he considered "strained relations" between SAC T and the special agents. He saw special agents "rolling their eyes" when SAC T was speaking to them. He observed several special agents displaying "close body language" towards SAC T. His observation was consistent with what he had observed previously when visiting Region L. The Bureau Director concluded he had to intervene. He decided to move SAC T from Region L to Region S.

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The Agency limits to 35 miles the driving distance that an employee with a State car can commute. Effective August 1, 2012, SAC T began working at the Region S office which was located more than 60 miles from the Agency's office in Region L. SAC T did not file any forms with the Agency indicating he would park his State car within 35 miles of Region S.

Effective August 10, 2012, the Agency initiated Personnel Action Notices documenting the transfer of SAC T from position 307 in Region L to position 43 in Region S. SAC S from position 43 in Region S to the newly created position 164 in the Agency's Headquarters.

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CONCLUSIONS OF POLICY

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Divisions within the Agency are able to adopt their own policies. General Order 14 is one of these policies and it governs "Transfer Request." The purpose of this policy is to, "formulate directives relative to the assignment and transfer of sworn personnel in the Bureau of Law enforcement."

Section III provides:

A. The assignment and reassignment of employees will be consistent with Department policies.

B. Special Agents will be eligible for transfer after serving 24 months at their

original area of assignment following initial employment. In all other cases, an employee may request a lateral transfer to another duty assignment after 12 months.

The above requirement will not apply whether a transfer is deemed to be in the best interest of the Bureau.

C. Transfer requests made by non-sworn employees and Special Agents will be submitted to the Bureau Director through the chain of command using a Transfer Request Form EB-02. Supervisors will ensure their recommendations are included on the floor before forwarding up the chain.

G. The Bureau Director reserves the right to transfer or reassign any and all personnel.

Section IV addresses “Transfer Request Procedures for SACs, ASACs, and Senior Special Agent.” This section provides:

A. SACs, ASACs and Special Agents requesting voluntary transfers to another region shall utilize the following procedure.

1. When a position opens at the level of Senior Special Agent, ASAC, or SAC, current employees holding these positions wishing to apply shall submit a State Application for the posted position.
2. Current personnel making application to fill the vacancy shall be interviewed along with other applicants for the position.

The Bureau Director had the authority to transfer any employees in the division including SAC T. General Order 14 governed how the transfer was to be accomplished if a SAC was seeking a voluntary transfer to another region. The effect of General Order 14 was that the transfer of a SAC from one region to another had to be completed by a competitive process if the transfer was a “voluntary transfer.” Following a competitive process would mean that the Agency would have to open the competition to other employees as well as the SAC seeking the voluntary transfer.

In this case, the Agency did not follow a competitive process when it transferred SAC T from Region L to Region S because the Agency did not believe the transfer was voluntary. If the transfer was actually a voluntary transfer, then the Agency erred because it failed to open the selection process to other employees including Grievant. If the transfer was not a voluntary transfer, then the Agency acted within its authority and the transfer of SAC T must be upheld.

In order for a transfer to be a voluntary transfer, there must be some evidence that the employee being transferred initiated and desired the transfer. Two people were involved in the transfer decision - the Bureau Director and SAC T. The Bureau Director’s testimony showed that he was the first one to form an opinion that SAC T should be transferred to Region S. SAC T did not seek out the Bureau Director and ask for a transfer. The Bureau

Director formed his opinion that SAC T should be transferred prior to discussing the transfer with SAC T. He initiated the discussions regarding transferring SAC T. SAC T agreed to the transfer but even if SAC T had not agreed with being transferred, the Bureau Director intended to transfer SAC T. Based on this evidence, it is clear that SAC T's transfer was not voluntary. Because the transfer was not voluntary, the Agency was free to transfer SAC T into position number 43 in Region S without opening the position to competition from other employees including the Grievant. The Agency did not fail to comply with General Order 14. Grievant's request for relief to undo the transfer of SAC T to Region S must be denied.

Neither party called SAC T as a witness. The evidence remaining consists of the Bureau Director's testimony and the hearsay testimony of those who spoke with SAC T. The Hearing Officer gives less weight to the hearsay statements made by witnesses who spoke with SAC T. The Hearing Officer gives greater weight to the testimony of the Bureau Director who was a party to the conversations with SAC T and his testimony was credible.

Grievant alleged that SAC T "lobbied" for the transfer by asking other employees to help him convince the Agency to transfer him to Region S. Insufficient persuasive evidence was presented to support this allegation.

Grievant argued that because SAC T was asked and agreed to be transferred, the transfer was a voluntary transfer. This argument fails. The Bureau Director only asked SAC T if he was willing to be transferred in order to lessen the appearance to SAC T that his transfer was being mandated. The Bureau Director was attempting to have SAC T "buy in" to the transfer so that the transition would be easier. When SAC T later asked the Bureau Director what would have happened if SAC T had said "no" to the transfer, the Bureau Director said that SAC T would have been transferred anyway.

Grievant argued that the transfer was voluntary because the Agency's Personnel Action Notice for SAC T describes the action as a "Non-Competitive Voluntary Transfer." Whether the transfer was voluntary depends more on the interaction between the Bureau Director and SAC T than on how the transfer was styled by the Agency's Human Resource office. The better evidence of whether the transfer was voluntary is the testimony of the Bureau Director who testified that he made the decision to transfer SAC T. It appears that the Agency's human resource staff incorrectly described the transfer as a non-competitive voluntary transfer when it should have been described as a reassignment within a pay band. The Bureau Director did not have control over how the Agency's human resource staff characterized the transfer.

Grievant has raised reasonable questions about whether transferring SAC T was a wise management decision. Several employees of Region S testified that SAC T remained a poor manager. If the Hearing Officer assumes for the sake of argument that the Agency made a poor management decision to transfer SAC T instead of addressing his poor managerial skills while he remained in Region L, the outcome of this case does not change. Nothing in the Grievance Procedure or the Rules for Conducting Grievance Hearings authorizes Hearing Officers to reverse poor management decisions in the absence of a policy violation by the Agency. The Hearing Officer does not have the authority to rescind the transfer of SAC T even if the Hearing Officer were to conclude that the transfer was not "for the betterment of the agency."

Grievant presented evidence showing that the Agency failed to enforce General Order 81 with respect to SAC T. Under this order, employees could drive their State vehicles only 35 miles from their offices. Since SAC T had not relocated to Region S, he had to drive his State vehicle more than 35 miles from the office thereby acting contrary to General Order 81. This issue was not qualified for hearing and, thus, the Hearing Officer does not have jurisdiction to address the issue.

DECISION

For the reasons stated herein, Grievant's request for relief is denied.

DISCUSSION

Hearing officers are authorized to make findings of fact as to the material issues in the case and to determine the grievance based on the evidence. By statute, the DHRM has the authority to determine whether the hearing officer's decision is consistent with policy as promulgated by DHRM or the agency in which the grievance is filed. The challenge must cite a particular mandate or provision in policy. This Department's authority, however, is limited to directing the hearing officer to revise the decision to conform to the specific provision or mandate in policy. This Department has no authority to rule on the merits of a case or to review the hearing officer's assessment of the evidence unless that assessment results in a decision that is in violation of policy and procedure.

In each instance where a request is made to this Agency for an administrative review related to policy violation, the party making the request must identify with which human resource policy, either state or agency, the hearing decision is inconsistent or is misinterpreted. In the instant case, the employee stated that the agency violated Department of Alcoholic Beverage Control (ABC) General Order 14 regarding filling positions. Summarily, in his grievance, he contends that the ABC erred in filling the position through transfer rather than filling it through a competitive procedure. In his appeal, he also stated that the ABC violated DHRM Policy 2.10 – Hiring, and DHRM Policy 3.05 – Compensation.

The question before the hearing officer was whether the transfer of the successful employee was voluntary or involuntary and if the ABC violated policy by not posting the position in question. After assessing the evidence, the hearing officer determined that the transfer was involuntary and concluded that the transfer was proper and did not violate General Order 14. In addition, the hearing officer found no violation of DHRM Policy 3.05.

According to DHRM Policy No. 2.10, Hiring, B.4, generally all vacant positions to be filled must be posted in the RMS for a minimum of 5 consecutive workdays, not counting Saturdays, Sundays and holidays. However, there are exceptions. Those exceptions include, but are not limited, to the following situations:

- (1). positions to be filled through Agency Internal Recruitment, if there are procedures in place to inform all agency employees of such openings;
- (2). vacant positions available as placement or recall opportunities for employees affected by layoff (see Policy 1.30 - Layoff);

(3). positions to be filled by applicants from the Re-employment Opportunity (RE-OP) Pool (see Policy 1.30 - Layoff);

(4). positions to be filled by agency-initiated demotions, employee-requested demotions, reassignments within the Pay Band, non-competitive voluntary transfers or temporary assignments (NOTE: Approval of employees' requests for non-competitive voluntary demotions or non-competitive voluntary transfers is at the discretion of the agency.)

While it is a requirement under ABC General Order 14 to post a position in case of a voluntary transfer, the hearing officer determined that the transfer was involuntary. In addition, DHRM Policy 2.10 at B.4. permits reassignments within the same Pay Band. There is no requirement to post a vacancy if it is filled by way of reassignment. Concerning DHRM Policy 3.05, Reassignment Within The Pay Band is defined as, "[a]ction of agency management to move an employee from one position to a different position in the same Role or Pay Band."

In addition, under DHRM Policy 3.05, it is appropriate for an agency to remove acting pay when the employee is no longer in an acting capacity. Therefore, the ABC did not violate DHRM Policy 3.05 when it reduced the grievant's pay by removing the acting pay supplement.

Because we find that the hearing officer did not violate any policy in making his decision, we have no authority to interfere with the application of this decision.

Ernest G. Spratley
Assistant Director
Office of Equal Employment Services