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## QUALIFICATION RULING

In the matter of the Department of Motor Vehicles  
Ruling Number 2022-5390  
May 19, 2022

The grievant has requested a ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management (“DHRM”) on whether his January 18, 2022, grievance with the Department of Motor Vehicles (the “agency”) qualifies for a hearing. For the reasons discussed below, this grievance is not qualified for a hearing.

### FACTS

In approximately December 2021, the grievant participated in a competitive recruitment process for an office manager position at one of the agency’s locations. The agency offered the position to the grievant but did not approve a pay increase for him based on its consideration of the relevant pay factors. The grievant filed a grievance on January 18, 2022, alleging that the agency had misapplied or unfairly applied compensation policy by declining to offer him a pay increase in conjunction with the promotion.<sup>1</sup> In particular, the grievant claims that the office manager position has “more responsibilities and skills” than his previous position and that the posted hiring range for the office manager position had a maximum greater than his current salary. As relief, the grievant seeks a salary increase up to the maximum of the hiring range from the agency’s advertisement for the office manager position. Following the management resolution steps, the agency head declined to qualify the grievance for a hearing. The grievant now appeals that determination to EDR.

### DISCUSSION

Although state employees with access to the grievance procedure may generally grieve anything related to their employment, only certain grievances qualify for a hearing.<sup>2</sup> Additionally, the grievance statutes and procedure reserve to management the exclusive right to manage the affairs and operations of state government.<sup>3</sup> Claims relating solely to the establishment and revision of salaries, wages, and general benefits generally do not qualify for a hearing, unless the grievant presents evidence raising a sufficient question as to whether discrimination, retaliation,

<sup>1</sup> The office manager position is in higher Pay Band than the grievant’s former position.

<sup>2</sup> See *Grievance Procedure Manual* §§ 4.1 (a), (b).

<sup>3</sup> See Va. Code § 2.2-3004(B).

or discipline may have improperly influenced management's decision, or whether state or agency policy may have been misapplied or unfairly applied.<sup>4</sup>

Further, the grievance procedure generally limits grievances that qualify for a hearing to those that involve "adverse employment actions."<sup>5</sup> Thus, typically, a threshold question is whether the grievant has suffered an adverse employment action. An adverse employment action is defined as a "tangible employment action constitut[ing] a significant change in employment status, such as hiring, firing, failing to promote, reassignment with significantly different responsibilities, or a decision causing a significant change in benefits."<sup>6</sup> Adverse employment actions include any agency actions that have an adverse effect *on the terms, conditions, or benefits* of one's employment.<sup>7</sup> For purposes of this ruling only, EDR will assume that the grievant has alleged an adverse employment action because he asserts issues with his compensation.

Here, the grievant essentially argues that management has misapplied or unfairly applied compensation policy by not including a pay increase when it offered him a promotion to the office manager position. More specifically, the grievant believes that his "experience at [the agency], relevant supervisory experience in a similar position and educational background warrant[] a higher salary [than his] current salary due to differences in the job responsibilities and skills" of his former position and the office manager position. The grievant has also expressed confusion that the hiring range for the office manager position was greater than his current salary, yet the agency declined to approve a pay increase for him up to the maximum of the hiring range. For an allegation of misapplication of policy or unfair application of policy to qualify for a hearing, there must be facts that raise a sufficient question as to whether management violated a mandatory policy provision, or whether the challenged action, in its totality, was so unfair as to amount to a disregard of the intent of the applicable policy.

DHRM Policy 3.05, *Compensation*, authorizes salary negotiations when an employee is promoted to a different position in a higher Pay Band through a competitive selection process.<sup>8</sup> When an employee is promoted, "the promotional increase is negotiable from the minimum of the new Salary Range."<sup>9</sup> Like all pay practices, salary negotiations in connection with a promotion are intended to emphasize merit rather than entitlements, such as across-the-board increases, while providing management with great flexibility and a high degree of accountability for justifying their pay decisions.<sup>10</sup> Although DHRM Policy 3.05 reflects the intent that similarly situated employees should be comparably compensated, it also invests agency management with broad discretion to make individual pay decisions in light of 13 enumerated pay factors: (1) agency business need; (2) duties and responsibilities; (3) performance; (4) work experience and education; (5) knowledge, skills, abilities and competencies; (6) training, certification and licensure; (7) internal salary alignment; (8) market availability; (9) salary reference data; (10) total compensation; (11) budget implications; (12) long term impact; and (13) current salary.<sup>11</sup> According to the policy, "[a]gencies may approve promotional increases above the hiring range minimum and below the hiring range

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<sup>4</sup> *Id.* § 2.2-3004(A); *Grievance Procedure Manual* §§ 4.1(b), (c).

<sup>5</sup> *See Grievance Procedure Manual* § 4.1(b).

<sup>6</sup> *Burlington Indus., Inc. v. Ellerth*, 524 U.S. 742, 761 (1998).

<sup>7</sup> *Holland v. Wash. Homes, Inc.*, 487 F.3d 208, 219 (4th Cir. 2007) (citation omitted).

<sup>8</sup> DHRM Policy 3.05, *Compensation*, at 3, 23.

<sup>9</sup> *Id.* at 3.

<sup>10</sup> *See DHRM Human Resource Management Manual*, Ch. 8, *Pay Practices*.

<sup>11</sup> *See DHRM Policy 3.05, Compensation*, at 19-24.

maximum as long as the resulting salary is within the new Pay Band and the action is supported by the Pay Factors.”<sup>12</sup> Because agencies are afforded great flexibility in making pay decisions, EDR has repeatedly held that qualification is warranted only where evidence presented by the grievant raises a sufficient question as to whether the agency’s determination was plainly inconsistent with other similar decisions within the agency or otherwise arbitrary or capricious.<sup>13</sup>

According to the agency, the grievant’s current salary is greater than the average salary for other office managers and is the highest salary among comparable employees in that position. For that reason, the agency determined that further increasing the grievant’s salary at this time would create issues with salary equity, alignment, and compression for employees in office manager positions. During the management steps, the agency further explained that the grievant previously worked in Northern Virginia and received a pay differential to account for market conditions in that region. The grievant later transferred to a different position in another region but retained the same salary as when he worked in Northern Virginia. As a result, the agency maintains that the grievant’s current salary is greater than other comparable office managers and thus no pay action was justified for the grievant when he was offered the promotion.

Nevertheless, the grievant disagrees with the agency’s conclusion that salary alignment concerns justified offering no pay increase with the promotion. He contends that the office manager position requires greater skills and responsibilities than his former position, and that the agency failed to consider his experience with the agency and his educational background when assessing whether to approve a salary increase. The grievant also notes that the hiring range for the officer manager position was approximately \$5,000 greater than his current salary but the agency apparently “has no intention of paying anywhere near the upper limit” of the pay range. When the grievant raised these concerns before initiating the grievance, the agency provided a response explaining that it considered these factors, but they did not outweigh the other considerations related to salary equity, alignment, and compression described above.

There appears to be no dispute in this case that the grievant is a competent and valued employee. He has worked for the agency for many years and, by all accounts, effectively performs his job responsibilities to the agency’s satisfaction. Having reviewed the evidence in the grievance record, however, EDR finds insufficient evidence to demonstrate that the agency’s decision not to approve a pay increase for the grievant when it offered the promotion to the grievant violated a specific mandatory policy provision or was outside the scope of the discretion granted to the agency by the applicable compensation policies. Indeed, it appears the agency fully considered the applicable factors in reaching a decision that no pay action was necessary for the grievant in this case. For example, the pay information the agency shared with the grievant before he initiated the grievance confirms that the grievant’s salary would be the highest among comparable employees in office manager positions. The agency’s response to the grievant at that time also included an explanation of its assessment of the pay factors, including the matters raised by the grievant related to his experience, education, and skills and responsibilities. Although we understand the grievant’s concern that the hiring range maximum for the position exceeded his current salary, the agency is responsible for reviewing individual pay actions to ensure that they are consistent with DHRM Policy 3.05, both in relation to the affected employee and the agency as a whole. DHRM policy

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<sup>12</sup> *Id.* at 3.

<sup>13</sup> See *Grievance Procedure Manual* § 9 (defining arbitrary or capricious as a decision made “[i]n disregard of the facts or without a reasoned basis”); see also, e.g., EDR Ruling No. 2008-1879 (and authorities cited therein).

does not mandate salary increases for employees who are offered promotions unless an increase is supported by a review of the applicable pay factors. In this case, the agency determined that the pay factors did not justify increasing the grievant's salary and we have not reviewed evidence to suggest that the agency disregarded any relevant facts in making that decision.

As stated above, DHRM Policy 3.05 is intended to grant the agency flexibility to address issues such as changes in an employee's job duties, work experience, education, and internal salary alignment.<sup>14</sup> The policy is not intended to entitle employees to across-the-board salary increases or limit the agency's discretion to evaluate whether an individual pay action is warranted. Considering the totality of the circumstances, an analysis of many of the individual pay factors—for example, job duties and responsibilities, work experience and education, and internal salary alignment—with respect to employees in the grievant's position does not support a conclusion that the agency's existing salary structure violates any specific policy requirement. The grievant argues that certain pay factors support his request for a pay increase, but the agency's position that its consideration of the relevant pay factors does not substantiate the need for a salary increase is also valid. An employee's skills and responsibilities, education, and experience represent just several of the many different factors an agency must consider in making the difficult determination of whether, when, and to what extent salary increases should be granted in individual cases and throughout the agency.<sup>15</sup> In cases like this one, where a mandatory entitlement to a pay increase does not exist, agencies have great discretion to weigh the relevant factors. For these reasons, EDR cannot find that the agency's decision not to approve a salary increase for the grievant in connection with its offer of the office manager position was improper or otherwise arbitrary or capricious.

### CONCLUSION

For the reasons discussed above, EDR finds that the facts presented in the grievance record do not constitute a claim that qualifies for a hearing under the grievance procedure.<sup>16</sup> Because the grievance does not raise a sufficient question whether the agency misapplied or unfairly applied compensation policy, the grievance does not qualify for a hearing on those grounds.

EDR's qualification rulings are final and nonappealable.<sup>17</sup>

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<sup>14</sup> See DHRM Policy 3.05, *Compensation*.

<sup>15</sup> *Id.* This is not to say that the agency's discretion in determining which employees should receive salary increases is without limitations. For example, an agency could not deny a salary increase on the basis of unlawful retaliation, discrimination, or some other improper motive.

<sup>16</sup> *Grievance Procedure Manual* § 4.1.

<sup>17</sup> See Va. Code § 2.2-1202.1(5).