



JANET L. LAWSON  
DIRECTOR

**COMMONWEALTH OF VIRGINIA**  
*Department Of Human Resource Management*  
*Office of Employment Dispute Resolution*

James Monroe Building  
101 N. 14<sup>th</sup> Street, 12<sup>th</sup> Floor  
Richmond, Virginia 23219  
Tel: (804) 225-2131  
(TTY) 711

## QUALIFICATION RULING

In the matter of the Department of Motor Vehicles  
Ruling Number 2023-5579  
August 30, 2023

The grievant has requested a ruling from the Office of Employment Dispute Resolution (“EDR”) at the Virginia Department of Human Resource Management (“DHRM”) on whether his March 29, 2023 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

The grievant is a Senior Special Agent for the agency’s Law Enforcement Division. On or about March 29, 2023, the grievant filed a grievance claiming misapplication of policy by the agency. In particular, the grievant argues that the agency misapplied DHRM Policy 3.05, *Compensation*, when they conducted a salary study and in-band pay adjustment for employees of the grievant’s division of Law Enforcement. The grievant alleges that the pay adjustment resulted in “an inadequate and unfair assessment of [his] current salary along with other required pay factors when determining [his] pay increase.” Specifically, the grievant argues that the agency only considered two of the thirteen Pay Factors outlined in Policy 3.05, that they failed to utilize the applicable Agency State Administrative Plan (“ASAP”) when considering his in-band adjustment, and that they failed to correctly apply available compensation data as a comparison for his position. These errors, the grievant alleges, culminated in a decision by the agency to not raise his salary.

Following the management steps, the agency head notified the grievant that the agency would have the law enforcement salary study redone by an “independent outside 3<sup>rd</sup> party vendor who specializes in salary compensation studies.” The agency head stated that it would take “a few weeks to [ ] two months” to begin the study, which itself is expected to take about five months to complete. The agency has not specified whether the new salary study would provide retroactive pay to the grievant if it is determined that the grievant should have received an in-band pay increase based on all relevant Pay Factors. However, due to the agency’s understanding that a new study effectively provides the grievant with the relief requested, the third-step respondent denied further relief and the Commissioner then determined that the grievance does not qualify for a hearing. The grievant now appeals that denial to EDR.

*An Equal Opportunity Employer*

## 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>1</sup> The grievance statutes and procedure reserve to management the exclusive right to manage the affairs and operations of state government.<sup>2</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, or discipline may have improperly influenced management's decision, or whether state or agency policy may have been misapplied or unfairly applied.<sup>3</sup> The grievant has not asserted a claim of discrimination or retaliation. Consequently, the grievance will be reviewed as to whether policy has been misapplied or unfairly applied.

Further, the grievance procedure generally limits grievances that qualify to those that involve "adverse employment actions."<sup>4</sup> Typically, then, the 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>5</sup> Adverse employment actions include any agency actions that have an adverse effect *on the terms, conditions, or benefits* of one's employment.<sup>6</sup> For purposes of this ruling only, EDR will assume that the grievant has alleged an adverse employment action, in that the effect of the agency's salary study directly affects the grievant's pay.

### *Misapplication of Policy*

It appears that the grievant's primary issue is centered on how the agency conducted its initial salary study and resulting in-band adjustments. In essence, the grievant claims that the agency misapplied DHRM Policy 3.05, *Compensation*, by incorrectly applying the factors that were considered and by only considering two of the thirteen Pay Factors in Policy 3.05. The grievant identifies the two factors considered as (1) "years of service with DMV" and (2) "the new starting salary for each role."<sup>7</sup> 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

---

<sup>1</sup> See *Grievance Procedure Manual* §§ 4.1 (a), (b).

<sup>2</sup> See Va. Code § 2.2-3004(B).

<sup>3</sup> *Id.* § 2.2-3004(A); *Grievance Procedure Manual* §§ 4.1(b), (c).

<sup>4</sup> Va. Code § 2.2-3004(A); see *Grievance Procedure Manual* § 4.1(b).

<sup>5</sup> *Ray v. Int'l Paper Co.*, 909 F.3d 661, 667 (4th Cir. 2018) (quoting *Burlington Indus., Inc. v. Ellerth*, 524 U.S. 742, 761 (1998)).

<sup>6</sup> *Laird v. Fairfax County*, 978 F.3d 887, 893 (4th Cir. 2020) (citing *Holland v. Wash. Homes, Inc.*, 487 F.3d 208, 219 (4th Cir. 2007)) (an adverse employment action requires more than a change that the employee finds "less appealing").

<sup>7</sup> In the context of the facts of this case, "years of service" can be associated with the Work Experience and Education Pay Factor, and "new starting salary" can be associated with the Internal Salary Alignment and Salary Reference Data Pay Factors. See DHRM Policy 3.05, *Compensation*, at 22. Regardless of explicit terminology, EDR interprets the Policy to include both years of agency service and comparable salaries within similar work titles as relevant pay factors for the agency to consider.<sup>8</sup> DHRM Policy 3.05, *Compensation*, at 5.

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*, is relatively broad when discussing the requirements of agencies in overseeing pay actions. In particular, it states that agencies must “conduct[] market and/or salary alignment studies on a periodic basis as needed” and “continuously review[] agency compensation practices and actions to ensure that similarly situated employees are treated consistently . . . .”<sup>8</sup> In addition, Policy 3.05 also allows for “flexible” starting-pay guidelines to attract a “highly skilled, competent workforce.”<sup>9</sup> Like all pay practices, salary questions like those at issue in this grievance 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> 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>12</sup>

The grievance alleges that the agency misapplied state compensation policy by (1) misapplying the factors it did consider, and (2) failing to consider additional relevant pay factors. The two factors the grievant states the agency considered were “years of service with DMV” and “the new starting salary for each role.”<sup>13</sup> The grievant asserts that overall state service (not just agency service) should have been considered and also that there is “no record” of what the starting pay for a Senior Special Agent (his position) should be.<sup>14</sup> While not exhaustive, the grievant asserts that the primary factors the agency apparently did not consider were the grievant’s education, certifications, and performance awards. Although the agency has maintained that its actions have complied with policy, the agency head ultimately decided to procure a new study, at least in part to address the grievant’s concerns about relevant factors.

---

<sup>8</sup> DHRM Policy 3.05, *Compensation*, at 5.

<sup>9</sup> DHRM Policy 3.05, *Compensation*, at 2.

<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.

<sup>12</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). In this context, disregarding relevant Pay Factors without a reasoned basis to do so could be considered arbitrary and capricious.

<sup>13</sup> Agency documents confirm that its initial pay increases for law enforcement would “depend on time in grade and also years of service with the [agency].”

<sup>14</sup> EDR is not aware of whether the grievant sought agency documents related to this issue. See generally *Grievance Procedure Manual* § 8.2.

The record does not provide further details as to why the agency deemed additional Pay Factors irrelevant to its in-band adjustment determinations. Nevertheless, there is insufficient evidence to demonstrate that the agency has misapplied or unfairly applied policy. Policy 3.05 does not require the agency to consider more Pay Factors than are relevant to a particular compensation determination, so long as the determination is not inconsistent with current practices or the salary study itself.<sup>15</sup> However, per DHRM Policy 3.05, the agency must still consider as many factors as are relevant to the grievant and the surrounding circumstances.<sup>16</sup> Considering only two of thirteen Pay Factors could constitute a misapplication of Policy 3.05 if additional Pay Factors, such as education and certifications as cited by the grievant in this case, would normally be relevant to the salary determination at issue. On the other hand, the record does not provide a basis to say that the agency might have been required to consider such factors as a matter of DHRM policy.

Nevertheless, qualification may not be appropriate even if a grievance challenges a management action that might ordinarily qualify for a hearing. For example, an issue may have become moot during the management resolution steps, either because the agency granted the specific relief requested by the grievant or an interim event prevents a hearing officer from being able to grant any meaningful relief. Additionally, qualification may be inappropriate when the hearing officer does not have the authority to grant the relief requested by the grievant and no other effectual relief is available.<sup>17</sup> Here, the primary relief the grievant requested was that a new salary study be properly conducted to ensure that he was given the opportunity to have a pay increase if merited by relevant Pay Factors. The agency has stated during the grievance process that they would initiate another salary study through a third party to address the grievant's concerns. As the agency's plan for the new salary study appears to have effectively granted the grievant's relief, there is no other effective relief available as to the matter of the salary study.

The only other basis on which this grievance could qualify for a hearing would be based on whether the agency's apparent denial of a pay increase at this time amounts to a misapplication or unfair application of policy.

Although the agency has not offered a comprehensive explanation of how it considered all relevant Pay Factors in its initial pay determinations, the grievance record does not raise a sufficient question as to whether the grievant's salary results from a failure to consider any particular Pay Factor. For example, EDR has reviewed the range of salaries of Senior Special Agents at the agency. Nothing in this data would appear to raise a sufficient question to demonstrate that the grievant's salary is the result of the agency violating a specific mandatory policy provision or outside the scope of the discretion granted to the agency by the applicable policies. Moreover, even if we were to conclude that a misapplication of policy may have occurred, a hearing officer's remedial authority would likely be limited to ordering the reapplication of policy at the point at which it was misapplied.

---

<sup>15</sup> The agency has not provided any insight as to how it normally evaluates Senior Special Agents in the Law Enforcement Division for compensation purposes. Ultimately, however, the grievant bears the burden of providing evidence to support his claims.

<sup>16</sup> DHRM Policy 3.05, *Compensation*, at 2 ("Appropriate pay factors must be considered" in agencies' pay practices).

<sup>17</sup> See, e.g., EDR Ruling No. 2017-4477; EDR Ruling No. 2017-4509.

Because the agency is apparently procuring a new salary study, they are effectively reapplying Policy 3.05 already. If the agency either further delays the new salary study or refuses to retroactively pay the grievant if it is determined that he in fact should have received a pay raise after the first study, then the grievant may consider initiating another grievance on those grounds.

#### CONCLUSION

For the reasons expressed above, the facts presented by the grievant do not constitute a claim that qualifies for a hearing under the grievance procedure.<sup>18</sup> EDR's qualification rulings are final and nonappealable.<sup>19</sup>

*Christopher M. Grab*  
Director  
Office of Employment Dispute Resolution

---

<sup>18</sup> See *Grievance Procedure Manual* § 4.1.

<sup>19</sup> See Va. Code § 2.2-1202.1(5).