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QUALIFICATION RULING

In the matter of the Virginia Community College System
Ruling Number 2024-5585
August 30, 2023

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 February 16, 2023 grievance with a community college in the Virginia Community College System (the “college” or “agency”) qualifies for a hearing. For the reasons discussed below, this grievance is not qualified for a hearing.

FACTS

The grievant was originally hired by the college in 2021 as an Academic Advisor.¹ Since then, the college has attempted to reorganize their advisors, dividing their respective responsibilities between new and current students. In 2022, the college apparently created and filled new “Navigator” positions whose advising duties would center on new students. With new students to be advised by Navigators going forward, on September 20, 2022, the college informed some of its advisors that their working titles would be updated to “Retention Specialists” to reflect a focus on “continuing” students. In December 2022, the college met with these advisors, including the grievant, to discuss the reworking of their Employee Work Profile (“EWP”) to align with the new duties being considered with the new Retention Specialist position. Many of the advisors expressed concerns during this meeting, which led to the college continuing to adjust the EWPs and job duties accordingly. Despite the continuing reworkings of the EWP and job duties based on the advisors’ concerns, the grievant alleges that the new job duties go beyond the scope of the job title he originally signed on for, that he never agreed to his job title being changed and/or modified, and that he should have received a pay increase for these new duties. The grievance has since gone through all the required management steps, with the college denying the grievant’s request for a hearing. The grievant now appeals that determination to EDR.

¹ The terminology of the grievant’s original role title is inconsistent throughout the record, mostly referred to as either “Academic Advisor” or “Academic/Career Advisor.” The grievant also referred to the original title as “Professional Advisor” in his grievance. This is also the work title listed on his most recent EWP, with a role title of Education Support Specialist. For the purposes of this ruling, because most instances in the record refer to the original title as “Academic Advisor,” that is the title EDR will use.

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.² Additionally, the grievance statutes and procedure reserve to management the exclusive right to manage the affairs and operations of state government.³ 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.⁴ 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.

Further, the grievance procedure generally limits grievances that qualify for a hearing to those that involve "adverse employment actions."⁵ Thus, typically, 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."⁶ Adverse employment actions include any agency actions that have an adverse effect *on the terms, conditions, or benefits* of one's employment.⁷

Compliance Challenge

As a preliminary matter, the college has asserted in their rebuttal to the grievant's appeal that the grievant is out of compliance with the grievance procedure for not properly submitting the request to the college's human resources department. Instead, the grievant submitted his appeal directly to EDR. When EDR explained the appeal process to the grievant, EDR assured him that as long as he either submitted the request to his human resources office or submitted the remaining grievance paperwork to EDR, the request for a hearing would properly proceed. The grievant followed up on this by submitting all other grievance paperwork to EDR, thus fulfilling the requirements on his end. For these reasons, EDR declines to find that the grievant has failed to comply with the grievance procedure in any way that renders his ruling request invalid. It is not in dispute that the grievant sought to continue with his grievance and sought this ruling in a timely manner.

² See *Grievance Procedure Manual* §§ 4.1 (a), (b).

³ See Va. Code § 2.2-3004(B).

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

⁵ See *Grievance Procedure Manual* § 4.1(b).

⁶ *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)).

⁷ *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").

Position Reclassification

It appears that the grievant's primary concern in his grievance is that he has been wrongly given excessive duties that are different from the duties included in the role title he was originally hired for, and that he was not given adequate notice of these changes in duties. Based on the most recent EWP in the record, it appears that the grievant's current working title is Professional Advisor, a Pay Band 4 position. This can be compared to his previous EWP issued in 2021 when he began working for the college, where his work title was Academic/Career Advisor (while the EWP does not provide the applicable pay band, it is inferred from the record that this position was also a Pay Band 4 position). As relief, he requests an updated EWP that properly conveys his new duties, along with the appropriate compensation and salary adjustment.

Additional/Changed Duties

As to the threshold requirement for qualification, EDR cannot find that the adjustments to the grievant's EWP and overall expectations rise to the level of an adverse employment action. Our review of the grievant's former and current descriptions of his duties does not indicate that the grievant's new job responsibilities, as compared to his former duties, amount to a tangibly adverse effect on the terms, conditions, or benefits of his employment.

It appears that the college has essentially focused the grievant's responsibilities on current students, leaving his former responsibility for new students with the newly created New Student Navigator Position. The grievant's original EWP reflects that the majority of his responsibilities focused on advising "new and non-curricular students" and assisting "program placed students" when their respective advisors were not available. These responsibilities included requirements to provide certain information to advisees, document advising sessions, and establish rapport with all students. By comparison, the grievant's most recent EWP lists the following Core Responsibilities: "Advise continuing students" (45 percent), (2) "Manage a caseload of students as the result of Early Alerts and/or retention initiatives" (45 percent), and (3) "Support student success of all students" (10 percent). Performance metrics continue to include providing accurate academic information to students, being available for walk-in advising, and establishing rapport. The new EWP does include several metrics involving proactive outreach and other actions with respect to students whose "retention" (continued enrollment) appears to be at risk. Without more, however, the available record does not support a conclusion that the addition of these new outreach duties is so significant as to constitute a tangibly adverse effect on the grievant's terms, conditions, or benefits of employment.

Even assuming that the grievance adequately alleged an adverse employment action, qualification for a hearing would also require evidence raising a sufficient question as to whether management violated a mandatory policy or whether the challenged action, in its totality, is so unfair as to amount to a disregard of the intent of the applicable policy. As it relates to job classifications such as the one challenged here, the General Assembly has recognized that the Commonwealth's system of personnel administration should be "based on merit principles and objective methods" of decision-making.⁸ In addition, the Commonwealth's classification plan "shall provide for the grouping of all positions in classes based upon the respective duties,

⁸ Va. Code § 2.2-2900.

authority, and responsibilities,” with each position “allocated to the appropriate class title.”⁹ The grievance procedure accords much deference to management’s exercise of judgment, including management’s assessment of the degree of change, if any, in the job duties of a position. While agencies are afforded great flexibility in making decisions such as those at issue here, agency discretion is not without limitation. Rather, EDR has repeatedly held that even where an agency has significant discretion to make decisions (for example, classifying a position in a particular role), qualification is warranted 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.¹⁰

Considering the totality of the information available, EDR finds the grievance does not raise a sufficient question whether the college has violated any mandatory policy or unfairly applied such policy to the point of disregarding its intent. As noted above, some of the grievant’s new job duties are indeed different from the job duties listed on the EWP for the grievant’s original Academic/Career Advisor title – *e.g.*, the addition of outreach responsibilities and the removal of responsibilities for new students. However, the college has provided evidence that these changes have arisen from a deliberative process, with articulated rationales for the restructuring (*e.g.*, recognizing different needs of new versus continuing students), solicitation of feedback from affected staff, and responsive adjustments to their duties. For example, the college asserts that, since full implementation of the Retention Specialist function began in September 2022, they have “agreed to change the position title and reallocated a percentage of [the grievant’s] duties and functions with regard to some of [the grievant’s] suggestions and other employees that are similarly situated.” Conversely, although the grievant may disagree with these changes, he has not provided information to suggest that they are inconsistent with similar college practices or otherwise in “disregard of the facts or without a reasoned basis.”

The grievant also expressed concerns over the logistics of this role title change, specifically that the Retention Specialist position was not advertised, he did not apply for or accept it, he was not informed that his original position was being dissolved, and he was forced into the new position “with added responsibilities without agreement or reasonable accommodations to constitute [sic] the extra duties.”¹¹ As described above, the grievance procedure grants considerable deference to agencies regarding decisions of job classifications and how they carry out those decisions. Likewise, under DHRM Policy 3.05, agencies may generally reassign employees to different duties without a mandated salary adjustment (otherwise known as a lateral role change), and they may do so without advertising for the new role or otherwise carrying out the standard hiring process. Ultimately, the action in this case would appear to be consistent with a reassignment within the pay band under state policy.¹² For these reasons, EDR does not find that the college misapplied or unfairly applied state policy by changing the grievant’s role and duties, or by its methods of doing so.

⁹ *Id.* § 2.2-103(B)(1).

¹⁰ See *Grievance Procedure Manual* § 9 (defining arbitrary or capricious as “[i]n disregard of the facts or without a reasoned basis”); see also, *e.g.*, EDR Ruling 2010-2365; EDR Ruling No. 2008-1879.

¹¹ The grievant’s request for a hearing, via email correspondence with EDR, is the only instance EDR is aware of where the grievant mentions the issue of reasonable accommodations. EDR therefore has no reason to believe that the grievant is grieving any issues related to disability accommodations, or that he is alleging he is being deprived of certain disability accommodations as a result of this new position. For that reason, reasonable accommodations of a potential disability will not be discussed in this ruling.

¹² See DHRM Policy 3.05, *Compensation*, at 6-7.

Compensation

In addition to job duties and classification, the grievant has also objected that he is not being adequately paid for his new role as a Retention Specialist/Professional Advisor. In essence, the grievant claims that the college is misapplying state policy by not adjusting his compensation despite enlisting him in additional duties beyond those listed for his original position.

DHRM Policy 3.05, *Compensation*, 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”¹³ However, the Policy does not explicitly mandate when and how agencies review and approve or deny pay actions for their divisions. With respect to adjusting salaries when employees are given new role titles and/or duties, Policy 3.05 only states that agencies “may” grant a salary increase when there is a lateral role change (a change where an employee is given different duties but in the same pay band).¹⁴ 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.¹⁵

Here, the grievant is alleging that the college is misapplying policy by not providing a salary increase in response to the grievant’s new title and job duties. As explained above, while agencies are allowed to provide pay increases for these reasons, they are not necessarily required to do so. It appears that the college determined, upon considerations of all Pay Factors articulated in Policy 3.05, that the grievant’s new classification is within the appropriate pay band. EDR has independently reviewed the record in its totality and finds no evidence that suggests the grievant’s revised duties go beyond his original duties as an Academic Advisor; the difference is that instead of overseeing both new and current students, the grievant is now primarily responsible for current students and ensuring that they have the resources needed to stay in the college’s curriculum. While the changes might require additional leadership and outreach to current students, EDR does not find a sufficient increase in overall duties such that an in-band adjustment would be mandated by policy. Moreover, we find nothing in the record to cast doubt on the college’s assertion that all Pay Factors required by Policy 3.05 have been considered. For these reasons, the grievance does not present a sufficient question as to whether the agency has misapplied policy by not adjusting the grievant’s pay in response to his reorganized duties.

Having reviewed the information in the grievance record, EDR finds insufficient evidence to demonstrate that the college’s decisions to reclassify the grievant’s role title and not grant a pay increase for doing so have violated a specific mandatory policy provision or were outside the scope of the discretion granted to the college by the applicable policies. Indeed, it appears the college thoroughly considered relevant circumstances in reaching a decision to create the grievant’s new position, and has substantiated this decision with evidence in the record, including multiple meetings and discussions with the grievant and similarly situated employees in order to draft the

¹³ DHRM Policy 3.05, *Compensation*, at 5.

¹⁴ *Id.* at 6 (“Role Change”).

¹⁵ *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).

most accurate and fair EWPs. For these reasons, EDR cannot find that these decisions were 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.¹⁶ EDR's qualification rulings are final and nonappealable.¹⁷

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¹⁶ *Grievance Procedure Manual* § 4.1.

¹⁷ See Va. Code § 2.2-1202.1(5).