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QUALIFICATION RULING

In the matter of the Virginia Department of Juvenile Justice
Ruling Number 2024-5632
December 26, 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 August 22, 2023 grievance with the Virginia Department of Juvenile Justice (the “agency”) qualifies for a hearing. For the reasons discussed below, this grievance is not qualified for a hearing.

FACTS

The grievant was employed by the agency as a Health Services Director. The agency engaged in the implementation of a reorganization plan from approximately April through June of 2023. This reorganization ultimately resulted in the grievant being laid off on July 27, 2023. The reorganization also resulted in the hiring of two Deputy Director positions: Deputy Director of Reentry, Education, and Intervention, and Deputy Director of Placement and Program Implementation. In his grievance, the grievant primarily contends that the selection processes for both positions were a result of pre-selection of the final candidates. He argues that pre-selection occurred because the finalists for these two positions allegedly received improper, noncompetitive promotions in the past. He also argues that the job descriptions for these two positions did not accurately reflect the skills and duties required for the positions, nor did the subsequent interview panels ask questions about the required skills and duties.¹ As a second major point of the grievance, the grievant challenges the elimination of his position that resulted in his layoff. As relief, the grievant requests to be considered for the two Deputy Director positions, but also requests that the agency be held accountable for their alleged misapplication of policy regarding the issues of pre-selection and improper layoff.

In the agency’s single-management-step response that was issued on September 1, 2023, the agency provided relief by providing a copy of the Placement and Program Implementation Employee Work Profile (“EWP”) and by confirming in writing that the agency had a “business need documented” relating to their reorganization plan and subsequent layoffs, but did not provide him such documentation. No other relief was granted. On September 19, EDR issued a compliance ruling that found that the agency did not fail to comply with the grievance procedure by

¹ While the grievant did not apply for the Reentry, Education, and Intervention position, he did apply for and interviewed for the Placement and Program Implementation position.

consolidating the management steps into a single step, nor by using a different Deputy Director step respondent due to the grievant's former supervisor (a Deputy Director) being directly involved in the grievance.² The Ruling also ordered the agency to provide documentation relating to the reorganization plan that was requested by the grievant.³ On September 27, 2023, the agency provided the requested documentation, including agency emails dated from April 25 – June 9, 2023. Finally, on October 11, 2023, the agency denied the grievant's request 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.⁴ Additionally, the grievance statutes and procedure reserve to management the exclusive right to manage the affairs and operations of state government.⁵ By statute and under the grievance procedure, complaints relating solely to issues such as the hiring, promotion, transfer, assignment, and retention of employees within the agency and layoff “shall not proceed to a hearing” unless there is sufficient evidence of discrimination, retaliation, unwarranted discipline, or a misapplication or unfair application of policy.⁶ 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.”⁷ 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.”⁸ Adverse employment actions include any agency actions that have an adverse effect *on the terms, conditions, or benefits* of one's employment.⁹ Here, the grievant has experienced an adverse employment action because he was laid off, and because the position that he applied and interviewed for would have been a promotion.

Dissolution of Position and Layoff

The grievant alleges in his grievance and appeal for qualification that the agency violated DHRM Policy 1.30, *Layoff*, and the agency's own layoff policy by inappropriately eliminating the

² EDR Ruling No. 2024-5617. The grievant has continued to contend these procedural issues, but because EDR has already ruled on these issues and finds no error in that ruling, this qualification ruling will refrain from further discussion on these issues.

³ *Id.*

⁴ See *Grievance Procedure Manual* §§ 4.1 (a), (b).

⁵ See Va. Code § 2.2-3004(B).

⁶ Va. Code § 2.2-3004(C); see *Grievance Procedure Manual* §§ 4.1(b), (c).

⁷ See *Grievance Procedure Manual* § 4.1(b).

⁸ *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)).

⁹ *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”).

grievant's position without providing a legitimate business reason for doing so. In particular, the grievant cites a provision from Policy 1.30 that states:

[a]gency management should assess and document the business need to reduce the number of employees or to reconfigure the work prior to implementing a Layoff. Each Agency is responsible for identifying employees for layoff consistent with their business needs and the provisions of this policy.¹⁰

The grievant argues that the agency did not provide a sufficient answer per DHRM Policy 1.30 when asked why his position was eliminated; they stated that his position was "redundant" and that it was eliminated "just because of a reorganization." The agency did eventually provide a written record of a legitimate business need in the form of various emails sent among managerial employees, but the grievant argues that this was insufficient because "[n]o one with healthcare experience was involved in the development of the written business need." While the policy provision that the grievant cites does require agency management to document the business need that is the cause for implementing a layoff, the policy does not require that certain agency personnel determine the business need and subsequent layoff. While the grievant is understandably frustrated that healthcare personnel did not determine the business needs of certain healthcare-related positions within the agency, nothing in DHRM policy requires the agency to act in this manner or overrides the agency head's judgment as to the agency's operational needs.

After a review of the provided emails, EDR can conclude that a sufficient legitimate business need was documented that fits within the provisions of DHRM Policy 1.30. Regarding the issue of non-healthcare personnel managing healthcare-related positions, the emails explain that while the Health Services Department is being reorganized under a different, non-healthcare specific Division, there "is still a need for a Medical Director to *clinically* supervise the Chief Physician, Nurse Manager . . . , and the psychiatrist . . ." Further emails also emphasized the need for "day to day business operations of the agency [] to be organized and supported so as to best perform [the essential agency functions of intervention, supervision, and rehabilitation of court-involved youth]." The agency also verified with EDR that a certified medical physician position was brought into the agency which caused the redundancy of the grievant's position. Finally, and while this does not exhaust the extensive information provided in the emails, the agency noted that they have met the requirement of the Code of Virginia which requires medical services to be overseen by a local health authority. EDR finds that the agency has demonstrated an adequate "legitimate business need" to meet the standard required by DHRM policy.

The grievance procedure accords much deference to management's exercise of judgment, particularly decisions as to what work units will be affected by layoff and the business functions to be eliminated or reassigned. Thus, a grievance that challenges an agency's determination like the one at issue here does not qualify for a hearing unless there is sufficient indication that it was plainly inconsistent with other similar decisions by the agency, or that the decision was otherwise arbitrary or capricious.¹¹ Although the grievant disagrees with the agency's actions, he has not presented evidence sufficient to support his assertion that the agency misapplied and/or unfairly applied any mandatory provision of policy, that the agency's actions were so unfair that they

¹⁰ DHRM Policy 1.30, *Layoff*, at 2.

¹¹ See *Grievance Procedure Manual* § 9 (defining an arbitrary or capricious decision as one made "[i]n disregard of the facts or without a reasoned basis").

amounted to a disregard of the intent of any applicable policy, or that the layoff process was conducted in a manner that was otherwise arbitrary or capricious. Accordingly, the grievance does not qualify for a hearing on this basis.

Non-Selection of Deputy Director Positions

The grievant has also challenged the agency's selection of the two Deputy Director positions as misapplication of DHRM Policies 3.05, *Compensation*, and 2.10, *Hiring*. In particular, the grievant argues that the two final candidates were pre-selected for the Deputy Director positions, that their previous positions were not adequately advertised to allow for a competitive hiring process, and that the job descriptions and interview questions for the Deputy Director positions did not accurately reflect their health-centered duties. Both Deputy Director positions will be discussed in this analysis for the sake of clarity, as both positions were created at similar times during the agency's reorganization, but for purposes of identifying an adverse employment action, only the Deputy Director of Placement and Implementation (the position for which the grievant applied) is relevant.¹²

Alleged Misapplication of DHRM Policy 3.05

The grievant cites a provision from Policy 3.05 regarding role changes, stating that the agency violated this provision by not creating a new position that should have used a competitive selection process. The provision states that “[i]mmediate and significant changes in duty assignments should be addressed through the establishment of a new position which is then competed.”¹³ The grievant's argument regarding this policy provision is that the agency did not properly create new positions to be competed for, but instead “promoted” managerial employees to certain positions before they ultimately applied for the Deputy Director positions. The positions in question are titled the Director of Re-Entry and the Director of Quality Assurance. Apparently the agency communicated these “promotions” in a potentially misleading manner, as the agency contends that they were not true promotions but instead non-competitive role changes. The grievant interpreted these announcements as “deceptive behavior,” arguing they were in fact promotions and therefore should have used the proper competitive hiring process. Conversely, the agency states that the recruitment and competitive hiring practices were properly followed for the Directors of Re-Entry and Quality Assurance, stating that while “they were not true promotions, but instead role changes, the agency announcements were misleading.”

Under DHRM Policy 3.05, a role change is defined as “[a] non-competitive action in which a position is changed to a different Role”¹⁴ It also adds that “[r]ole changes normally occur when there has been a gradual change of duties which are assigned over an extended period of time or to correct a prior misclassification. Immediate and significant changes in duty assignments should be addressed through the establishment of a new position which is then competed”¹⁵ According to the agency, the employees who ultimately advanced to the Deputy Director positions received non-competitive role changes in the past, earning the titles Director of Re-Entry and

¹² The grievant cannot have experienced an adverse employment action regarding the Deputy Director of Reentry, Education, and Intervention position because he did not apply for that position. For there to be an adverse employment action, the action must have an adverse effect on the terms, conditions, or benefits of *the grievant's* employment.

¹³ DHRM Policy 3.05, *Compensation*, at 6.

¹⁴ *Id.*

¹⁵ *Id.*

Director of Quality Assurance. The agency states that when this occurred, both employees were kept in the same pay band. The agency had recognized that these employees had absorbed increased duties and responsibilities in recent years. As such, the agency took action to update their Employee Work Profiles to reflect current duties and to change their working titles to a program director level.¹⁶

EDR finds that the agency's reasoning sufficiently adheres to DHRM Policy 3.05 in that the agency followed proper procedure by engaging in non-competitive role changes for the two employees. The fact that the employees were already performing the duties that were ultimately reflected in the title changes, combined with the fact that neither change resulted in a different pay band, means that a competitive hiring process was not necessary for the Deputy of Re-Entry and Deputy of Quality Assurance positions – they were essentially title changes to accurately reflect the work that the employees were doing. It should be noted, however, that these previous role changes are entirely separate from the hiring process regarding the Deputy Director position for which the grievant applied. While the grievant contends that the previous “promotions” reflect a pattern of pre-selection that ultimately won another employee the position that the grievant applied for, EDR has not reviewed any evidence to suggest that prior role change improperly impacted the hiring process of the Deputy Director position. Indeed, the grievant does not contest the hiring of the Deputy Director position itself or argues why he should have been selected over the finalist – he only contests the prior role change.

Qualification for a hearing requires 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. After a review of the record, including discussions from both agency representatives and the grievant, EDR cannot find evidence of a sufficient question that the agency misapplied or unfairly applied policy regarding the prior role changes. As it relates to promotion selections such as the ones 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.¹⁷ Agency decision-makers deserve appropriate deference in making determinations regarding a candidate's knowledge, skills, and abilities. While agencies are afforded great flexibility in making decisions such as those at issue here, agency discretion is not without limitation. EDR will not second-guess management's decisions regarding the administration of its procedures absent evidence that the agency's actions are plainly inconsistent with other similar decisions within the agency or otherwise arbitrary or capricious.

Alleged Misapplication of DHRM Policy 2.10

The grievant's primary argument regarding DHRM Policy 2.10 is that the postings of the Deputy Director Positions had inaccurate job descriptions. The provision he cites on appeal states that all job announcements must include “a summary of essential job duties” and “any bona fide occupational requirements.”¹⁸ The grievant argues that each of the Deputy Director job announcements did not include accurate summaries of job duties or the bona fide occupational

¹⁶ The Director of Re-entry did not undergo a role change because that individual had been in the same role since 2012. The Director of Quality Assurance did involve a role change, but, again, this was to reflect duties already being performed.

¹⁷ Va. Code § 2.2-2900.

¹⁸ DHRM Policy 2.10, *Hiring*, at 4.

requirements for the positions. He adds that the jobs inherently require certain medical expertise, but the announcement summaries and interview questions only asked about certain administrative and managerial expertise.

Regarding state hiring policy, the grievance procedure accords much deference to management's exercise of judgment, including management's assessment of applicants during a selection process. Thus, a grievance that challenges an agency's action like the selection in this case does not qualify for a hearing unless there is sufficient evidence that the resulting determination was plainly inconsistent with other similar decisions by the agency or that the assessment was otherwise arbitrary or capricious.¹⁹ DHRM Policy 2.10, *Hiring*, provides that "[a] set of interview questions must be developed and asked of each applicant" who is interviewed, that those "[q]uestions should seek information related to the applicant's knowledge, skills, and ability to perform the job," and that "[i]nterviewers must document, either written or electronically, applicants' responses to questions to assist with their evaluation of each candidate's qualifications."²⁰

The agency states that the questions "were fair and appropriate for the functions and requirements of the position." While the grievant contends that the job descriptions and subsequent interview questions did not adequately cover the healthcare-related aspects of the position, the agency states that the "position is not heavy on the health care aspects other than overseeing the position of Medical Compliance Administrator, which is responsible for the oversight of the medical unit." The agency's rationale regarding the makeup of interview questions also ties back to their reorganization plan, with the Agency Director stating that when the Deputy Director of Placement and Implementation position was created (the one for which the grievant applied), "the position was never intended to be heavy on health care responsibilities besides from overseeing the position that would be." This explanation was also provided as written documentation as part of the grievance's original relief, which consists of an email from the Director that goes into more detail regarding the agency's rationale.

Considering the totality of the information available, EDR finds the grievance does not raise a sufficient question whether the agency has violated any mandatory policy or unfairly applied such policy to the point of disregarding its intent. As explained above, agencies are granted considerable deference in how they conduct hiring processes. The previously cited provision of DHRM Policy 2.10 also only requires that the interview questions seek information related to the applicant's "knowledge, skills, and ability to perform the job."²¹ Determining what knowledge, skills, and abilities are necessary is ultimately determined by the agency's hiring personnel. Here, the agency has provided a sufficient rationale explaining why the Deputy Director of Placement and Implementation position is less focused on healthcare-related aspects and more on administrative oversight. Absent any evidence of the selection process being plainly inconsistent with other similar decisions by the agency, or that the decision was otherwise arbitrary or capricious, there is no indication that the agency's selection of interview questions was improper. EDR cannot find such inconsistent, arbitrary, or capricious decision-making by the agency in this regard, and for that reason, EDR declines to qualify the grievance for a hearing on these grounds.

¹⁹ See *Grievance Procedure Manual* § 9 (defining arbitrary or capricious as "[i]n disregard of the facts or without a reasoned basis").

²⁰ DHRM Policy 2.10, *Hiring*, at 12.

²¹ See DHRM Policy 2.10, *Hiring*, at 12.

CONCLUSION

Having reviewed the information in the grievance record, EDR finds insufficient evidence to demonstrate that the agency's decision to reorganize their management in a way that eliminated the grievant's position, or their decision to implement non-competitive role changes for employees who ultimately received positions to which the grievant applied, has violated a specific mandatory policy provision or was outside the scope of the discretion granted to the agency by the applicable policies. Indeed, it appears the agency thoroughly considered relevant circumstances in reaching a decision to eliminate the grievant's position and implement role changes for the relevant employees, and has substantiated these decisions with evidence in the record, including multiple emails among managerial staff discussing the reasoning for all decisions made throughout the reorganization process. For these reasons, EDR cannot find that these decisions were improper or otherwise arbitrary or capricious.

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.²² EDR's qualification rulings are final and nonappealable.²³

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²² *Grievance Procedure Manual* § 4.1.

²³ *See* Va. Code § 2.2-1202.1(5).