

Issue: Qualification – Compensation (other); Ruling Date: January 4, 2017; Ruling No. 2017-4449; Agency: Department of Juvenile Justice; Outcome: Not Qualified.



COMMONWEALTH of VIRGINIA
Department of Human Resource Management
Office of Employment Dispute Resolution

QUALIFICATION RULING

In the matter of Department of Juvenile Justice
Ruling Number 2017-4449
January 4, 2017

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, 2016 grievance with the Department of Juvenile Justice (the agency) qualifies for a hearing. For the reasons discussed below, this grievance does not qualify for a hearing.

FACTS

The grievant is employed as an Equipment Repair Tech at one of the agency's facilities, which is scheduled for closure in June of 2017. As part of the layoff process, the agency has elected to offer affected employees at this facility a retention bonus plan, which awards employees a quarterly bonus of 15% of his or her salary, pursuant to the following conditions: that the employee has not been placed or selected for placement in another position at the agency, that the employee has not used more than 80 hours of paid or unpaid leave during the quarter, and that the employee has not received a formal disciplinary action during the quarter. On or about August 16, 2016, the grievant signed a "Retention Bonus Participation Agreement," accepting the terms and conditions of the facility's retention bonus plan. On or about August 22, 2016, the grievant initiated a grievance to challenge the provision of the bonus plan requiring the employee to use less than 80 hours of leave in a quarter to be eligible. After proceeding through the management resolution steps, the agency head denied the grievant's request for qualification of his grievance for hearing, and he now appeals that decision to EDR.

DISCUSSION

The grievance statutes and procedure reserve to management the exclusive right to manage the affairs and operations of state government.¹ Thus, by statute and under the grievance procedure, complaints relating solely to the establishment and revision of salaries, wages, and general benefits "shall not proceed to a hearing"² unless there is sufficient evidence of discrimination, retaliation, unwarranted discipline, or a misapplication or unfair application of policy. In this case, the grievant alleges that the agency's retention bonus plan constitutes a misapplication of policy.

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

¹ See Va. Code § 2.2-3004(B).

² *Id.* § 2.2-3004(C).

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.”³ 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.”⁴ Adverse employment actions include any agency actions that have an adverse effect *on the terms, conditions, or benefits* of one’s employment.⁵

Even assuming that an adverse employment action exists in this case, EDR has thoroughly reviewed the evidence presented in this matter and cannot conclude that any specific policy requirement has been violated by the agency’s adoption of the retention bonus plan. The primary policy implicated in this grievance is DHRM Policy 3.05, *Compensation*. This policy provides that agencies may offer retention bonuses in order to “encourage current employees to remain in specific critical positions” and requires that a formal written agreement be executed with each employee offered the bonus.⁶ DHRM Policy 3.05 further provides that agencies must coordinate with the appropriate Cabinet secretary and DHRM in so doing.⁷ Here, the agency indicates that its retention bonus plan was approved by the Secretary of Public Safety and Homeland Security, by the Director of DHRM, and by the Governor’s Chief of Staff.

Although the grievant may disagree with the provisions within the agency’s retention bonus plan, EDR has reviewed nothing that would suggest the parameters established by the agency violate a mandatory policy provision, disregard the pertinent facts or are otherwise arbitrary or capricious. To the extent that the grievant raises arguments that may relate to the enforcement of a contractual agreement between an employing agency and an employee, claims of that nature do not fall within the types of cases that qualify for hearing as enumerated under the grievance statutes and the grievance procedure.⁸ Therefore, EDR concludes that the grievant’s August 22, 2016 grievance does not qualify for hearing.⁹

EDR’s qualification rulings are final and nonappealable.¹⁰



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³ See *Grievance Procedure Manual* § 4.1(b).

⁴ *Burlington Indus., Inc. v. Ellerth*, 524 U.S. 742, 761 (1998).

⁵ *Holland v. Wash. Homes, Inc.*, 487 F.3d 208, 219 (4th Cir. 2007) (citation omitted).

⁶ See DHRM Policy 3.05, *Compensation*.

⁷ *Id.*

⁸ See Va. Code § 2.2-3004; *Grievance Procedure Manual* § 4.1(b), (c). However, there could be circumstances in which similar cases could result in qualification for hearing. Such circumstances do not exist here. It appears that the grievant received the bonus in the only quarter in which it has been paid to date. To the extent the grievant is denied a bonus in a future quarter, this ruling does not prevent the grievant from challenging that denial in a future grievance as an unfair or unlawful application of the terms of the agreement to his particular circumstance.

⁹ This ruling only determines that this issue does not qualify for a hearing under the grievance statutes. It does not address whether there may be some other legal or equitable remedy available to the grievant in relation to this claim.

¹⁰ Va. Code § 2.2-1202.1(5).