

Issues: Qualification – Separation from State (layoff/recall); Compensation (position classification), and Benefits/Leave (sick leave); Ruling Date: February 22, 2017; Ruling No. 2017-4451; Agency: College of William and Mary; Outcome: Not Qualified.



COMMONWEALTH of VIRGINIA
Department of Human Resource Management
Office of Employment Dispute Resolution¹

QUALIFICATION RULING

In the matter of the College of William and Mary
Ruling Number 2017-4451
February 22, 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 her October 26, 2016 grievance with the College of William and Mary (the “College” or the “agency”) qualifies for a hearing. For the reasons discussed below, this grievance does not qualify for a hearing.

FACTS

The grievant was employed by the College as an Administrative and Office Specialist III. On or about September 30, 2016, the grievant was notified that her position was being eliminated effective October 31, 2016, due to an “organizational restructuring” of her work unit. The grievant filed an expedited grievance with the College on October 26, 2016 to challenge her layoff and related issues with her employment. The grievant subsequently received a Final Notice of Layoff or Placement form on October 31, offering her a placement in the same Role in another work unit. The grievant declined the placement because it would have resulted in a salary decrease and elected to be placed on Leave Without Pay-Layoff (“LWOP”) status for up to twelve months. After the grievance advanced through the management steps, it was not qualified for a hearing by the College president. 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.² Additionally, the grievance statutes and procedure reserve to management the exclusive right to manage the affairs and operations of state government.³ Thus, claims relating to issues such as to the methods, means, and personnel by which work activities are to be carried out, as well as layoff, position classifications, hiring, promotion, transfer, assignment, and retention of employees within the agency do not qualify for a hearing, unless the grievant presents evidence

¹ Effective January 1, 2017, the Office of Employment Dispute Resolution merged with another office area within the Department of Human Resource Management, the Office of Equal Employment Services. Because full updates have not yet been made to the *Grievance Procedure Manual*, this office will be referred to as “EDR” in this ruling to alleviate any confusion. EDR’s role with regard to the grievance procedure remains the same post-merger.

² See *Grievance Procedure Manual* § 4.1.

³ Va. Code § 2.2-3004(B).

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 The grievant has not alleged discrimination, retaliation, or discipline. Therefore, the grievant's claims could only qualify for hearing based upon a theory that the University has misapplied or unfairly applied 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 amount to a disregard of the intent of the applicable policy. The grievance procedure accords much deference to management's exercise of judgment, including decisions as to what work units will be affected by layoff and the business functions to be eliminated or reassigned and 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, an agency's assessment of a position's job duties or the need for organizational restructuring), 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.⁵

Layoff

In her grievance, the grievant argues that she was improperly selected for layoff. In support of this assertion, the grievant asserts that she was directed to hire a temporary employee "to help the team stay afloat" after she was laid off and that she had worked overtime in the period preceding her layoff. The grievant also appears to claim that she was the only classified employee in her work unit and that the College selected her position for abolishment with the intention of replacing her position with a non-classified Assistant Director position.⁶ The intent of DHRM Policy 1.30, *Layoff* (the "Layoff Policy"), is to allow "agencies to implement reductions in the work force according to uniform criteria when it becomes necessary to reduce the number of employees or to reconfigure the work force"⁷ In determining how to implement the Layoff Policy, agencies identify "work that is no longer needed or that must be reassigned" in a manner that is "consistent with their business needs and the provisions of [the Layoff Policy]."⁸

In this case, the College conducted a review of the grievant's work unit and determined that abolishing the grievant's position and replacing it with an Assistant Director position would

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

⁵ *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.

⁶ The Restructured Higher Education Financial and Administrative Operations Act contains additional information about different types of employment status at institutions of higher education, including the College. *See* Va. Code §§ 23.1-1020, 23.1-1021, 23.1-1022, 23.1-1023.

⁷ DHRM Policy 1.30, *Layoff*.

⁸ *Id.*

“improve the operational efficiencies of the Department.” In particular, management found that it was necessary to create a position with both “financial acumen and appropriate supervisory skill” for the work unit to function more effectively. The grievant’s job duties as set forth in her Employee Work Profile (“EWP”) focused on “perform[ing] all administrative functions” of the work unit and managing the unit’s financial “tracking database” The new Assistant Director position, on the other hand, is expected to perform financial management, strategic planning, and program development tasks, among other duties, that were not a part of the grievant’s job responsibilities. Furthermore, the Assistant Director will supervise additional staff and have greater authority to manage processes for the work unit. In other words, the College appears to have concluded that higher-level program support assistance functions to assist in the “day to day operations” of the work unit were required within the grievant’s work unit such that the creation of the Assistant Director position was warranted, and EDR cannot conclude that this determination was improper.⁹

The grievant’s concerns about the College’s motivation for restructuring her work unit, particularly her allegation that the College abolished her position because it was classified, are understandable. However, EDR is not aware of, and the grievant has not identified, any requirement under policy that would prohibit an agency from restructuring a work unit by abolishing a position of one type in order to create a position of a different type. Although such an action could, in some circumstances, be improper, EDR has reviewed nothing in this case that raises a question as to whether the College’s assessment of the work unit’s needs or decision-making process was tainted by an improper motive, plainly inconsistent with other similar decisions, or otherwise arbitrary or capricious.¹⁰ To the contrary, the abolishment of the grievant’s position and creation of the Assistant Director position appear consistent with the College’s stated purpose of “improv[ing] the operational efficiencies” of the grievant’s work unit.

While the grievant may disagree with the College’s assessments, she has not presented evidence sufficient to support her assertion that other positions should have been abolished rather than her own, or that the College’s actions were otherwise arbitrary or capricious. Further, the grievant has not demonstrated that the College misapplied and/or unfairly applied any mandatory provision in the Layoff Policy, or that the decision to abolish her position was so unfair that it amounted to a disregard of the Layoff Policy’s intent. Accordingly, the grievance does not qualify for a hearing on this basis.

⁹ While the grievant further alleges that “the manner in which [she] was laid off had people believing that [she] had done something underhanded” and that the College’s handling of her layoff was handled improperly and/or unprofessionally, EDR has reviewed nothing to suggest that the College failed to comply with the requirements of the Layoff Policy in either notifying or executing the grievant’s layoff. In addition, there would appear to be little effectual relief available under the grievance procedure to correct allegedly unprofessional behavior connected with a layoff if the behavior was not discriminatory, retaliatory, or otherwise in violation of state and/or agency policy. See *Grievance Procedure Manual* §§ 5.9(a), 5.9(b); *Rules for Conducting Grievance Hearings* § VI(C).

¹⁰ 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).”

Position Classification

In her grievance, the grievant argues that she was improperly classified as an Administrative and Office Specialist III based on the job duties she performed and seeks for the College to change her classification such that she will receive layoff benefits consistent with the work she performed. 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.¹¹ In addition, the Commonwealth's classification plan "shall provide for the grouping of all positions in classes based upon the respective duties, authority, and responsibilities," with each position "allocated to the appropriate class title."¹² The above statutes evince a policy that would require state agencies and institutions to allocate positions having substantially the same duties and responsibilities to the same role.

In support of her assertion that she was improperly classified in Pay Band 3 as an Administrative and Office Specialist III, the grievant asserts that she "had been dong [sic] the duties of assistant manager" within her work unit "from day one," which was not consistent with the nature of the job she was originally hired to perform. For example, the grievant asserts that she supervised two employees while she was employed by the College and was responsible for customer service, administration of the work unit's financial tracking database, preparing accounting reports for the work unit, and training staff on procedures for the work unit. Although the grievant does not appear to have identified a specific Role that may have been more appropriate for the nature of the work she performed, the Program Administration Specialist I and/or Program Administration Manager I Roles, both in Pay Band 4, could be assigned the types of duties the grievant alleges she performed at the College.¹³

Having reviewed the entirety of the grievance record, however, EDR finds that the grievant's allegations do not raise a question as to whether the College's abused its discretion under policy in determining the classification of the grievant's position. The grievant's position description identifies her working title as the "Assistant Manager" for her work unit and states that she was primarily responsible for "[p]erform[ing] all administrative functions" of the unit, as well as managing the financial "tracking database for accuracy, reporting, maintenance, and editing of files." The grievant asserts that, in addition to these duties, she performed additional tasks such as researching vendors and products, assisting with other College programs, coordinating with staff from other work units, and attending management meetings in her supervisor's absence, among other things.

While the grievant may have occasionally performed tasks that were not contemplated by her position description, the College has provided EDR with information to indicate that any

¹¹ Va. Code § 2.2-2900.

¹² *Id.* § 2.2-103(B)(1).

¹³ Additional information about the Program Administration Specialist and Program Administration Manager Roles is available at <http://web1.dhrm.virginia.gov/itech/DHRMWebAssets/careergroups/admin/ProgAdmin19210.htm>. It is particularly noteworthy that the class titles of "Institutional Traffic and Parking Supervisor" and "Institutional Traffic and Parking Manager" from the Commonwealth's former job classification system are considered comparable to these Roles under the current classification system.

such duties were temporary in nature and/or were not ongoing expectations for her position. To the extent the grievant may have been performing tasks that are not explicitly outlined in her position description, the grievance statutes and procedure reserve to management the exclusive right to manage the affairs and operations of state government, including the methods, means, and personnel by which work activities are to be carried out.¹⁴ EDR has reviewed nothing to indicate that the grievant's performance of those tasks were so substantial and/or frequent that the College's classification of the grievant's position as an Administrative and Office Specialist III constituted a violation of policy that would warrant qualification for a hearing.¹⁵ Furthermore, based on a review of the job classification structure provided on DHRM's website, EDR has found no inconsistencies in classifying the grievant's position as an Administrative and Office Specialist III.¹⁶

Although the grievant disagreed with the College's assessment of how best to distribute her workload and assign tasks within her work unit, she has not raised a question as to whether the College misapplied and/or unfairly applied policy, acted in a manner that was inconsistent with other decisions regarding organization and/or classification of positions, or was otherwise arbitrary or capricious. In summary, it appears that the College's classification of the grievant's position and the assignment of her duties was consistent with the discretion granted by policy. Accordingly, the grievance does not qualify for hearing on this basis.

Sick Leave and Benefits

Finally, the grievant requests a "100% payout of [her] sick leave" because she was "denied to opportunity to use" her sick leave prior to her layoff. The grievant also seeks other benefits associated with her employment to be continued, including "additional credits added to [her] time" that would allow her to receive retirement benefits.¹⁷

The Layoff Policy provides that "[a]n employee who has five or more years of continuous state service" may either be "paid for his or her 'traditional' sick leave in accordance with" state policy or "allowed to retain this balance when placed on [LWOP]." DHRM Policy 4.55, *Sick Leave*, states that employees are eligible "to receive payment for 25% of their unused sick leave balances up to a maximum payment amount of \$5,000."¹⁸ In short, there is simply no mechanism under state policy by which a hearing officer could direct the College to pay the

¹⁴ Va. Code §§ 2.2-3004(B), 2.2-3004(C).

¹⁵ In general, however, it would be a best practice for management to ensure that substantial and continued job assignments outside of an employee's position description are adequately documented to ensure compliance with state classification and compensation policies.

¹⁶ For further information about the Career Group to which the Administrative and Office Specialist Roles are assigned, as well as a general description of the complexity, results, and accountability for each Role, see <http://web1.dhrm.virginia.gov/itech/DHRMWebAssets/careergroups/admin/AdminOfficeSupport19010.htm>.

¹⁷ In the grievance, the grievant also asked the College to provide additional information about the impact of the layoff on her existing benefits, such as retirement and deferred compensation plans. The second step-respondent directed College human resources staff to meet with the grievant and "fully explain all benefits/options available to her . . ." The grievant has presented nothing to indicate that College staff failed to comply with this directive, and EDR will not address that issue further in this ruling.

¹⁸ DHRM Policy 4.55, *Sick Leave*

grievant more than 25% of the balance of her sick leave, up to a maximum of \$5,000. Similarly, DHRM Policy 1.57, *Severance Benefits*, discusses the benefits available to employees who have been involuntarily separated, which may consist of either “severance payments, continued state contribution toward health insurance premiums, and continued state contribution of life insurance premiums,” or “enhanced retirement.”¹⁹ While the grievant’s concerns about the financial impact of her layoff and her desire for the College to continue providing certain benefits of her employment are understandable, EDR has reviewed nothing in the grievance record to indicate that the College has not provided the grievant with the benefits to which she is entitled under policy, nor has the grievant alleged that the College failed to comply with any specific policy provision(s). Accordingly, the grievance does not qualify for a hearing on this basis.

EDR’s qualification rulings are final and nonappealable.²⁰



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¹⁹ DHRM Policy 1.57, *Severance Benefits*.

²⁰ See Va. Code § 2.2-1202.1(5).