

Issue: Qualification – Management Actions (Assignment of Duties); Ruling Date:
March 18, 2016; Ruling No.2016-4315; Agency: Department of Corrections;
Outcome: Not Qualified.



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

QUALIFICATION RULING

In the matter of the Department of Corrections
Ruling Number 2016-4315
March 18, 2016

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 January 12, 2016 grievance with the Department of Corrections (the “agency”) qualifies for a hearing. [scanned at 3] For the reasons set forth below, this grievance does not qualify for a hearing.

FACTS

The grievant is employed by the agency as an Institutional Training Officer/Lieutenant. On or about December 15, 2015, he was notified that the agency would be instituting a mandatory rotation program for all Institutional Training Officers (“ITOs”) beginning in December 2016. The agency determined that the mandatory rotation program was necessary to ensure that “institutional training personnel can remain up-to-date with the knowledge, skills and abilities needed to perform operational tasks and/or meet objectives.” As part of the rotation program, the grievant and other ITOs will be reassigned to positions as Corrections Lieutenants on a rotating basis. Both the ITO and the Corrections Lieutenant positions are classified in the Security Manager I role. The salary, pay band, and benefits of the grievant and other affected ITOs will not be modified in conjunction with the transfer; however, their job duties, work title, and reporting structure will be different.

On or about January 12, 2016, the grievant initiated a grievance challenging the agency’s decision to reassign him and requesting that he “[r]emain in the ITO position” at his facility. After proceeding through the management steps, the grievance was not qualified for a hearing by the agency head. 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.¹ Additionally, the grievance statutes and procedure reserve to management the exclusive right to manage the affairs and operations of state government.² Thus, claims relating to issues such as

¹ See *Grievance Procedure Manual* § 4.1.

² Va. Code § 2.2-3004(B).

the methods, means and personnel by which work activities are to be carried out 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 policy may have been misapplied or unfairly applied.³ The grievant has not alleged discrimination, retaliation, or discipline. Therefore, the grievant's claims could only qualify for a hearing based upon a theory that the agency 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 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, an agency's assessment of a position's job duties), 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.⁴

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

Even assuming, for purposes of this ruling only, that the reassignment could be considered an adverse employment action, there is nothing in the grievance record to suggest that the agency has misapplied and/or unfairly applied policy in implementing the mandatory rotation program for ITOs. The primary policy implicated in this grievance is DHRM Policy 3.05, *Compensation*, which defines a "Reassignment Within The Pay Band" as an "[a]ction of agency management to move an employee from one position to a different position in the same Role or Pay Band." The policy further provides that, due to operational business needs, agencies may require the movement of staff to different positions within the same salary range, in either the same or a different role.⁶ Though we are sympathetic to the grievant's situation, EDR has found no mandatory policy provision that the agency has violated by implementing the mandatory

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

⁴ *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.

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

⁶ DHRM Policy 3.05, *Compensation*.

rotation program. It is undisputed that the grievant's role title, salary, and pay band will remain the same following his transfer. In addition, the rotation program applies not only to the grievant, but to all employees who work as ITOs and Corrections Lieutenants across the agency. As a result, there is no basis for EDR to conclude that the agency has treated the grievant differently than any other employee with a comparable level of experience in his position.

Although the grievant disagrees with the agency's assessment of how to best distribute the workload and assignment of duties among employees who work as ITOs and Corrections Lieutenants, he has not raised a question as to whether the agency misapplied and/or unfairly applied policy, acted in a manner that was inconsistent with other decisions regarding the reassignment of employees, or was otherwise arbitrary or capricious. In summary, it appears that the agency's decision to reassign the grievant to a Corrections Lieutenant position is consistent with the discretion granted by policy. Accordingly, the grievance does not qualify for hearing on this basis.

EDR's qualification rulings are final and nonappealable.⁷



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⁷ See Va. Code § 2.2-1202.1(5).