

Issue: Qualification – Compensation (salary dispute); Ruling Date: August 29, 2013;
Ruling No. 2014-3677; 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 the Department of Juvenile Justice
Ruling Number 2014-3677
August 29, 2013

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 March 1, 2013 grievance with the Department of Juvenile Justice (“DJJ” or “agency”) qualifies for a hearing. For the reasons discussed below, this grievance does not qualify for hearing.

FACTS

The grievant was employed as a Special Education Teacher with the agency.¹ On or about December 5, 2012, she was informed that she would be reassigned in the same role from one facility to another, due to a move of students into the second facility. The grievant states that at that time, the Assistant Superintendent of the Division of Education told her there would be no change in her salary as a result of the transfer. However, following the grievant’s reassignment, she was informed by the agency’s Human Resources personnel that the salary supplement that she received in addition to her base pay was lower at the new facility, and thus, her total wages would in fact decrease. The agency alleges that the Assistant Superintendent who notified the grievant that there would be no change to her salary did not have the authority to make that statement, as agency policy prohibits the grievant from retaining her former supplement.

DISCUSSION

The grievance statutes and procedure reserve to management the exclusive right to manage the affairs and operations of state government.² 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” unless there is sufficient evidence of discrimination, retaliation, unwarranted discipline, or a misapplication or unfair application of policy.³ 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 agency has misapplied or unfairly applied policy.

¹ The grievant has since resigned from this position.

² See Va. Code § 2.2-3004(B).

³ Va. Code § 2.2-3004(C).

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.”⁴ 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.”⁵ Adverse employment actions include any agency actions that have an adverse effect *on the terms, conditions, or benefits* of one’s employment.⁶ For purposes of this ruling only, it will be assumed that the grievant has alleged an adverse employment action in that she asserts issues with her compensation.

Though we are sympathetic to the grievant’s situation to the extent that she appears to have received misinformation from an agency employee, EDR has found no mandatory policy provision that the agency has violated, and the grievant has cited to none. The agency indicates that no DJJ policy directly addresses this issue. The agency’s practice is to follow, as it did in this instance, DHRM policy regarding geographic pay differentials, which states, “[w]hen an employee moves from one position to another, any differential that might apply to the former position is removed if it does not apply to the new position.”⁷ In this instance, removal of the grievant’s higher salary supplement and replacement with a lower one appears to be consistent with this policy.

Further, though the grievant asserts that the agency has inconsistently applied policy in that a colleague transferring to the same facility did not lose supplemental pay, we do not find sufficient information exists in this instance to support an allegation that the agency’s action was inconsistent or otherwise arbitrary or capricious. The agency indicates that the employee mentioned by the grievant had been transferred while employed by the Department of Correctional Education (“DCE”), rather than the DJJ.⁸ While DCE had previously allowed personnel in the grievant’s situation to keep a pay differential when transferred by the agency, DJJ did not accept or follow that practice, instead following DHRM Policy 3.05 outlined above. Based on the information gathered, there was no indication that the grievant was treated inconsistently from other DJJ employees in similar situations under DJJ’s practice. As such, because EDR cannot find that the agency has misapplied or unfairly applied policy, the grievance does not qualify for hearing.⁹

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

⁵ *Burlington Indus., Inc. v. Ellerth*, 524 U.S. 742, 761 (1998).

⁶ *Holland v. Wash. Homes, Inc.*, 487 F.3d 208, 219 (4th Cir. 2007).

⁷ See DHRM Policy No. 3.05, *Compensation*.

⁸ Effective July 1, 2012, the former DCE merged with DJJ.

⁹ This ruling only determines that under the grievance statutes this grievance does not qualify for a hearing. This ruling does not address whether the grievant may have some other legal or equitable remedy.

EDR's qualification rulings are final and nonappealable.¹⁰



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¹⁰ Va. Code § 2.2-1202.1(5).