

Issue: Qualification/Recruitment and Selection All; Ruling Date July 27, 2001; Ruling #2001-105; Agency: Virginia Department of Transportation; Outcome: not qualified. Appealed to the Circuit Court of Richmond; File date: August 6, 2001; EDR Decision affirmed and recorded November 28, 2001.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

QUALIFICATION RULING OF DIRECTOR

In the matter of the Virginia Department of Transportation
Ruling No. 2001-105

July 27, 2001

The grievant has requested a ruling on whether her January 22, 2001 grievance with the Virginia Department of Transportation (“agency”) qualifies for a hearing. She claims that she was the superior candidate for a promotion but was denied the job due to improper pre-selection. For the reasons set forth below, her grievance does not qualify for a hearing.

FACTS

The grievant is employed by the agency as a Photogrammetrist Specialist. In October of 2000, the agency advertised a vacancy for a Transportation Engineer position. The applicant pool selected for interviewing included two other employees in addition to the grievant. A panel interviewed all three applicants. The grievant and another applicant were also interviewed by a second panel. The grievant was not selected.

DISCUSSION

By statute and under the grievance procedure, management has the authority to determine who is best suited for a particular position by determining the knowledge, skills, and abilities necessary for the position and by assessing the qualifications of the candidates. Accordingly, claims relating to a selection process 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 the process, or whether policy may have been misapplied.¹ The grievance as filed in this case does not allege discrimination, retaliation or discipline. Thus, the claim of improper pre-selection can best be viewed as a claim that the Commonwealth’s selection policy had been misapplied or unfairly applied.²

¹ See Va. Code § 2.1-116.06; *Grievance Procedure Manual* § 4.1, pages 10-11.

² In advancing the grievance to the second step, the grievant wrote a lengthy rebuttal to the first step response in which she appeared to raise for the first time the issue of being the only woman (potential gender discrimination)

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 amount to a disregard of the intent of the applicable policy. State hiring policy is designed to ascertain which candidate is best suited for the position, not just to determine who might be qualified to perform the duties of the position.³ It is the Commonwealth's policy that hiring and promotions be competitive and based on merit.⁴ Thus, pre-selection -- merely going through the motions of the selection process when the outcome has been predetermined, regardless of merit -- violates that policy.

In support of her charge of pre-selection, the grievant cites reports from other employees that the hiring supervisor had long favored the selected candidate and that the position was said to be his, even before the position opening was formally announced. The supervisor denies providing an unfair advantage to the selected candidate, stating that he requested the involvement of the human resource department in the hiring process due to an anticipated "high level of internal competitiveness for this position."⁵ The supervisor further cites legitimate business reasons for having earlier provided the successful candidate with certain training and assignments, and there is insufficient evidence that his business reasons were merely a pretext for improper pre-selection.⁶

The grievant asserts that the hiring supervisor showed favoritism when he included, in the second round of interview questions, a question biased towards the successful candidate. As an initial point, it is not uncommon for a supervisor to determine the questions to be used for the interview process. Furthermore, the interview questions appear to have been rationally related to the duties performed by a Transportation Engineer. The questions were, therefore, permissible and did not violate policy.

The grievant also asserts that her knowledge, skills, and abilities exceed those of the selected applicant. As evidence of her qualifications for the position, she notes that she was the only applicant who held certification as a photogrammetrist and cites the job announcement which states that holding that certification is a "plus." The grievant further

in the unit. Once a grievance is initiated, however, additional claims may not be added. Thus the issue of gender discrimination will not be addressed in this ruling. *Grievance Procedure Manual* § 2.4, page 6.

³ DHRM Policy No. 2.10, effective date 9/25/2000, pages 1 and 2 (defining selection as the final act of determining the best suited applicant for a specific position; and knowledge, skill, and ability as a component of a position's qualification requirements).

⁴ The prevailing statute is Virginia Code § 2.1-111, which states, in part, that "in accordance with the provision of this chapter all appointments and promotions to and tenure in positions in the service of the Commonwealth shall be based upon merit and fitness, to be ascertained, as far as possible, by the competitive rating of qualifications by the respective appointing authorities." (Emphasis added).

⁵ See First Resolution Step – Response dated January 31, 2001.

⁶ See *id.*, which explains in some detail how the successful candidate's responsibilities and experience matched best with the training and assignments at issue.

claims that her work with a community band provided her supervisory opportunities in managing money and time. However, certification and supervisory experience are only some of the factors considered by management that ultimately determine who is best suited for a position. In this case, management concluded that the strong management and people skills of the successful applicant made him a stronger candidate. The grievant's assertions merely reflect that the grievant's perception of her qualifications and suitability for the position differ from that of management. Because policy gives management the discretion to determine who is best-suited for the job, the grievant's perceptions of her qualifications and suitability cannot support a claim that management misapplied or unfairly applied policy.

Finally, the grievant asserts that additional training opportunities would have increased her possibility for promotion. The applicable policy is DHRM Policy 5.05, Employee Training and Development. This policy states that "[a]gencies shall provide, within reasonable resources, employee training necessary to assist the agency in achieving its mission and accomplishing its goals."⁷ There is no mandate in this policy, however, to provide an employee with the training she requests. Thus, it cannot be concluded that the agency misapplied or unfairly applied policy by not providing certain training opportunities to the grievant.⁸

APPEAL RIGHTS AND OTHER INFORMATION

For information regarding the actions the grievant may take as a result of this ruling, please refer to the enclosed sheet. If the grievant wishes to appeal this determination to the circuit court, she should notify the human resources office, in writing, within five workdays of receipt of this ruling. If the court should qualify this grievance, within five workdays of receipt of the court's decision, the agency will request the appointment of a hearing officer unless the grievant notifies the agency that she does not wish to proceed.

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⁷ DHRM Policy No. 5.05. III. A, effective date 9/16/93, page 2 of 5.

⁸ It should be noted that during the grievance process, the third step response suggested a plan for the grievant, her supervisor, and the human resource office that would identify and track an individual development plan for the grievant.