

Issue: Qualification, Compensation/Leave, Salary Disputes; Ruling date: December 20, 2001; Ruling #2001-174; Agency: Department of Transportation; Outcome: Not qualified.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

QUALIFICATION RULING OF DIRECTOR

In the matter of Department of Transportation/ No. 2001-174
December 20, 2001

The grievant has requested a ruling on whether his August 20, 2001 grievance with the Virginia Department of Transportation (VDOT) qualifies for a hearing. The grievant claims that VDOT misapplied policy in the handling of his competitive salary offer. Specifically, he claims that VDOT breached the Tenure Agreement that he was required to sign in order to receive his competitive offer. For the reasons discussed below, this grievance does not qualify for a hearing.

FACTS

The grievant is employed by VDOT as an Engineering Technician II, Transportation Construction Inspector. He is considered a high-performer and his most recent Performance Evaluation indicates an overall evaluation of "Exceeds Expectations."

On April 17, 2001, the grievant met with a private sector employer to discuss employment opportunities. This company offered him \$23 per hour and promised a minimum of 40 hours per week, with opportunities for overtime work at one and a half times his hourly rate. He was also told that he would be eligible for health and life insurance programs and vacation and sick leave, and he would be provided with a company vehicle. The company provided a written offer to the grievant on April 19.

The grievant approached his supervisor with his competitive offer on April 20 to inquire about the state's competitive offer pay practices.¹ Several weeks after submitting his competitive offer to his supervisor, the grievant received a response from Human Resources, authorizing his competitive offer for \$31,439, a 12.5% increase from his current salary. On July 2, the grievant met with his supervisor, received a verbal offer for the above amount, then signed a twelve-month Tenure Agreement which indicated the

¹ DHRM Policy 3.05 "Compensation" allows state agencies to counteroffer any competitive offers from outside organizations. These offers may not exceed the maximum of the Pay Band, and may not exceed the outside offer.

same amount, to start on July 10, 2001. The District Administrator followed up with a letter on July 9, again stating a salary of \$31,439.

On July 11, the grievant's supervisor informed him that there had been an error with the salary adjustment and asked him to tear up the Tenure Agreement. He stated that VDOT would provide another Tenure Agreement in the amount of \$30,542, effective July 10. The grievant refused to destroy the Tenure Agreement and informed his supervisor that he wished to pursue this matter further. On July 31, the Human Resources Manager mentioned to the grievant that the Commissioner verbally disapproved the \$31,439 Competitive Offer. The grievant initiated his grievance on August 20, claiming that VDOT violated policy by not honoring its agreement to pay him \$32,175. Management's response is that there was simply a mistake in listing the salary as \$32,175 on the July 2 Tenure Agreement. The grievant claims that even if the promise was a mistake, the agency, not he, should bear the effects.

DISCUSSION

For a claim 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 controlling policy in this grievance is DHRM Policy No. 3.05.² According to Policy 3.05, when an employee receives a job offer from an outside organization, "the employing agency may make a competitive offer not to exceed the amount of the job offer, or the maximum of the Pay Band."³ VDOT's Salary Administration Plan has the same provision, but adds that a twelve-month tenure agreement is required.⁴ The grievant's position, Transportation Construction Inspector, is in Pay Band 3. Accordingly, under Policy 3.05, the grievant could have received a salary offer anywhere between \$27,939 (the grievant's current salary) and \$41,980 (the maximum of the pay band).⁵ The grievant was approved for a salary of \$30,542, a 9.321% increase from his current salary. This salary fell within the parameters set by policy.

Therefore, while the grievant's disappointment with VDOT's error is understandable, VDOT properly applied the policy guidelines in offering this salary to

² DHRM Policy No. 3.05, effective September 25, 2000, revised March 1, 2001.

³ DHRM Policy No. 3.05 "External Competitive Salary Offer."

⁴ *VDOT's Salary Administration Plan* "Competitive Offer." DHRM Policy 3.05 states that it is the responsibility of the agencies to develop and use Salary Administration Plan to outline "implementation of the Compensation Management System." DHRM Policy 3.05 "Definitions." VDOT's Salary Administration Plan also makes clear that the agency is to examine a number of factors in making decisions. It is evident from the grievant's Pay Action Worksheet and from correspondences that the agency did consider those factors, including the grievant's strong work performance, training, knowledge, skills, and abilities, and the availability of qualified individuals in the area.

⁵ The grievant's outside offer amounted to roughly \$47,840, according to his Pay Action Worksheet. This amount exceeds the maximum of the Pay Band, so the most the grievant could receive is \$41,980, the maximum of the Pay Band.

the grievant. VDOT's action in reducing the grievant's offer did not violate a mandatory policy provision nor was it so unfair as to amount to a disregard of the intent of the applicable policy. While this grievance challenges an alleged breach of the July 2 Tenure Agreement, such a challenge is not among the issues identified by the General Assembly that may qualify for a hearing,⁶ and is not appropriate for adjudication by a hearing officer. Therefore, this grievance does not qualify for a hearing.

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, he 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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Director

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⁶ See Va. Code § 2.1-116.06(A) (repealed October 1, 2001, recodified as 2.2-3004(A)).