

Issue: Qualification- Recruitment and Selection; Ruling Date: March 26, 2002; Ruling #2001-178; Agency: Department of State Police; Outcome: not qualified



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

QUALIFICATION RULING OF DIRECTOR

In the matter of Department of State Police
Ruling Number 2001-178
March 26, 2002

The grievant has requested a ruling on whether his grievance initiated with the Department of State Police on August 10, 2001 qualifies for a hearing. The grievant claims that management misapplied or unfairly applied the promotion policy. For the reasons discussed below, this grievance does not qualify for hearing.

FACTS

The grievant is employed by the agency as a Special Agent. Promotion to law enforcement positions within the agency is based in part on competitive examinations. In June 1998, the grievant took the exam for promotion to the rank of Assistant Special Agent in Charge (ASAC). Based on his test score, the grievant was placed fifth on the eligibility list for the promotional cycle running from January 1, 1999 through December 31, 2000; when the four candidates ahead of him were promoted, the grievant moved to the top of the list. However, on November 14, 2000, the agency announced that the promotional system for all ranks was frozen until further notice, due to budgetary and other administrative reasons. At least two ASAC vacancies for which the grievant was eligible were left unfilled until the end of the promotional cycle on December 31, 2000, and the grievant was not promoted. Subsequently, the grievant asked the Superintendent to extend the 1999-2000 eligibility list for all ranks, commensurate with the length of the freeze. The Superintendent denied the request.

DISCUSSION

The grievance procedure recognizes management's exclusive right to manage the operations of state government, including the hiring or promotion of employees within an agency.¹ Inherent in this right is the authority to determine whether or when vacant

¹ See Va. Code § 2.2-3004 (B).

positions will be filled. Grievances relating solely to the contents of personnel policies and the hiring of employees within an agency “shall not proceed to a hearing.”²

Accordingly, a grievance challenging the promotional process does not qualify for a hearing unless there is evidence raising a sufficient question as to whether the process was tainted by discrimination, retaliation, discipline, or a misapplication of policy.³ In this case, the grievant asserts that the Superintendent misapplied or unfairly applied policy by: (1) freezing the promotional process to avoid, at least in part, promoting one or more candidates whom he thought unsuitable for promotion; and (2) failing to extend the timeframes of the 1999-2000 eligibility list to compensate for the freeze. The grievant asserts that these actions “affected [him] adversely” by denying him a promotion to an ASAC position.

For an allegation of misapplication 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. Department of Human Resource Management (DHRM) Policy No. 2.10 (“Hiring”) applies to the grievant’s first claim regarding the freeze on the promotional process. The Annotations to the Hiring policy state that “[t]here is no policy which prohibits agencies from canceling a recruitment at any time.”⁴ DHRM has reiterated this interpretation in subsequent rulings, stating that, “agencies may terminate a selection process for any reason.”⁵ In light of this interpretation of policy, the grievant’s claim that the Superintendent unfairly applied or misapplied policy by freezing the promotion process does not qualify for hearing, because the Superintendent had the discretion under policy to do so.

The revisions to General Order 15, disseminated on February 5, 1999, apply to the grievant’s second claim regarding the Superintendent’s failure to extend the eligibility list’s timeframes. General Order 15, paragraph 16(b), provides that “the eligibility list will be valid for two years or until replaced by new lists.” The agency does not attempt to adjust the promotional timeframes when it is unable to fill all the vacancies during a promotional cycle. Because of the discretion also afforded by this policy (i.e., the list is valid for two years, unless management chooses to replace it with a new list), the grievant’s claim that the list should have been extended to account for the freeze does not qualify for a hearing.

APPEAL RIGHTS AND OTHER INFORMATION

² Va. Code § 2.2-3004 (C).

³ *Grievance Procedure Manual*, § 4.1 (c), page 10.

⁴ DHRM Policy No. 2.10 Annotations, pp. 1&2 of 6 (effective 1/28/94), citing Department of Personnel and Training [DPT] Interpretation, April 23, 1992.

⁵ See DPT Ruling dated August 15, 1996, reversing a hearing officer’s determination that an agency could not terminate a selection process.

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 he does not wish to proceed.

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