

Issue: Qualification-Compensation/Leave, Recruitment/Selection; Ruling Date
December 28, 2001; Ruling #2001-213; Agency: Virginia Community College System;
Outcome: Not qualified. Appealed to Circuit Court of the County of Brunswick; File
Date: January 17, 2002; Case #CL02-04; EDR Decision affirmed.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

QUALIFICATION RULING OF DIRECTOR

In the matter of Southside Virginia Community College/ No. 2001-213
December 28, 2001

The grievant has requested a ruling on whether his October 1, 2001 grievance with Southside Virginia Community College (SVCC or College) qualifies for a hearing. The grievant claims that SVCC unfairly applied policy when it hired a less-qualified employee for the same position that the grievant holds at a salary \$5300 higher than his. For the reasons set forth below, this grievance does not qualify for a hearing.

FACTS

The grievant is employed as a Housekeeping and Apparel Services Worker I with SVCC. According to his Employee Work Profile, his responsibilities include cleaning classrooms; cleaning, buffing, and waxing floors; and performing security duties. He has had over forty years of experience and training as a maintenance and janitorial worker, including three and a half years with the Commonwealth.

In July 2001, the College hired two employees to the same position held by the grievant. The grievant learned that one of these employees, whom he claims is not qualified for the position, is making approximately \$5300 more annually than he is - he earns \$18,711 a year while she earns \$24,024. Specifically, he claims that she does not have the experience or the knowledge to buff and wax the floors, which was listed as a requirement in the advertisement for the position.¹ The new employee's Employee Work Profile notes that her duties include sweeping and mopping floors, cleaning furniture, washing windows, cleaning restrooms, and assisting in cleaning and buffing floors. The grievant claims that it is unfair for SVCC to pay a long-time, diligent employee less than what it is paying a new employee with little experience.

The College asserts that the salary discrepancy is the result of the Commonwealth's new compensation policy, which went into effect in September 2000, which provides more flexibility to state agencies in making pay decisions. It

¹ The new employee's qualifications for the position will not be discussed at length in this ruling. The grievant merely uses this information as evidence that, in his opinion, he is more qualified than she is and therefore should be paid at least what she is paid.

acknowledges the pay inequity, but notes that it operated within the guidelines provided by the state. Further, SVCC points out that although the grievant and the new employee have the same job titles, their duties are not the same. The grievant does not dispute that his salary is within the Pay Band set by the Commonwealth; he is only concerned that the new hire's salary is higher than his.

DISCUSSION

By statute and under the grievance procedure, management reserves the exclusive right to manage the affairs and operations of state government.² Therefore, claims relating to issues such as the establishment and revision of wages, salaries, or general benefits and the contents of established personnel policies, procedures, rules and regulations generally do not qualify for 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.³ In this case, the grievant alleges that SVCC unfairly applied state compensation policy by paying a new employee with little experience a higher salary than a long-time employee with vast knowledge and experience in the field. In further support of his claim, the grievant states that the new employee does not perform the duties for which she was hired, while he does perform those duties. Specifically, he notes that the new employee does not operate a floor buffer or work nights.

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 3.05.⁴ According to Policy 3.05, the Commonwealth has established nine Pay Bands in the pay structure for state employees and gives agencies the responsibility to set salaries for employees within their Pay Bands.⁵

Moreover, state and College policies state that "starting pay is negotiable between the minimum of the Pay Band . . . up to 15% above the applicant's current salary."⁶ The policy notes that the guidelines are flexible in order to attract and retain employees.⁷ Here, both the grievant and the new hire share the role title "Housekeeping and Apparel Services Worker I," which is in Pay Band 1. Accordingly, under Policy 3.05, both the grievant and the new employee could have salaries anywhere from \$13,101 (the minimum of the Pay Band) up to \$26,888 (maximum of the Pay Band). Both salaries fall

² Va. Code § 2.2-3004(B).

³ Va. Code § 2.2-3004(A) and (C); *Grievance Procedure Manual* § 4.1, pages 10-11.

⁴ DHRM Policy No. 3.05, effective 9/25/00.

⁵ *Id.*

⁶ DHRM Policy No. 3.05, "Starting Pay," effective 9/25/00; *see also* Virginia Community College System Salary Administration Plan, "Starting Pay," effective 12/1/01.

⁷ *Id.*

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within the parameters set by policy. While understandably disappointing to the grievant that another employee, whom he perceives to be less qualified than he, is making a higher salary, it was not a misapplication or unfair application of policy to hire her at that rate, since her salary is within the Pay Band. Further, management reports that under Policy 3.05 starting pay provisions, the new hire was offered 10% above what she was making in her previous position. In sum, it was wholly within the discretion of management to offer her a starting salary of \$24,024. Because it appears that SVCC neither misapplied nor unfairly applied policy, this grievance does not qualify for 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 he does not wish to proceed.

Neil A. G. McPhie, Esq.
Director

Leigh A. Brabrand
Employment Relations Consultant