

Issue: Qualification-Position/Classification-failure to classify pilots; Ruling Date: December 21, 2001; Ruling #2001-215; Agency: Virginia Polytechnic Institute and State University; Outcome: Not qualified.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

QUALIFICATION RULING OF DIRECTOR

In the matter of Virginia Polytechnic Institute and State University/ No. 2001-215
December 21, 2001

The grievant has requested a determination on whether his September 11, 2001 grievance with Virginia Polytechnic Institute and State University (VPI&SU or Virginia Tech) qualifies for a hearing.¹ He claims that management misapplied or unfairly applied state policy when Virginia Tech pilots did not receive the four-step differential paid to Department of Aviation (DOAV) pilots, who perform essentially the same job duties as the Virginia Tech pilots. The grievant also maintains that the pilots at VPI&SU have been discriminated against. For the following reasons, this grievance does not qualify for a hearing.

FACTS

The grievant is a Command Pilot with VPI&SU. In the fall of 1998, DOAV requested that the Department of Personnel and Training (DPT)² conduct a study of their Command Pilots, claiming that they were underpaid. In support of this request, DOAV noted that pilots were performing a number of tasks in addition to their flight duties³ and that competition in their geographic area was causing recruitment problems. Meanwhile, the pilots at Virginia Tech contacted their Personnel Department, requesting an evaluation of their positions because of increased responsibilities due to the university's

¹ The grievant is challenging an action that took place in October 1999. The *Grievance Procedure Manual* states that a grievance must be initiated "within 30 calendar days of the date the employee knew or should have known of the event that forms the basis of the grievance." *Grievance Procedure Manual* § 2.4, page 6. However, the agency has not challenged the grievant's failure to file his grievance within 30 calendar days. It is also important to note that different laws and policies were in effect at the time the action occurred. Therefore, all citations will be to policies and statutes that were applicable in October 1999. However, because the grievance was initiated in September 2001, the current grievance procedure and corresponding current statutes will apply.

² The Department of Personnel and Training is now known as the Department of Human Resource Management (DHRM). This ruling will refer to it as DPT, since that is how it was known at the time the events surrounding this grievance occurred.

³ These additional duties included (1) conducting seminars on airline safety, (2) evaluating construction projects, (3) inspecting private airports, (4) conducting presentations to planning commissions and the public, and (5) developing emergency service plans, flight training, and maintenance plans. See Letter dated November 22, 2000 to the grievant from DHRM.

acquisition of a Citation II jet aircraft. In a series of e-mail correspondences, VPI&SU responded that DOAV had already requested a position review through DPT, and that this review would include the Virginia Tech pilots. The University also communicated to its pilots that DPT would work through DOAV, since the request came from them.

After interviewing DOAV Command Pilots and reviewing job descriptions of DOAV and Virginia Tech pilots, DPT granted the DOAV pilots a 10% pay differential. The decision was based on the high turnover DOAV had been experiencing and because of the ancillary duties that the pilots were performing. During this Department's investigation, DPT (now DHRM) added that those duties relate to the overall mission of DOAV - airline safety - while the mission of VPI&SU is education. This distinction was influential in DPT's decision to grant DOAV pilots, and not Virginia Tech pilots, the pay increase. However, DPT notified Virginia Tech by phone that their pilots could receive a pay differential if they were also experiencing high turnover and recruitment problems. The University did not report any problems and did not request a visit from DPT.

DISCUSSION

Misapplication and Unfair Application of Policy

The grievant claims that management has misapplied or unfairly applied job classification and compensation policy and procedure by not paying him, and other VPI&SU Command Pilots, the four-step differential paid to the DOAV Command Pilots. The agency has responded that the grievant is challenging wage establishment and position classification, issues which do not qualify for a hearing under the grievance procedure.⁴ The University has also responded that, because their compensation decisions required the authorization of the DPT, his grievance challenges the personnel actions of DPT.⁵

For a claim of policy misapplication to qualify for a hearing, there must be sufficient evidence of a violation of a mandatory policy provision, or evidence that management's actions, in their totality, are so unfair as to amount to a disregard of the intent of the applicable policy.

The applicable policy for the relevant time in this case (October 1999), was found in the Code of Virginia and in DPT Policy and Procedure. The Commonwealth's system of personnel administration, including its classification and compensation system, was, and still is, to be "based on merit principles and objective methods of appointment and other incidents of state employment."⁶ DPT Policy 3.05 further stated that all positions

⁴ Va. Code § 2.2-3004(C), *Grievance Procedure Manual* § 4.1(c), page 11.

⁵ Current policy now allows state agencies to make compensation decisions without DHRM's approval. However, policy and law in effect in October 1999 authorized the Director of that Department (then DPT) to promulgate and interpret the state's personnel policies, including the compensation policy at issue here. *See* Va. Code § 2.1-114.5(13) (*repealed* October 1, 2001, recodified as § 2.2-1201(3)).

⁶ Va. Code § 2.1-110 (*repealed* October 1, 2001, recodified as § 2.2-2900).

shall be allocated “to the appropriate classes on the basis of assigned duties and responsibilities.”⁷ However, DPT’s compensation procedures in effect at the time also allowed the payment of market-based differentials and supplements in addition to a base salary.⁸ Significantly, in this case, a “Special Geographic Differential” could be paid “where there [was] a staffing problem that [was] a result of a competitive disadvantage to a job class within a specific geographic area of the state.”⁹

With regard to the statewide classification of positions, DPT Policy did not mandate the manner in which an agency must conduct a classification review or identify with specificity the particular information that must be reviewed.¹⁰ However, as general guidance, DPT recommended that the classification process include a review of current position description, comparisons of the audited position with related positions (both within and outside the agency), and a review of the organizational structure.¹¹

In this case, the grievant asserts that a classification-wide review of state pilots resulted in a misapplication of policy, because there was a salary adjustment for some pilots, but not for others. However, DPT reported that the study of the pilots was *not* a classification review.¹² Rather, the requested review was specifically limited to pilots in the Richmond area and focused on a perceived need for a salary adjustment in that area. Moreover, the individual from DPT who conducted the study determined that both the DOAV and VPI&SU pilots were already properly classified as Command Pilots. Therefore, the focus of his study was on whether a salary adjustment for the Richmond pilots was justified.

Special Geographical Differential

At the time the action forming the basis for this grievance occurred, DPT procedures in place allowed a percentage of base pay or a specified number of steps to be paid as a special differential where staffing problems arose due to a competitive disadvantage with respect to a job class within a specific geographic area of the state.¹³ An agency requesting a differential had to provide information to DPT to show, among other things, that (1) the class experienced high turnover and employees were leaving for comparable positions in the specified local area that pay significantly higher salaries; (2) the agency was unable to attract a sufficient number of qualified applicants; and (3)

⁷ DPT Policy 3.05 IV (C)(1) (effective September 16, 1993) (*revised* September 25, 2000; March 1, 2001).

⁸ See DPT *Compensation Manual*, Ch. 15, pg. 89 “Differentials and Supplements.”

⁹ *Id.* at 91.

¹⁰ See DPT Policy 3.05 (effective September 16, 1993) (*revised* September 25, 2000; March 1, 2001).

¹¹ See DPT *Classification and Job Evaluation Manual* VI-11.

¹² It appears that the grievant, and other Virginia Tech pilots, relied on statements made in a series of e-mail correspondences by their Personnel Department that this study was a classification review of all state pilots and that any changes would affect everyone in that classification. While these misstatements are unfortunate, they do not demonstrate a violation of any policy provision. Moreover, the statements do not appear to promise a salary adjustment, rather, they merely indicate that DPT was pursuing a request by DOAV to conduct a salary review.

¹³ See DPT *Compensation Manual*, Ch. 15, pg. 89 “Differentials and Supplements.”

staffing problems resulted in a difficulty for the agency to perform its required functions.¹⁴

In this case, DOAV requested a salary review of its Command Pilots based on competition it was receiving from local corporate entities. Furthermore, DOAV pilots spent a large portion of their time contributing to aviation safety, which is the overriding mission of its agency. On the other hand, Virginia Tech pilots provide a support function for the University. DPT acknowledged that both groups of pilots have the same certification requirements, but the central issues in its determination to grant the salary differential were the ancillary duties of the DOAV pilots and the fact that there are more corporate jet pilots in the Richmond area, creating high turnover.¹⁵

The market-based conditions for pilots in the Richmond area distinguish those positions from the positions of the VPI&SU pilots, thus providing a legitimate business reason for paying the DOAV Command Pilots the Special Geographic Differential. Although the Virginia Tech pilots may have disagreed with the decision not to pay them the Special Geographic Differential, there is no evidence that policy was misapplied or applied unfairly. Accordingly, this complaint does not qualify for a hearing.

Discrimination

The grievant alleges that the VPI&SU pilots were discriminated against. Specifically, he claims that the DOAV pilots have been shown favoritism. As evidence, he points to the fact that DPT conducted interviews with the Richmond pilots, but did not visit the Virginia Tech location. A claim of discrimination qualifies for a hearing only if an employee presents sufficient evidence showing that the challenged actions are based on race, color, religion, political affiliation, age, disability, national origin, or sex.¹⁶ The grievant's claim of discrimination is not based on any of these factors; rather, it reflects a perception that DOAV pilots are favored over VPI&SU pilots. Such a claim is not among the issues identified by the General Assembly that may qualify for a hearing.

However, it is worth noting that during this Department's investigation, DPT reported that the study was limited to DOAV pilots and that is why only DOAV pilots were interviewed. While VPI&SU had an opportunity to request a study of its pilots, it declined to do so because the University reported to DPT that it was not having recruitment problems. Therefore, there was no need to ask anyone from DPT to come to Blacksburg for interviews. Consequently, DPT had a legitimate reason for interviewing only DOAV pilots, as the study was limited to their job duties.

¹⁴ *Id.* at 92.

¹⁵ It is important to note that, in the summer of 1999, DPT gave Virginia Tech the opportunity to make a case for a salary differential for their pilots. However, the University reported that it had not experienced a level of turnover or recruiting problems with their Command Pilots sufficient to warrant a request for a salary differential. As a result, DPT did not provide a salary differential to the Virginia Tech pilots.

¹⁶ Va. Code § 2.2-3004(A)(iii); *Grievance Procedure Manual* "Definitions," page 23.

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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.

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