

Summary: Qualification-Position/Classification-Role Assignment; Ruling Date: May 31, 2002; Ruling #2002-028; Agency: Department of Corrections; Outcome: qualified.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

QUALIFICATION RULING OF DIRECTOR

In the matter of Department of Corrections/ No. 2002-028
May 31, 2002

The grievant has requested a ruling on whether his October 31, 2000 grievance with the Department of Corrections (DOC) qualifies for a hearing. The grievant claims that the agency misapplied or unfairly applied state policy by failing to act on his reallocation request and by not reallocating his position to Law Enforcement III. For the reasons discussed below, this grievance qualifies for a hearing.

FACTS

The grievant is employed as a Special Agent/Law Enforcement II (Pay Band 4) with DOC. Prior to September 25, 2000, his job classification was Corrections Investigation Assistant Supervisor (grade 11).

On September 25, 2000, the Commonwealth implemented the first phase of a new compensation reform plan. On that date, 1,650 classified positions were condensed into approximately 300 broader roles. Consequently, the grievant's former classification of Corrections Investigation Assistant Supervisor was "cross-walked" (assigned) to the role of Law Enforcement II. The move was based on the fact that grade 11 positions were moved into Pay Band 4. The grievant claims that this move, based on salary alone, was arbitrary, because the roles of the Special Agents were not considered. He alleges that an objective review of his job duties would require a classification of Law Enforcement III.

The grievant further claims that DOC declined to make adjustments during Phase 2 of compensation reform.¹ During this Department's investigation, he claimed that in a "hallway conversation" with another employee, a human resources manager is rumored to have said that the grievant could request a reallocation, but "it ain't going to happen." This alleged statement, he claims, is evidence that DOC never intended to adequately consider a review of his position classification.

¹ The Department of Human Resources Management allowed agencies to "correct" any mistakes that were made during the cross-walk. The grievant claims that a mistake was made in classifying Special Agents as Law Enforcement II.

He initiated this grievance on October 31, 2000. He asserts that the complexity, the specialized knowledge, and the level of responsibility of the Special Agent position qualify him and other Special Agents for a class level of Law Enforcement III (Pay Band 5).² He especially notes that Special Agents are responsible for complex criminal investigations, work characteristically performed by those classified as Law Enforcement III. He requests as relief a fair review of his position, with no predisposition to deny his request.

Management appears to have had differing responses to this grievance. Both the first and second step respondents support the grievant's position. The second step respondent conducted a study of the Special Agent position, and recommended that it be reclassified.³ On the other hand, during this Department's investigation, a human resources manager noted that, while DOC Special Agents have police powers and are in charge of complex cases, their jurisdiction is limited.⁴ The DOC agency head ordered a full review of the grievant's position and the human resources office is currently in the process of issuing a report.

According to the Department of Human Resources Management (DHRM), Law Enforcement II officers range "from probationary status to . . . fully sworn officers performing journey to senior law enforcement activities."⁵ These officers conduct investigations, arrests, searches, evidence compilation, and reports and serve a limited jurisdiction.⁶ Law Enforcement III officers are responsible "for the most complex cases involving murder, rape, robbery, kidnapping, embezzlement, narcotics, money laundering, financial fraud" and other serious acts. They are also responsible for surveillance.⁷ Both the grievant and management acknowledge that the grievant's position resembles both descriptions, but the grievant maintains that it is more similar to the Law Enforcement III.

² The grievant is responsible for surveillance and investigation of narcotics. He determines how drugs enter prison facilities. This also involves the prevention of drug trafficking into DOC. The grievant initiates investigations and has police powers. He is also responsible for covert operations. He is in charge of 13 different facilities in the Northern Region. Moreover, he was selected for the National Major Gang Task Force, based on his experience, and has testified before the General Assembly. He claims that his work is complex, requires interaction with courts, requires extensive knowledge, is at times life-threatening, and has a substantial effect on the agency.

³ The report concluded that Law Enforcement II role is for newly employed law enforcement officers, while the Law Enforcement III role applies to officers with higher levels of complexity and responsibility, including Special Agents. She noted that DOC Special Agents have "an astonishing variety of expertise" and that to reclassify them to Law Enforcement III would be a minimal cost to the agency. Finally, she likened the position to Special Agents in the Department of Virginia State Police, who are classified in the higher role.

⁴ He compared the positions to Special Agents in the Department of Motor Vehicles and the Department of Alcoholic Beverage Control, both of which are classified as Law Enforcement II. He stated that the DOC position is not as broad as the Special Agent position with State Police because of its limited jurisdiction.

⁵ See <http://www.dhrm.state.va.us/services/compens/careergroups/p.../LawEnforcement69070.ht> (visited March 25, 2002).

⁶ *Id.*

⁷ *Id.*

DISCUSSION

By statute and under the grievance procedure, management is reserved the exclusive right to manage the affairs and operations of state government.⁸ Further, complaints relating solely to the establishment and revision of salaries and position classifications “shall not proceed to hearing”⁹ unless there is sufficient evidence of discrimination, retaliation, discipline, or a misapplication or unfair application of policy.

The grievant alleges misapplication or unfair application of policy. For such a claim to qualify for a hearing, there must be evidence raising a sufficient question as to whether management violated a mandatory policy or whether the challenged action, in its totality, is so unfair as to amount to a disregard of the intent of the applicable policy.

The General Assembly has recognized that the Commonwealth’s system of personnel administration should be “based on merit principles and objective methods” of decision-making.¹⁰ In addition, the Commonwealth’s classification plan “shall provide for the grouping of all positions in classes based upon the respective duties, authority, and responsibilities,” with each position “allocated to the appropriate class title.”¹¹ The above statutes evince a policy that would require state agencies to allocate positions having substantially the same duties and responsibilities to the same role. Indeed, during the implementation of compensation reform, a DHRM bulletin stated that “agencies must determine if role corrections are necessary” following the September 25, 2000 crosswalk.¹² Further, while there is no specific policy requirement that agencies review positions each time an employee asks for a review, DOC’s Salary Administration Plan states that “role change requests will normally be reviewed on a quarterly basis.”¹³

This grievance raises a sufficient question as to whether the agency has misapplied or unfairly applied policy by failing to determine, in a timely and appropriate manner, if the grievant’s requested role correction is necessary. Both the first and second step respondents recommended that the position be reclassified, and the grievant claims that the Director of DOC also supports a reallocation. Furthermore, the Director’s written response to the grievance demonstrates that a review of the position was to have been conducted by November 21, 2001.¹⁴ The grievant and his supervisor reported that an individual from DOC’s human resources office has already completed an in-depth study and that she was going to recommend to her superiors that Special Agents be reclassified. However, to date, more than six months after the Director’s deadline, no

⁸ Va. Code § 2.2-3004(B)

⁹ Va. Code § 2.2-3004(C).

¹⁰ Va. Code § 2.2-2900.

¹¹ Va. Code § 2.2-103(B)(1).

¹² Compensation Reform Action Bulletin No. 29, issued October 9, 2001 to agency Human Resources Directors from the Director of DHRM.

¹³ DOC Salary Administration Plan, “Role Changes.”

¹⁴ He directed the review to be conducted 45 work days (9 weeks) from September 19, 2001.

final report from Human Resources has been issued. During this Department's investigation, the grievant expressed concern that the individual responsible for the final report is the same individual who made the statement more than a year and a half ago that his position would not be considered for reclassification.

This ruling does not conclude that the grievant's position is not properly classified, only that further review by an administrative hearing officer is warranted on the issue of whether the agency misapplied or unfairly applied policy by failing to objectively review and complete a response to the grievant's reallocation role change request. Indeed, the classification of the grievant's position is within management's discretion, and so long as that classification has a reasonable basis in policy and duties performed, a hearing officer may not substitute his judgment for that of management's regarding the correct classification or level of an employee's position.¹⁵ If a hearing officer determines that DOC has misapplied or unfairly applied policy, he may only order that the agency reapply the policy as mandated or in a manner in keeping with the intent of the applicable policy. A hearing officer may not award any particular classification as relief.¹⁶

CONCLUSION

In light of the above, this grievance qualifies for a hearing. For additional information regarding the actions the grievant may take as a result of this ruling, please refer to the enclosed sheet. Please note that this determination cannot be construed as a finding that the agency misapplied or unfairly applied policy. Only a hearing officer can make such a determination after a full exploration of the facts.

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¹⁶ Va. Code § 2.2-3004(B).

¹⁷ *Grievance Procedure Manual* § 5.9(b), page 15; *Rules for Conducting Grievance Hearings*, page 15.