

Summary: Qualification-Methods/Means-Hours of Work, Shifts; Ruling Date: June 5, 2002; Ruling #2002-066; Agency: University of Virginia; Outcome: Not qualified. Appealed to Circuit Court for the City of Charlottesville; File Date: June 24, 2002; Case # L.:02-125; EDR Decision Affirmed.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

QUALIFICATION RULING OF DIRECTOR

In the matter of University of Virginia/ No. 2002-066
June 5, 2002

The grievant has requested a ruling on whether her December 28, 2001 grievance with the University of Virginia (UVA) qualifies for a hearing. She claims that her manager unfairly schedules employees with less seniority to work over student breaks, which negatively affects her years of state service and her accumulation of sick and annual leave time. For the following reasons, this grievance does not qualify for a hearing.

FACTS

The grievant is employed as a Food Service Operations Assistant A with UVA. There are only four state employees in her unit. All other employees are part of Aramark Corporation, including the grievant's supervisor. There are over one-hundred employees at the grievant's facility, but when UVA students are on semester breaks, only a few employees are needed to work. All other employees are taken off the payroll for those periods. For example, during last winter break, only three employees worked - two state employees and one Aramark employee.

The grievant claims that the employees allowed to work over break are often less senior than she is. Because she does not work over student breaks, she does not accumulate state service time or annual and sick leave. She claims that she has been employed with UVA for eighteen years, but "on paper," she has only been there for fourteen years. She asserts that seniority should be a factor when management is making scheduling decisions.

DISCUSSION

By statute and under the grievance procedure, management reserves the exclusive right to manage the affairs and operations of state government.¹ Therefore, claims relating to issues such as the methods, means and personnel by which work activities are carried out, including the scheduling of employees, generally do not qualify for hearing,

¹ Va. Code § 2.2-3004(B).

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.²

The grievant does not claim that management has discriminated or retaliated against her. Nor has she claimed that UVA improperly disciplined her. Her claim is, in essence, that management has applied policy unfairly, because her supervisor is preventing her from accumulating state service and leave time. Department of Human Resource Management (DHRM) policy states that agencies "shall set and adjust the work schedules for employees in the agency, being mindful of the hours of public need."³ While the University certainly has the discretion to consider seniority when arranging work schedules, nothing in state policy requires that scheduling preferences be given to employees with more seniority. Inherent in management's right to manage the affairs of state government is the right to schedule employees as agency need requires. Therefore, it appears that management has not violated applicable policy, and 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, the grievant 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 wishes to conclude the grievance and notifies the agency of that desire.

Claudia T. Farr
Director

Leigh A. Brabrand
Employment Relations Consultant

² Va. Code § 2.2-3004(A) and (C); *Grievance Procedure Manual* § 4.1(c), page 11.

³ DHRM Policy 1.25III(A), "Hours of Work."