

Issue: Compliance/30 day rule; Qualification/Compensation & Leave/Salary disputes, Multiple Compensation/Leave, Position/classification/Working out of Class-Failure to take Action; Ruling Date: September 16, 2002; Ruling #2002-082; Agency: Department of Juvenile Justice; Outcome: Grievant out of compliance, not qualified.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE AND QUALIFICATION RULING OF DIRECTOR

In the matter of Department of Juvenile Justice
Ruling Number 2002-082
September 16, 2002

The grievant has requested rulings on whether his January 14, 2002 grievance with the Department of Juvenile Justice (DJJ) qualifies for hearing. The grievant claims that the agency misapplied the state compensation policy (1) when it failed to grant him a 1995 salary adjustment, which was awarded to all employees in the Juvenile Correctional Officers Series and (2) by paying new employees higher salaries than long-term employees. The agency head replied that the grievant did not initiate his grievance on the issue of the 1995 salary adjustment within the 30 calendar day time period required by the grievance procedure.

For the reasons discussed below, the agency head's challenge on timeliness is upheld. Further, the remaining issue of misapplication of policy (salary disparities between new and long-term employees) does not qualify for hearing.

FACTS

The grievant is employed as a Juvenile Corrections Sergeant. He was hired by the agency in 1976 with a starting salary of \$7,680. Since then, the grievant has received salary adjustments and increases resulting in a current salary of \$34,141.

The 1994 General Assembly approved funding to provide for a one-grade increase in the Juvenile Correctional Officer Series. Salary adjustments were to be made only when required to bring employees to the minimum of the new salary grade, which was established at \$19,188. At the time of the increase, the grievant's salary was \$21,932, which exceeded the minimum of the new salary grade. The grievant did not receive a salary adjustment.

DISCUSSION

Compliance

The grievance procedure provides that an employee must initiate a written grievance within 30 calendar days of the date he knew or should have known of the event or action that is the basis of the grievance.¹ When an employee initiates a grievance beyond the 30 calendar day period without just cause, the grievance is not in compliance with the grievance procedure, and may be administratively closed.

¹ Va. Code § 2.2-3003(C); *Grievance Procedure Manual* § 2.4(1), page 6.

In the present case, the grievant knew or should have known about the lack of an adjustment to his salary upon receipt of his Leave and Earning Statement in December 1995. Thus, the grievant had thirty calendar days from December 1995 to file a grievance. It is undisputed that the grievant did not initiate his grievance until January 14, 2002, well over 30 calendar days. Consequently, the sole question remaining is whether there was just cause for the grievant's delay.

To support his claim of just cause, grievant contends that he initially delayed initiation of his grievance because he was attempting to resolve his complaint with management. He asserts further that he inadvertently failed to follow-up and file a grievance after receiving no response from management. This Department has long held, however, that waiting for the outcome of discussions with management does not constitute just cause for failure to initiate a grievance in a timely manner. Accordingly, this Department cannot find that there was just cause for the grievant's delay in initiating his grievance on this issue.

For the reasons discussed above, the grievant is out of compliance with the grievance procedure. Therefore, he may not further pursue the issue of the 1995 salary adjustment through the grievance process. This Department's rulings on matters of compliance are final and nonappealable.²

Qualification

By statute and under the grievance procedure, management reserves the exclusive right to manage the affairs and operations of state government.³ 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. In this case, the grievant asserts that the agency has misapplied or unfairly applied state compensation policy by paying new employees higher salaries than long-term employees.

For an allegation 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.

In this case, there is no applicable mandatory policy requiring that new employees be hired at a rate of pay equal to or lower than that paid to existing employees, or that the pay of existing employees be increased to match that of new hires. The applicable policy is DHRM Policy 3.05, which until September 25, 2000 stated that "[a]s general rule, the Commonwealth

² Va. Code § 2.2-1001(5).

³ Va. Code § 2.2-3004(B).

pays the minimum sufficient salary to attract suitably qualified applicants for job openings.”⁴ That policy further provided, that “[a]pplicants with experience related to the position may be hired at any one of the 20 steps of the salary range, as long as the starting salary does not exceed applicants’ pre-employment salary by more than approximately 10 percent.”⁵ DHRM Policy 3.05 was revised effective September 25, 2000 to establish nine broad Pay Bands for state employees and to allow agencies to set salaries for employees within these Bands.⁶ The revised policy instructs that “starting pay is negotiable between the minimum of the Pay Band...up to 15% above the applicant’s current salary.”⁷

The grievant cites to no specific instance in which a new employee was provided a higher salary than an existing employee.⁸ More importantly, although couched as a challenge to the agency’s application of the DHRM compensation policy, the grievant is in essence disputing the *contents* of policy, a policy which has always allowed management some degree of latitude in setting employee starting salaries, and which does not prohibit a new employee from receiving a higher salary than an existing employee. This is the type of challenge that the grievance statutes expressly exclude from qualification, unless there is some support for a claim of discrimination, retaliation, or discipline. The grievant asserts no such claim in this instance. Therefore, this issue 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 notifies the agency that he wishes to conclude the grievance.

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Director

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⁴ DHRM Policy 3.05 III (E)(1), effective 9/16/93.

⁵ DHRM Policy 3.05 III (E)(2), effective 9/16/93.

⁶ DHRM Policy 3.05, effective 9/25/00.

⁷ DHRM Policy 3.05, “Starting Pay, effective 9/25/00.

⁸ During this Department’s qualification review, the grievant stated that he became aware of the alleged misapplication or unfair application of policy in January 2002 but was unable to cite a specific case.