

Issue: Qualification; Salary Dispute; Ruling Date: July 24, 2002; Ruling #2002-129;  
Agency: Mary Washington College; Outcome: not qualified



*COMMONWEALTH of VIRGINIA*  
*Department of Employment Dispute Resolution*

QUALIFICATION RULING OF DIRECTOR

In the matter of Mary Washington College/ No. 2002-129  
July 24, 2002

The grievant has requested a ruling on whether his May 14, 2002 grievance with Mary Washington College (agency) qualifies for a hearing. The grievant claims discrimination in the "vast difference" between his salary and that of the senior locksmith. For the reasons discussed below, this grievance does not qualify for a hearing.

FACTS

Mary Washington College employs the grievant as a Locksmith. The grievant initiated his grievance on May 14, 2002, claiming that Mary Washington College is discriminating against him by paying him much less than it pays the Locksmith Senior. Management responded that both the grievant's salary and the salary of the Locksmith Senior are within the range for Pay Band 3. Further, management proffers a business reason for the difference in pay, namely, that the Locksmith Senior position has been "extremely difficult to fill over the past years.... and requires a higher level of knowledge, skills and abilities, and performs work of a more complex nature than the Locksmith position."<sup>1</sup> The grievant claims that he has more experience and education than the supervisor does and even if the supervisor makes more, there should not be such a difference in their salaries.

DISCUSSION

By statute and under the grievance procedure, management is reserved the exclusive right to manage the affairs and operations of state government.<sup>2</sup> Although all complaints initiated in compliance with the grievance process may proceed through the three resolution steps set forth in the grievance statute, thereby allowing employees to bring their concerns to management's attention, only certain issues qualify for a hearing. Claims relating to such issues as the establishment and revision of wages (including salaries) generally do not qualify for a hearing, unless the grievant presents evidence raising a sufficient question as to whether discrimination, retaliation, or discipline may

---

<sup>1</sup> See third step response dated May 28, 2002.

<sup>2</sup> Va. Code § 2.2-3004 (B).

have improperly influenced management's decision, or whether state policy may have been misapplied.<sup>3</sup> In this case, the grievant claims discrimination regarding his salary.

Under the grievance procedure, a claim of discrimination arising from membership in a protected class (in other words, on the basis of race, color, religion, political affiliation, age, disability, national origin, or sex) may qualify for a hearing.<sup>4</sup>

For a claim of discrimination to qualify for a hearing, there must be more than a mere allegation that discrimination has occurred. The grievant must present facts that raise a sufficient question as to whether the decision regarding his salary was made *because of* his membership in a protected class. The grievant may accomplish this by coming forward with evidence that: (1) he is a member of a protected class; (2) he is qualified for the position; (3) in spite of his qualifications he suffered an adverse employment action; and (4) that he was treated differently than similarly situated employees outside of the protected class.<sup>5</sup> If, however, the agency comes forward with a nondiscriminatory reason for its actions, the grievance should not qualify for hearing, unless there is sufficient evidence that the agency's stated reason is merely a pretext or excuse for improper discrimination.<sup>6</sup>

In this case, the grievant has not met all of the above four elements of a discrimination claim. As an African American, the grievant is a member of a protected class. The grievant is qualified for his position as evidenced by receiving a "Contributor" rating on his most recent performance evaluation. Further, a relatively low salary could be viewed as an adverse employment action.<sup>7</sup> However, it does not appear that the grievant and the Locksmith Senior are similarly situated. While both the grievant and the Locksmith Senior are in the Trades Technician III role, the position of Locksmith Senior, formerly a Grade 7, supervises the grievant's position.<sup>8</sup> Moreover, the Locksmith Senior has worked as a locksmith since 1989. Although the grievant has completed a variety of locksmith training courses, he did not list any locksmith related work on his state employment application.

Finally, the agency has offered, a legitimate business reason for the differences in salaries, specifically that the position of Locksmith Senior is hard to fill and requires work of a more complex nature than that of a Locksmith.<sup>9</sup> The grievant has offered no evidence to show that the agency's stated reason is merely a pretext or excuse for

---

<sup>3</sup> Va. Code §2.2-3004 (A) and (C); *Grievance Procedure Manual* § 4.1 (c) page 11.

<sup>4</sup> Va. Code §2.2-3004 (A)

<sup>5</sup> See *Hutchinson v. INOVA Health System, Inc.*, 1998 U.S. Dist. LEXIS 7723 (E.D. Va. 1998) (citing *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973)).

<sup>6</sup> *Id.*

<sup>7</sup> See *Boone v. Goldin*, 178 F.3d 253, 255 (4<sup>th</sup> Cir. 1999) typical requirements for an "adverse employment action" include, but are not limited to, a decrease in pay or benefits.

<sup>8</sup> See third step response dated May 28, 2002.

<sup>9</sup> See Pay Action Worksheet for [Locksmith Senior] approved by Budget Administrator 7/27/01.

discrimination on the basis of his race. Therefore, this grievance does not qualify for a hearing.<sup>10</sup>

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.

---

Claudia T. Farr  
Director

---

Deborah M. Amatulli  
Employment Relations Consultant

---

<sup>10</sup> While the grievant did not expressly challenge the Agency's action as a misapplication of policy, such a claim would also have failed. Under the Department of Human Resources Management (DHRM) Policy 3.05, the grievant's salary of \$20,455 and the Locksmith Senior's salary of \$38,000 both fall within the parameters of Pay Band 3 (\$20,455 to \$41,980). It shall be noted that the grievant was hired in February 2000 at a salary of \$20,257, prior to a major reform of the Commonwealth's compensation plan, in September 2000. The Locksmith Senior was hired after the September 2000 implementation of the new compensation plan, which allowed him to bargain for a substantially higher salary and allowed the agency to start his salary at a higher rate. See DHRM Policy 3.05, which states that starting pay is negotiable between the minimum of the pay band and up to 15% above the applicant's salary.