

Issue: Qualification/Compensation/Leave; Ruling Date: January 27, 2003; Ruling #2002-167; 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  
Ruling Number 2002-167  
January 27, 2003

The grievant has requested a ruling on whether his May 17, 2002 grievance with the Department of Corrections (DOC) qualifies for a hearing. The grievant claims that the agency misapplied the layoff policy.<sup>1</sup>

FACTS

At the time of his grievance, the grievant was employed as a Corrections Major. The grievant's facility was designated to be closed, resulting in the implementation of layoff for identified employees. As a part of the placement sequence, the agency interviewed affected employees and asked them to complete a preference form indicating their geographic priority for job placement. The grievant listed three facilities, which were within similar commuting distance from his home, but did not indicate that he would decline other placement options at a greater distance.

On April 17, 2002, the grievant accepted a placement offer for a Captain's position in the same Pay Band at an adjacent facility. On May 1<sup>st</sup>, however, he was notified that the offer was invalid as the position had been filled by lateral transfer. The grievant was subsequently placed in a Captain's position in the same Pay Band at another adjacent facility effective on June 10, 2002.

DISCUSSION

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.

The grievant asserts that the agency misapplied policy by failing to use his seniority to place him in the highest position (Corrections Major) available agency-wide,

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<sup>1</sup> See Department of Human Resource Management (DHRM) Policy No. 1.30, (effective 09/25/00). Policy No. 1.30 was revised on 06/10/02 and 08/10/02. However, the applicable policy for purposes of this ruling is the version that was in effect prior to the 06/10/02 revisions. See also Department of Corrections Policy Number 5-39, *Layoffs; Reductions in Work Force*.

in the same Pay Band. The agency contends that it has complied with DHRM policy by placing the grievant in the same Pay Band at the same or lower level. Further, the agency asserts that it has exercised its discretion under agency policy to determine which vacancy to offer when there is more than one vacant position.

The applicable policies are DHRM Policy 1.30 *Layoff* and DOC Procedure 5-39 *Layoffs: Reductions in Work Force*. DHRM policy mandates that the agency make an attempt to place an employee by seniority to any valid vacancy agency-wide in the current or a lower Pay Band.<sup>2</sup> Additionally, “such placement shall be in the highest position available for which the employee is minimally qualified at the same or lower level in the same or lower Pay Band, re-gard-less[sic] of work hours or shift.”<sup>3</sup> DOC Procedure 5-39 states that “[t]he agency must first consider any vacant full-time positions within the agency that it intends to fill at the same or lower level as the position to be discontinued and that are in the employee’s pay band.”<sup>4</sup> Procedure 5-39 states further that “if there is more than one minimally qualified employee for the position, the position will be awarded according to seniority.” Further, “If there is more than one (1) vacant position, agency management may determine which vacancy to offer.”<sup>5</sup>

Under DHRM policy, it appears that DOC was required to consider the grievant for placement in the highest position (Corrections Major) available agency-wide for which he was minimally qualified, and make placement based upon seniority. In this instance, however, rather than looking for agency-wide placements, the agency focused on vacancies in the grievant’s geographic work area. As a result, the grievant was not offered a Corrections Major’s position, although vacancies existed outside his geographic area.<sup>6</sup> While DOC policy grants the agency some discretion when more than one viable placement option exists, it does not negate the requirements of the DHRM policy, i.e., placement to the highest position available agency-wide based on seniority. Accordingly, this grievance raises a sufficient question as to whether DOC misapplied or unfairly applied applicable policy, and thus qualifies for 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. Please also note that our qualification ruling is not a determination that the agency misapplied or unfairly applied policy. Rather, this ruling simply reflects that there are sufficient questions such that further review by a hearing officer is justified. 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.

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<sup>2</sup> See DHRM Policy 1.30, *Placement Within the Agency*, page 8.

<sup>3</sup> *Id.*

<sup>4</sup> DOC Procedure 5-39.7 (C) (1), *Layoffs: Reductions I Work Force*.

<sup>5</sup> DOC Procedure 5-39.7 (D) (3).

<sup>6</sup> For example, an employee with less seniority was placed in a Major’s position at a Northern Region II facility on June 10, 2002, the same date that grievant was placed in the Captain position.

As regards the other forms of requested relief, even should the hearing officer find that the agency misapplied policy, he would have no authority to transfer the grievant to another position or to change his role or rank. The authority to take such action is reserved to management.

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Director

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