

Issue: Qualification/Compensation/Leave – other issue; Ruling Date: February 10, 2003;
Ruling #2002-182; Agency: Virginia Community College System; Outcome: not
qualified.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

QUALIFICATION RULING OF DIRECTOR

In the matter of J. Sargeant Reynolds Community College
No. 2002-182
February 10, 2003

The grievant requests a ruling on whether her August 13, 2002 grievance with J. Sargeant Reynolds Community College (“JSRCC” or “the college”) qualifies for hearing. The grievant claims that the college has misapplied policy by failing to retroactively apply her in-band salary adjustment from September 2001. For the reasons discussed below, this Department concludes that this grievance does not qualify for hearing.

FACTS

The grievant is employed as a Library Practitioner II at JSRCC. In March 2001, the grievant assumed all of the duties of a part-time position in her department, in addition to her own full-time duties. The grievant’s supervisor submitted a Pay Action Form (PAF) on October 23, 2001, to the Dean of Technology (“the Dean”), requesting an in-band adjustment for the grievant for purposes of internal salary alignment, citing the grievant’s increasing work in technological areas such as web page production.¹ In his first-step response, the supervisor states that he did not seek an in-band adjustment based on an increase in duties because he believed the increased responsibilities would be temporary in nature. The grievant’s supervisor further recommended that the grievant be granted the relief sought, i.e., an in-band adjustment retroactive to September 14, 2001, based on an increase in duties and responsibilities.

On March 20, 2002, the college Human Resources Director advised the Dean that an internal alignment in-band adjustment for the grievant was fiscally possible due to a new vacancy, and appropriate as well because it would bring the grievant’s salary closer to that of other long-time library specialists. In a memorandum to the Director of Financial Operations dated April 3, 2002, the Dean requested a permanent internal alignment in-band adjustment of 10% retroactive to January 1, 2002. The in-band

¹ Department of Human Resource Management (DHRM) Policy 3.05 describes an In-Band Adjustment (IBA) as a multi-faceted pay practice that allows agency management the flexibility to provide salary growth and career progression. An IBA may be awarded (1) in recognition of a change in duties, (2) in recognition of professional/skill development, (3) to promote employee retention, and (4) to internally align salaries. In-band adjustments cannot exceed 10% of an employee’s annual salary in any fiscal year.

adjustment was approved by the Director of Financial Operations on April 10, 2002 and then forwarded to the human resources office for processing. On July 15, 2002, after authorization by the Human Resources Director and approval by the Classification and Compensation Manager at Virginia Community College System, the grievant was notified that she would receive an internal alignment in-band adjustment with an effective date of April 10, 2002. JSRCC maintains that DHRM and the Virginia Community College System do not permit retroactive pay adjustments and, as such, the college has adopted a practice of making the effective date the very next pay period after approval by the Dean.

DISCUSSION

For an allegation of misapplication 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.²

The primary policy implicated in this grievance is Department of Human Resource Management (DHRM) Policy 3.05, which, pursuant to the Commonwealth's new compensation plan, requires all agencies, among other things, to develop an agency Salary Administration Plan (SAP).³ An SAP outlines how the agency will implement the Commonwealth's compensation management system, and is "the foundation for ensuring consistent application of pay decisions."⁴ The college has complied with this requirement by developing several policies to address salary administration, including Policy No. 3-5, which describes the process by which in-band pay adjustments may be awarded to deserving JSRCC full-time employees.

In the present case, Policy No. 3-5 confers to JSRCC the authority to determine not only the amount of in-band adjustments but more importantly, whether to grant a request for such a salary increase in the first place. To request an in-band adjustment, the employee's supervisor completes a Pay Action Form (PAF), which the supervising executive officer reviews and either approves or denies.⁵ If approved, the PAF is submitted to the college's budget unit for review.⁶ Within three workdays of receipt, the director of Financial Operations makes a budget determination and forwards the form to Human Resources for review and processing.⁷ Thereafter, the Human Resource Director reviews the PAF and makes a recommendation to the Dean of Finance and

² For the remainder of this Ruling, the term "misapplication of policy" shall be synonymous with "unfair application of policy."

³ See generally, DHRM Policy 3.05 (effective 9/25/00, revised 3/01/01). The SAP "addresses the agency's internal compensation philosophy and policies; responsibilities and approval processes; recruitment and selection process; performance management; administration of pay practices; program evaluation; appeal process; EEO considerations and the communication plan." DHRM Policy 3.05, page 1 of 21.

⁴ DHRM Policy 3.05, page 1 of 21.

⁵ See JSRCC Policy No. 3-5, Personnel Actions for Full-Time Positions, page 9 of 13.

⁶ *Id.*

⁷ *Id.*

Administration.⁸ For positions in Pay Bands 4 and above, (such as the grievant's), after review by the Dean of Finance and Administration, the Human Resource Director immediately forwards the complete PAF package to the Virginia Community College System's Human Resource Services office for approval.⁹

DHRM Policy 3.05 provides that compensation actions should be implemented prospectively, and that actions retroactive more than 90 days should be discussed with DHRM prior to implementation.¹⁰ Under JSRCC's Policy No. 3-5, an in-band adjustment *based on a change in duties* takes retroactive effect back to the date of the employee's successful performance of the new duties for a period of at least six months.¹¹ In contrast, Policy No. 3-5 is silent as to the effective date of an in-band adjustment, such as the grievant's, *based on internal alignment*.

In the present case, the grievant primarily challenges the type of in-band adjustment she was granted and the effective date of the pay action. She asserts that under JSRCC policy, she became eligible in September 2001 for an in-band adjustment based on a change in duties (her successful performance of increased duties for a period of at least six months) and, accordingly, her in-band adjustment must be retroactive to September 2001.

The grievant is correct that Policy 3-5 provides for a retroactive effective date (immediately after the six-month period) *if* management approves an in-band adjustment based on a change in duties. However, as documented in the PAF, the grievant's salary increase was based on internal alignment, *not* a change in duties. Because Policy 3-5 is silent as to the effective date of an in-band adjustment for internal alignment purposes, it cannot be concluded that the agency violated its policy by using the April 10, 2002 approval date as the effective date for the increase. Indeed, DHRM Policy 3.05 states that compensation actions should be implemented prospectively, thus it appears that the agency's action in this case conformed to the intent of the applicable state policy.¹²

Further, (as may be the case here), if circumstances could permit an agency to seek an in-band adjustment pay increase for an employee on the basis of either increased duties and responsibilities *or* internal alignment purposes, the agency has the discretion to chose either basis, or to chose not to pursue the pay increase at all. Thus, the agency's decision here to base the in-band adjustment on internal alignment instead of newly assumed duties does not violate any mandatory policy provision and does not constitute a

⁸ *Id.*

⁹ *Id.*

¹⁰ See DHRM Policy 3.05, page 6 of 21.

¹¹ See JSRCC Policy No. 3-5, Personnel Actions for Full-Time Positions, page 8 of 13.

¹² See DHRM Policy 3.05, page 6 of 21. It should be noted that while DHRM Policy 3.05 states that in-band adjustments *should* be made prospectively, there is no policy language prohibiting an agency from making them retroactive. If an agency elects to make an adjustment retroactive for more than 90 days, the agency is, however, encouraged to discuss the matter with DHRM prior to implementation. *Id.*

disregard of the intent of the applicable policies. For all the above reasons, this grievance is not qualified 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. If the grievant wishes to appeal this determination to the circuit court, she 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 she does not wish to proceed.

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