

Issue: Qualification/Compensation/Leave; Ruling date: June 20, 2003; Ruling #2002-187; Agency: Department of State Police; Outcome: not qualified



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

QUALIFICATION RULING OF DIRECTOR

In the matter of Department of Virginia State Police/ No. 2002-187
June 20, 2002

The grievant has requested a ruling on whether his August 30, 2002 grievance with the Virginia State Police (VSP) qualifies for a hearing. The grievant claims that the agency misapplied or unfairly applied state and agency compensation policies when it reduced his salary after he transferred from State Police Sergeant to Special Agent. For the following reasons, this grievance does not qualify for a hearing.

FACTS

The grievant is Special Agent with VSP. On May 16, 1997, the grievant was promoted from Senior Trooper to State Police Sergeant and received a four-step salary increase.

On August 10, 2001, the grievant voluntarily transferred from the position of Sargeant (Pay Grade 14) to the position of Special Agent (Pay Grade 13). As a result of the transfer, VSP reduced his salary from \$58,269 to \$53,025. The agency contends that the salary reduction was appropriate, because the move amounted to a voluntary demotion into a lower salary grade, resulting in a four-step (9%) decrease.¹

Between the grievant's 1997 promotion and his 2001 transfer, the Commonwealth implemented a new compensation reform plan. The old compensation plan consisted of 23 pay grades, with 21 fixed pay steps within each pay grade. Under the new compensation plan, effective September 25, 2000, the 23 pay grades were consolidated into nine pay bands, with no fixed pay steps.²

On July 1, 2002, the grievant received a 4% increase in his salary, retroactive to his August 10, 2001 transfer.³ The grievant argues that any salary reduction was unfair

¹ See *VSP Salary Administration Plan*, effective December 2000.

² See www.dhrm.state.va.us/compreform/salarystructure.htm <visited November 6, 2002>.

³ The increase reflects VSP's newly revised Salary Administration Plan, effective November 6, 2001, which reduces salaries in proportion to the reduction in responsibilities. As applied to the grievant's responsibilities, this new Plan resulted in a smaller decrease in the salary he received prior to the August 10 transfer.

because under current compensation policy, the two positions (Sargeant and Special Agent) are in the same Pay Band. Moreover, the grievant argues that under the old compensation policy, he would have received the same salary increase in 1997 (four-step or 9%) had he been promoted to Special Agent instead of Sergeant.⁴ Therefore, he argues that because a promotion in 1997 to Special Agent *or* Sergeant would have resulted in the same salary, a reduction in salary now is an unfair application of policy.

The grievant further contends that other employees of VSP have been granted relief under somewhat similar circumstances.⁵ During this Department's investigation, it was determined that two of those employees had been granted a 3-4% salary increase. The grievant states that those employees are now making the salary they would have made had they been promoted directly to Special Agent in 1997 under the old policy.⁶ The grievant asserts that his 4% increase in July 2002 is insufficient in his case because he was more senior than the other employees were at the time of the 1997 promotions.

DISCUSSION

For a claim of misapplication 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 controlling policy in this grievance is DHRM Policy No. 3.05.⁷ According to Policy 3.05, when an employee requests a transfer to a different position in the same Pay Band, the action is considered a Voluntary Transfer - Non-Competitive and the employee's salary is negotiable between the minimum of the Pay Band up to 10% above the current salary.⁸ The policy further states that "in some situations, the negotiated salary may be less than the employee's current salary."⁹

In August 2001, the grievant requested a transfer to a *different position* (Special Agent) in the *same Pay Band* (Pay Band 5) as his original position (State Police Sergeant), thus, the grievant's move into the Special Agent position is properly classified as a Voluntary Transfer - Non-Competitive. Accordingly, under Policy 3.05, the grievant could have received a salary offer anywhere from \$34,910 (the minimum of the pay band) up to \$64,096 (10% above the grievant's current salary as a Sergeant). The

⁴ Under the old policy, Special Agent was in Pay Grade 13. VSP's compensation policy in effect in 1997 stated that a one pay grade increase would result in a four-step salary increase, the same increase granted for a two-grade increase.

⁵ At least three other employees also transferred from Sergeant to Special Agent and experienced an initial salary reduction of 9%.

⁶ Unlike the grievant, those employees were promoted from Trooper II to Sergeant positions in 1997. Their promotions resulted in a six-step salary increase because their positions increased by three pay grades, not two. Had they been promoted to Special Agent under the old policy, they would have received a four-step increase in salary because their positions would have increased by only two grades.

⁷ DHRM Policy No. 3.05, effective September 25, 2000, revised March 1, 2001.

⁸ DHRM Policy No. 3.05 "Voluntary Transfer;" The new salary may not exceed the Pay Band maximum.

⁹ DHRM Policy No. 3.05 "Voluntary Transfer."

grievant was initially approved for a salary of \$53,025. This salary fell within the parameters set by policy.

The grievant argues that, under VSP's *old* Salary Administration Plan, had he been promoted to Special Agent in 1997, he would have received the same four-step salary increase that he received for his promotion to Sergeant.¹⁰ Therefore, the grievant asserts, his salary should have stayed the same when he transferred to Special Agent in 2001. However, at the time of his transfer to Special Agent, DHRM's *new* compensation policy was in effect, and a transfer to a position in the same pay band could result in a lower salary than the employee's current salary. The grievant's argument also ignores the fact that he was promoted to *Sergeant* in 1997, not to Special Agent. Indeed, even under VSP's *old* compensation policy, a transfer to a position in a lower pay grade, such as a transfer from Sergeant to Special Agent, would have resulted in a four-step reduction in salary.¹¹

It should be noted that VSP is incorrect in categorizing the grievant's transfer as a "voluntary demotion." It appears that VSP continues to refer to language contained in the old policy, causing some confusion as to what pay action has occurred. In fact, VSP potentially misapplied policy by categorizing the grievant's 2001 move from Sergeant to Special Agent as a demotion and reducing his salary based on that incorrect assumption. It is true that under the old compensation policy (in effect prior to September 25, 2000), a move from Sergeant, a Grade 14 position, to Special Agent, a Grade 13 position, would have been a demotion. However, during Compensation Reform in 2000, positions in Grades 12-14 moved into Pay Band 5. DHRM Policy 3.05 defines a voluntary demotion as an "employee initiated movement to a different position in a *lower* Pay Band."¹² VSP's current salary administration plan also defines a demotion as a move to a position in a lower pay band.¹³ Here, the grievant transferred to a position in the *same* pay band, so the move was not, in fact, a demotion. However, VSP subsequently treated the grievant's move more correctly as a transfer when it revised its Salary Administration Plan and increased the grievant's salary by 4% retroactive to the date of the move. As noted above, with voluntary transfers, VRS had discretion to pay the grievant within a broad range set by state and agency compensation policy (between \$34,910 and \$64,096). By taking into account the reduction in responsibility and adjusting the grievant's salary accordingly, VRS corrected its initial misapplication of policy and did not violate state or agency policy.¹⁴

¹⁰ See *supra* notes 1 and 4.

¹¹ See Informational Bulletin "Voluntary and Performance Demotions," dated March 4, 1992.

¹² DHRM Policy 3.05 "Definitions" (emphasis added).

¹³ VSP *Salary Administration Plan* "Voluntary Demotion," effective 11/06/01.

¹⁴ Furthermore, it should be noted that the grievant appears to have been treated at least as favorably, in terms of compensation adjustment, as the other Sergeants who transferred to the Special Agent position. Accordingly, this Department cannot conclude that the agency's actions were so unfair as to amount to a disregard of the intent of the applicable pay policies.

In sum, while the grievant's disappointment with his reduction in salary is understandable, VSP properly applied the policy guidelines in offering the 4% salary adjustment to the grievant. Therefore, 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 the qualification 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