

Issue: Qualification/Separation/Layoff/Recall; Ruling Date: February 7, 2003; Ruling #2002-234;
Agency: Department of Corrections; Outcome: not qualified.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

QUALIFICATION RULING OF DIRECTOR

In the matter of the Department of Corrections
No. 2002-234
February 7, 2003

The grievant has requested a ruling on whether his October 23, 2002 grievance with the Department of Corrections (DOC or agency) qualifies for a hearing. The grievant claims that the agency misapplied the layoff policy by using seniority as the sole criterion instead of considering factors such as knowledge, skills, abilities and job performance.¹ For the reasons discussed below, this grievance does not qualify for hearing.

FACTS

At the time of his grievance, the grievant was employed as one of numerous Buildings & Grounds Supervisor A's (Supervisor A's) at the agency. The agency determined for business reasons that nine positions in the Supervisor A Role² were no longer needed, and identified the nine least senior Supervisor A's for layoff. On October 21, 2002, the grievant was notified that he would be laid off because he was among the least senior of the Supervisor A's. On October 23, 2002, the grievant filed his grievance claiming that the agency had misapplied the layoff policy by using only one criterion – seniority – to determine layoff status. The agency head denied qualification, and the grievant subsequently requested that the Director of this Department qualify the grievance for hearing.

¹ "Layoff" is defined as removing an employee from his or her position as a result of a reduction in force or reorganization. Department of Human Resource Management (DHRM) Policy No. 1.30, *Definitions*, (effective 9/25/00, revised 8/10/02). See also Department of Corrections Policy Number 5-39, *Layoffs; Reductions in Work Force*.

² According to policy, a "Role" describes a "broad group of positions in a Career Group assigned to a specific Pay Band that are assigned different levels of work at various skill or knowledge levels." DHRM Policy No. 1.30, page 4.

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 applicable policies in this case are DHRM Policy 1.30 *Layoff* and DOC Procedure 5-39, *Layoffs: Reductions in Work Force*. DHRM Policy 1.30 specifically provides that each agency must identify employees for layoff in a manner consistent with their business needs and the provisions of that Policy. Before implementing a layoff, agencies must “determine whether the entire agency or only certain designated work unit(s) are to be affected; designate business functions to be eliminated or reassigned; designate work unit(s) to be affected as appropriate.”³ After identifying the work or business function to be affected, “agencies must select employees for layoff within the same work unit, geographic area, and Role, who are performing substantially the same work, according to the following layoff sequence: . . . the least senior through the most senior full-time classified employee.”⁴ Policy further states that: “[s]eniority *must* be used by agencies when determining (1) who will be affected by layoff and (2) who is eligible for placement options within the agency before layoff or for recall opportunities.”⁵ Likewise, DOC Procedure 5-39 states in pertinent part that “[a]fter positions have been identified to be discontinued according to the sequence outlined, the agency *must* identify employees to be removed from the specific roles *according to seniority*.”⁶

While the grievant may disagree with management’s decision to abolish nine Supervisor A positions, state and agency policies grant to agency management alone the authority and responsibility of “identifying the work that is no longer needed or that must be reassigned.”⁷ Management is afforded great discretion when making such determinations and, so long as those determinations are based on legitimate business considerations and not on impermissible factors such as discrimination or retaliation, then management’s decisions regarding the elimination or reassignment of work cannot be overturned through the grievance process.⁸

In this case, there is no evidence that the agency’s layoff of the grievant was based on any impermissible reason. Indeed, after determining that nine Supervisor A’s must be laid off, the agency was compelled by state policy to identify the nine least senior Supervisor A’s for that layoff. As the agency has provided unchallenged evidence

³ DHRM Policy No. 1.30, Layoff, effective date 9/25/02, revised date 8/10/02, page 7, Agency Decisions Prior To Implementing Layoff.

⁴ *Id.*, pages 7 & 8, Implementing Layoff, Layoff Sequence (5).

⁵ *Id.*, page 5, Seniority (emphasis added). Seniority is determined by total continuous salaried state service.

⁶ DOC Procedure Number 5-39.7(A), March 15, 2001, (emphasis added).

⁷ DHRM Policy No. 1.30, Layoff, effective date 9/25/02, revised date 8/10/02, page 7, Agency Decisions Prior To Implementing Layoff.

⁸ “Management reserves the exclusive right to manage the affairs and operations of state government.” Va. Code § 2.2-3004 (B).

that the grievant was indeed one of the nine least senior Supervisors A, this Department finds no reason to qualify this grievance for hearing.⁹

APPEAL RIGHTS AND OTHER INFORMATION

For information regarding the actions that 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 his Human Resources Office, in writing, within five workdays of receipt of this ruling. If the court should qualify his grievance, within five workdays of receipt of the court's decision, the agency will request the appointment of a hearing officer unless he notifies them that he does not want to proceed.

Claudia T. Farr
Director

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⁹ To the extent this grievance is challenging the *content* of the layoff policy, such a grievance cannot be qualified for hearing. See Va. Code § 2.2-3004(C)(iii). In addition, the remaining points raised in the grievance, while not expressly discussed in this ruling, have been carefully considered and do not support a claim of misapplication or unfair application of policy.