

Issue: Qualification/Separation/Layoff/Recall; Ruling Date: March 17, 2003; Ruling #2003-008; Agency: Department of Veterans' Affairs; Outcome: Not qualified



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

QUALIFICATION RULING OF DIRECTOR

In the matter of Department of Veterans' Affairs
No. 2003-008
March 17, 2003

The grievant has requested a ruling on whether her November 15, 2002 grievance with the Department of Veterans' Affairs (agency) qualifies for a hearing. In support of her grievance, the grievant claims that she was identified for layoff and reduced from full-time to part-time classified: (i) because she had been placed on short term disability (STD) status; (ii) without regard to her seniority; and (iii) while part-time employees were not terminated, all allegedly in violation of state human resource policy. For the reasons discussed below, this grievance does not qualify for a hearing.

FACTS

On August 12, 2002, grievant was placed on short term disability (STD) status. She returned with a reduced schedule on October 1, 2002, and was to return to a full-time schedule on January 2, 2003. However, on October 18, 2002, the grievant was notified that her position had been identified for lay off due to budget reductions. She was given until October 25, 2002 to consider two options: to move to part-time classified status or to be laid off and receive severance benefits. On October 23, 2002 she was given a memorandum outlining the specifics of the options available to her.¹ The grievant accepted the move to part-time classified status and is working 32 hours a week at 80% of her former salary.

The grievant's Role title is Financial Specialist I (her working title is Financial and Procurement Specialist) and her core responsibilities include: (1) processing vouchers; (2) budgeting; (3) processing purchase requests, maintaining procurement files and ledgers; (4) reconciling CARS transactions and overseeing the posting of transactions; (5) maintaining petty cash; and (6) entering and reconciling fixed assets into FAACS and preparing FAACS status reports.² It is undisputed that there are five administrative positions at the agency, with none having the same Role as the grievant.

¹ See October 23, 2002 Memorandum "Change in Employment Status."

² See EWP, effective date 10/25/01.

DISCUSSION

For a grievance claiming a misapplication of policy or an 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.

It is the Commonwealth's policy to ensure "a system of personnel administration based on merit principles and objective methods of appointment, promotion, transfer, *layoff*, removal, discipline, and other incidents of state employment."³ The Department of Human Resource Management (DHRM) Layoff Policy requires that agencies select employees for layoff based on objective factors.⁴ Factors such as race, religion, political affiliation, age, disability, national origin, sex or improper retaliatory motives may not form the basis for selecting an employee for layoff.

Specifically, under the state's layoff policy, prior to implementing layoff, agencies must: (1) determine whether the entire agency or designated work unit(s) are to be affected; (2) designate business functions to be eliminated or reassigned; (3) designate work unit(s) to be affected as appropriate; and (4) review all vacant positions to identify valid vacancies that can be used as placement options during layoff.⁵ A work unit is a "designation that an agency may use to define the scope of the layoff to organizational units smaller than the entire agency. The work unit designation may be by geographic area(s) or business unit(s) to be impacted. If such a designation is used by the agency, the designation must be made *prior to* implementing a layoff."⁶

Further, after identifying the work that is no longer needed or that must be reassigned, 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: (1) wage employee(s) performing the same work (2) the least senior through the most senior part-time restricted employee; and then (3) the least senior through the most senior full time restricted employee; and then (4) the least senior through the most senior full-time restricted employee; and then (5) the least senior through the most senior full-time classified employee.⁷ Thus, seniority comes into play only with respect to multiple employees, in the same work unit, geographic area and Role, and who also perform "substantially the same work."⁸

³ Va. Code § 2.2-2900 (emphasis added).

⁴ See DHRM Policy No. 1.30 Layoff, effective date 9/25/00, revised date 8/10/02.

⁵ *Id.*, page 7 of 22.

⁶ *Id.*, page 6 of 22 (emphasis in original).

⁷ *Id.*, pages 7 and 8 of 22.

⁸ *Id.*, page 5 of 22.

The following are factors considered by agencies in determining whether employees are performing “substantially the same work”: (1) positions are in the same work unit; (2) positions are in the same Role; (3) positions have the same work title; (4) positions are at the same reporting level in the organizational structure; (5) positions have the same SOC Code; and (6) positions have similar job duties, KSAs, and other job requirements, based on the position description or Employee Work Profile.⁹

DHRM Layoff Policy further states that “[e]mployees on STD and LTD-working under the VSDP may receive notice of layoff.”¹⁰ In addition, “[t]he effective date of layoff for these employees will be the date designated by the agency regardless of their VSDP status.”¹¹ Moreover, eligible employees identified for layoff while on STD must be afforded placement options provided by Policy 1.30.¹²

Layoff Based on STD Status

Management asserts that the grievant’s STD status under the VSDP program was not a consideration in determining layoff. The agency states that it identified the grievant’s position for layoff because the duties associated with her “position will decrease as the result of budget reductions.”¹³ Management’s consideration of the impending budget reductions on the agency and how those cuts would impact the grievant’s work is consistent with Policy 1.30 and management’s responsibility for identifying work no longer needed or that must be reassigned.¹⁴ Furthermore, the grievant has provided no evidence that tends to suggest that the agency’s decision to reduce her hours was based on her STD status.

Failure to Consider Seniority

Management had designated the grievant as a work unit of one. If properly designated as a work unit of one, the grievant could be laid off without regard to seniority. But even if such a designation had not been made prior to implementing the layoff, a review of the positions at issue here substantiates management’s assertion that the grievant’s work differs significantly from that of the less senior individual (the Human Resources Consultant), who the grievant contends should have been laid off or given reduced working hours instead of the grievant.¹⁵ The Role title, working title, and SOC title and code all are different for the two positions.¹⁶ Moreover, a review of the

⁹ *Id.*, pages 5 and 6 of 22.

¹⁰ *Id.*, page 9 of 22.

¹¹ *Id.*

¹² *Id.*, page 11 of 22.

¹³ For instance, management noted that “procurement will be minimal and only for essential items.” Management further noted that “[t]ravel has been limited to only essential travel for the Director and IT staff.” Immediate Supervisor Response, November 22, 2002, page 2.

¹⁴ See DHRM Policy 1.30, pages 7 and 8 of 22.

¹⁵ See EWP for grievant and for HRC.

¹⁶ *Id.*

core responsibilities for the two positions clearly shows that the job functions differ, with only one of the Human Resource Consultant's duties being similar to that of the grievant's position.¹⁷ Finally, although the two positions are in the same Pay Band, they are in two separate Career Group designations: the grievant's position is in the Financial Services Career Group and the HRC position is in the Administrative and Office Support Career Group.¹⁸ Because the two positions at issue here do not share the same Role or perform substantially the same work, seniority does not apply in determining which is to be affected by layoff.

Retention of Part-time Employee

Management asserts that the part-time wage employee, who was retained, serves in a different capacity than the grievant. The part-time position's primary duties are mail functions and research, and the position is considered critical due to the volume of mail and correspondence handled daily. Due to previous budget cutbacks and the loss of other positions, management concluded that it was not feasible to eliminate the part-time position and distribute that position's workload to remaining staff members.¹⁹

While the grievant asserts that her "view of the layoff process is that part-time employees should always be the first to go instead of the possibility of losing valuable long-time state employees,"²⁰ state policy clearly provides that seniority pertains only to employees in the same work unit, geographic area, and Role, who are performing "substantially the same work."²¹ Although the part-time employee may indeed work in the area of administration and at the same geographic location, her position is in a lower pay band, a different Career Group²² and is responsible for duties that are substantially different from the grievant's fiscal and procurement duties.²³ Thus, retaining the part-time wage position while subjecting the grievant to layoff or part-time status does not violate state policy.

In light of all the above, we conclude that the grievant has failed to provide sufficient evidence that the agency misapplied policy, unfairly applied policy, or discriminated against her because of her STD status. Therefore, this issue does not qualify for hearing.

APPEAL RIGHTS AND OTHER INFORMATION

¹⁷ *Id.* The HRC serves as back-up to the grievant's position. According to the HRC's EWP, only 15% of the HRC's work is devoted to serving as a back-up to the grievant.

¹⁸ See DHRM Compensation Reform Career Groups.

¹⁹ See Immediate Supervisor Response dated November 22, 2002, page 2.

²⁰ See grievant's typewritten response (#5) to the Agency Head, not dated or signed.

²¹ See DHRM Policy No. 1.30, page 7 of 22.

²² See DHRM Compensation Reform Career Groups, which lists this position under the Administrative and Office Career Group.

²³ See Administrative & Program Support Specialist II/ASST Position Description signed 8/15/01.

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, please 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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