

Issue: Qualification/Methods and Means/Assignment of Duties; Ruling Date: March 19, 2003; Ruling #2003-028; 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 State Police  
Ruling Number 2003-028  
March 19, 2003

The grievant has requested a ruling on whether his December 19, 2002 grievance with the Department of State Police (VSP) qualifies for a hearing. In his grievance, the grievant challenges his assignment from an unmarked to marked police vehicle as disciplinary.

FACTS

The grievant is employed as a Senior Trooper. On November 22, 2002, he attended a quarterly evaluation meeting with his supervisor. During the course of the meeting, he was informed that his performance in promoting highway safety continued to be below expectation, and that therefore, his unmarked police vehicle would be reassigned effective on November 24, 2002. The grievant was assigned a standard marked police vehicle as a replacement.

DISCUSSION

By statute and under the grievance procedure, management is reserved the exclusive right to manage the affairs and operations of state government.<sup>1</sup> Thus, claims relating to issues such as the method, means and personnel by which work activities are to be carried out (to include the best utilization of law enforcement equipment) generally do not qualify for a hearing, unless the grievant presents evidence raising a sufficient question as to whether discrimination, retaliation, or discipline may have influenced management's decision, or whether state policy may have been misapplied.<sup>2</sup> The grievant asserts that the agency has improperly used the evaluation of his performance as justification to remove his unmarked police vehicle, resulting in unwarranted disciplinary action.

*Informal Disciplinary Action*

---

<sup>1</sup> See Va. Code § 2.2-3004(B).

<sup>2</sup> Va. Code § 2.2-3004(A) and (C); *Grievance Procedure Manual* § 4.1 (C), page 11.

All formal discipline accompanied by a written notice automatically qualifies for a hearing if challenged through the grievance procedure.<sup>3</sup> In the absence of an accompanying written notice, a disciplinary action qualifies for a hearing only if there is a sufficient question as to whether it was an “adverse employment action” and was taken primarily to correct behavior or to establish the professional or personal standards for conduct of an employee.<sup>4</sup> These policy and procedural safeguards are designed to ensure that the discipline is merited. The issues of whether the grievant’s reassignment from an unmarked to a marked police vehicle constituted an adverse employment action and was disciplinary in nature are discussed below.

#### *Adverse Employment Action*

An adverse employment action includes any action resulting in an adverse effect on the terms, conditions, or benefits of employment.<sup>5</sup> In this instance, the grievant was assigned to perform his duties in a marked police vehicle, which did not result in a decrease in compensation, or a change in job title, level of responsibility or opportunity for promotion. Because the assignment to a marked vehicle does not constitute a significant detrimental effect on the terms, conditions, or benefits of the grievant’s employment, it is not an adverse employment action.

#### *Disciplinary Basis*

The agency denies that reassignment of the car was disciplinary. However, even assuming that the reassignment was disciplinary, because the grievant has not suffered an adverse employment action, this grievance does not qualify 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, 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

---

<sup>3</sup> Va. Code § 2.2-3004 (A); DHRM Policy No. 1.60, Standards of Conduct (IX); *Grievance Procedure Manual*, § 4.1, page 10.

<sup>4</sup> Va. Code § 2.2-3004 (A) and (C); *Grievance Procedure Manual* § 4.1 (b) and (c), pages 10-11.

<sup>5</sup> *Von Gunten v. Maryland Department of Employment*, 2001 U. S. App. LEXIS 4149 (4<sup>th</sup> Cir. 2001)(citing *Munday v. Waste Mgmt. of North America, Inc.*, 126 F.3d 239, 243 (4<sup>th</sup> Cir. 1997)).

March 19, 2003  
Ruling #2003-028  
Page 4

---

June M. Foy  
Senior Employment Relations Consultant