

Issue: Qualification/Separation/Layoff/Recall; Ruling Date: March 21, 2003; Ruling #2003-033; Agency: Department of Motor Vehicles; Outcome: not qualified.



*COMMONWEALTH of VIRGINIA*  
*Department of Employment Dispute Resolution*

QUALIFICATION RULING OF DIRECTOR

In the matter of Department of Motor Vehicles  
No. 2003-033  
March 21, 2003

The grievant has requested a ruling on whether his October 30, 2002 grievance, challenging his layoff from the Department of Motor Vehicles (“agency”), qualifies for a hearing. Specifically, the grievant claims that he was laid off before at least two other employees who had less seniority and who assumed his job duties.<sup>1</sup> For the reasons discussed below, this grievance does not qualify for a hearing.

FACTS

At the time of his layoff, the grievant was employed by the agency in the Role of Financial Services Manager I, and his work unit was the Controller’s office. On October 16, 2002, the grievant was notified that his position had been identified for layoff due to the Governor’s budget reductions and that he would be separated from employment effective November 1, 2002.<sup>2</sup> The next day, October 17, 2002, an email regarding budget reductions was sent to all agency staff indicating that the agency had “conducted a functional analysis...identified the core functions that [the agency] cannot survive without...[and] determined the roles (position classifications) that could be abolished.”<sup>3</sup>

The grievant had worked in continuous state service for over twenty-six years. It is undisputed that the grievant was the only employee in the Role of Financial Services Manager I in his work unit.<sup>4</sup> On October 30, 2002, he initiated his grievance and subsequent to the agency head’s qualification denial, the grievant requested a ruling by this Department.

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

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<sup>1</sup> See Grievant’s Attachment II to Grievance Form A #7 & #8 dated October 30, 2002.

<sup>2</sup> See Notice of Layoff or Placement Final Notice 10/16/2002.

<sup>3</sup> See email from Agency Head to: “ALL –DMV” sent 10/17/2002 4:09 p.m.

<sup>4</sup> See Worksheet listing of the Roles in the Controller’s office prepared during the layoff process.

action, in its totality, was so unfair as to amount to a disregard of the intent of the applicable policy.

The applicable policy in this case is DHRM Policy 1.30 *Layoff*. DHRM Policy 1.30 specifically provides that each agency must identify employees for layoff in a manner consistent with its 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.”<sup>5</sup> 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.”<sup>6</sup> Thus, seniority comes into play only in situations where employees are in the same work unit, geographic area, Role and perform substantially the same work.

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.<sup>7</sup>

Here, because the grievant was the only employee with his Role title in his work unit, policy allows his layoff without regard to seniority or the other factors for determining “substantially the same work” as outlined above. While the grievant may disagree with management’s decision to abolish his position and reassign his duties, state policy grants to agency management alone the authority and responsibility of “identifying the work that is no longer needed or that must be reassigned.”<sup>8</sup> Management is afforded great discretion when making such determinations. As long as those determinations are based on legitimate business considerations and not on impermissible factors such as discrimination or retaliation, management’s decisions regarding the elimination or reassignment of work cannot be overturned through the grievance process.<sup>9</sup>

In this case, there is no evidence that the agency’s layoff of the grievant was based on any impermissible reason. Although the grievant believes that policy would

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<sup>5</sup> DHRM Policy No. 1.30, *Layoff*, effective date 9/25/02, revised date 8/10/02, page 7, Agency Decisions Prior To Implementing Layoff.

<sup>6</sup> *Id.*, pages 7 & 8, *Implementing Layoff, Layoff Sequence*.

<sup>7</sup> *Id.*, at page 5.

<sup>8</sup> DHRM Policy No. 1.30, *Layoff*, effective date 9/25/02, revised date 8/10/02, page 7.

<sup>9</sup> “Management reserves the exclusive right to manage the affairs and operations of state government.” Va. Code § 2.2-3004 (B).

mandate that his position not be eliminated, as he performed a “core function” of the agency, such a mandate does not exist. Furthermore, policy clearly permits the reassignment of duties from a Role identified for layoff. Once the Controller’s work unit was identified to be affected by layoff, and the grievant’s Role was identified for layoff, his duties were reassigned in accordance with policy. Moreover, the agency was compelled by state policy to ignore the grievant’s seniority in relation to the two other employees mentioned in his Form A, because those employees were not in the same Role as he. In sum, because the agency has provided unchallenged evidence that the grievant was indeed the only Financial Services Manager I in the Controller’s work unit, this grievance presents no evidence that the agency misapplied or unfairly applied the layoff policy, and thus does not qualify for a hearing.<sup>10</sup>

#### 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, 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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Director

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<sup>10</sup> 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.