

Issue: Qualification/Position/Classification; Ruling date: July 17, 2003; Ruling #2003-045; Agency: Department for the Blind and Vision Impaired; Outcome: not qualified



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

QUALIFICATION RULING OF DIRECTOR

In the matter of Department for the Blind and Vision Impaired
No. 2003-045
July 17, 2003

The grievant has requested a ruling on whether his December 17, 2002 grievance with the Department for the Blind and Vision Impaired (DBVI or the agency) qualifies for a hearing. The grievant claims that the agency misapplied or unfairly applied state policy by failing to reclassify his position to a Program Administration Manager III. For the reasons discussed below, this grievance does not qualify for a hearing.

FACTS

The grievant is a thirty-year employee of the agency and has been a Center Director since 1991. The Director position's formal role title is Program Administration Manager II (Pay Band 5). In April of 2001, the grievant requested an upward role change based upon his concern that there had been significant duties added to the Director position, which were not addressed when the new compensation system was implemented as he had been previously advised by human resource personnel.¹ On June 20, 2002, the Commissioner submitted a Pay Action Worksheet and revised Employee Work Profile (EWP) to the agency's Human Resource Director requesting an upward role change for the grievant's position to that of a Program Administration Manager III (Pay Band 6).

In response to the Commissioner's request, the agency's Compensation Consultant completed a Pay Action Analysis Report finding that the grievant's position is properly classified and does not warrant an upward role change. In the report, the consultant claims that the Director's position is not out of alignment with the other thirteen positions that were used as comparators, in either level of program responsibilities or salary. Further, she finds that the Director does not have new duties supporting an upward role change and that the same program changes cited by the

¹ In October of 1999, the grievant had requested that the agency review the supervisory/management positions at the Center because he felt they were not properly classified. He raised the issue again in March of 2000, but was advised to wait until the implementation of the new Compensation Program because position classifications would be reviewed at that time. After the new system was implemented, the Director claims that the organization structure of the Center was "totally flat," and he disagrees with how the supervisory positions were crosswalked. Thus, in April of 2001, he began requests for upward role changes for supervisory positions. One supervisor was granted an upward role change to Pay Band 5 (the same pay band as the grievant), while the Director's requests for role changes for two other supervisors were denied.

Director were previously specified as the basis for other upward role change requests for other employees, who are directly responsible for those programs.² After the consultant's submission of her report, the Commissioner questioned some of her determinations and requested that she also review as comparators positions that provide services 24 hours a day, seven days a week in residential facilities.

Subsequently, the consultant requested that the agency's Compensation Consultant at the Department of Human Resource Management (DHRM) review her findings. In addition to reviewing the agency's compensation consultant's findings, the DHRM consultant also expanded the review of job descriptions to include comparisons of directors of small to medium residential facilities in Health and Human Resources, Public Safety and Educational agencies.³ She also found the Director position to be correctly classified in the role of Program Administration Manager II.

At the request of the Commissioner, DHRM's Compensation Consultant then conducted an on-site audit on September 24, 2002, which "included a tour of the Center, the observation of active programming, and a discussion with [the grievant] regarding the more complex aspects of his work."⁴ The DHRM consultant expanded the study further to encompass "[j]ob descriptions and related materials for positions that are not facility directors, but are responsible for managing all of the core residential programs within state facilities," including "facilities that are somewhat to significantly larger than the Center in terms of the numbers of clients, operating budget and staffing."⁵ Additionally, the grievant's supervisor was contacted to obtain information regarding the management of the Center, and the grievant was given the opportunity to present more information via email. At the conclusion of the study, DHRM's Compensation Consultant again determined that the Director position is properly classified, finding that the position functions at the highest level of expertise within the Program Administration Manager II role and is comparable to other Pay Band 5 managers of residential and/or community service programs. While acknowledging that the position does demonstrate some of the characteristics of facility management positions in Pay Band 6, the consultant concludes that a role change "could disrupt the existing alignment of band 6 management positions at [the agency] and in other agencies without adequate justification."⁶

On December 17, 2002, the grievant initiated a grievance challenging the agency's denial of his request for an upward role change as a misapplication and/or unfair application of policy, claiming (1) that the EWP for the Director position meets the standards outlined in the role description for the Program Administration Manager III and (2) that it is improper for the Director position and the Assistant Director position to be in the same role. The grievance advanced through the management resolution steps without

² See *supra*, note 1.

³ Memorandum from DHRM's Compensation Consultant to the agency's Compensation Consultant, dated August 23, 2002.

⁴ See Classification Review by DHRM's Compensation Consultant, page 1.

⁵ *Id.*

⁶ See Classification Review by DHRM's Compensation Consultant, page 4.

relief, and the grievant requested qualification of his grievance from the agency head on February 3, 2003. The agency head denied qualification, and the grievant has requested a qualification determination from this Department.

In support of his grievance, the grievant claims that he is unaware of another state facility with an organizational structure that has the Director and one of the Assistant Director positions in the same role; nor has the agency responded to his request to provide him examples of such. Additionally, he states that the Pay Action Analysis Report contains inaccurate information regarding his job duties, which both compensation consultants erroneously relied upon when reaching their respective determinations. Further, he claims that the DHRM Compensation Consultant failed to address the compensable factors for the Program Administration Manager III role in her written report as he had requested. Lastly, during the investigation for this ruling, the grievant informed the investigating consultant that the three studies are inconsistent.⁷

On the other hand, the agency maintains that Pay Bands were designed for compensation, and it is not uncommon for a position in a particular band to supervise other positions allocated to the same band.⁸ Furthermore, the agency notes that there have been several in-depth studies of the grievant's position, with all supporting the determination that the position is correctly classified.⁹

DISCUSSION

By statute and under the grievance procedure, complaints relating solely to the establishment and revision of salaries and position classifications "shall not proceed to hearing"¹⁰ unless there is sufficient evidence of discrimination, retaliation, discipline, or a misapplication or unfair application of policy. In this case, the grievant alleges that the agency's denial of his request for an upward role change to the role of Program Administration Manager III was a misapplication or unfair application of policy.

For such a claim to qualify for a hearing, there must be evidence raising a sufficient question as to whether management violated a mandatory policy or whether the challenged action, in its totality, is so unfair as to amount to a disregard of the intent of the applicable policy. The General Assembly has recognized that the Commonwealth's system of personnel administration should be "based on merit principles and objective

⁷ The grievant claims the reports are inconsistent because the original report indicated that he was definitely correctly classified, while the on-site study conducted by the DHRM Compensation Consultant stated that "[t]he expanded review did not reveal any new information that could *conclusively* demonstrate that [the grievant's] is misaligned with positions statewide" and that the position does have some characteristics of Pay Band 6 positions (emphasis added). See Classification Review, pages 2-3.

⁸ See Second Resolution Step response, dated January 28, 2003. Among some of the examples cited by the agency in support of its claim include: (1) Disability Service Unit Supervisors who are in the same pay band as the professional staff that they supervise, (2) Audit Managers are the same pay band and supervise Auditor IIs, and (3) Counselors II may supervise other Counselors II in the same role.

⁹ *Id.*

¹⁰ Va. Code § 2.2-3004(C). GPM § 4.1 (C), page 11.

methods” of decision-making.¹¹ In addition, the Commonwealth’s classification plan “shall provide for the grouping of all positions in classes based upon the respective duties, authority, and responsibilities,” with each position “allocated to the appropriate class title.”¹²

The above statutes evince a policy that would require state agencies to allocate positions having substantially the same duties and responsibilities to the same role. Importantly, the grievance procedure accords much deference to management’s exercise of judgment, including management’s assessment of the degree of change, if any, in the job duties of a position. Accordingly, this Department has long held that a hearing officer may not substitute his or her judgment for that of management regarding the correct classification of a position.¹³ Thus, a grievance that challenges the substance of an agency’s assessment of a position’s job duties does not qualify for a hearing unless there is sufficient evidence that the assessment was plainly inconsistent with other similar decisions within the agency or was otherwise arbitrary or capricious.¹⁴

In this case, it appears that the agency has fulfilled its responsibility under policy to review and determine the classification of the grievant’s position. The decision not to reclassify the grievant’s position was based upon several reviews of all the supporting data (including an on-site study observing the program and a discussion with the grievant detailing the complexity of his work) and consideration of the factors for classifying positions.¹⁵ Although the grievant disputes the determinations of both compensation consultants regarding the complexity, results and accountability of his work, which positions in other state facilities are most similar to his position, the alignment of positions at the Center, and what data was included in the reports, the evidence does not establish that the agency’s decision was in disregard of the facts, without a reasoned basis, or plainly inconsistent with other similar job classification decisions.

More importantly, a compensation consultant for DHRM, the agency with the final authority to establish and interpret personnel policies and procedures (including the classification and compensation policies and procedures at issue here),¹⁶ conducted both a desk audit and an on-site site study and concluded that the grievant’s position is properly classified. Because DHRM has the authority to ensure full compliance with such

¹¹ Va. Code § 2.2-2900.

¹² Va. Code § 2.2-103(B)(1).

¹³ See EDR Ruling No. 2001-062 (July 18, 2001).

¹⁴ See *Grievance Procedure Manual* § 9, page 23. Arbitrary or capricious is defined as a decision made in disregard of the facts or without a reasoned basis.

¹⁵ During the investigation for this ruling, the grievant informed the investigating consultant that he had requested that the DHRM Compensation Consultant discuss the compensable factors (Complexity, Results and Accountability) in her study, but she had failed to do so. However, while not organized as such in her written report, it is clear from the Summary of Findings section comparing facility directors and facility residential program managers and comparing the grievant’s position to agency positions that the compensable factors were reviewed in detail.

¹⁶ Va. Code § 2.2-1201(13).

policies¹⁷ and its representative has found the Director position correctly classified after a thorough review of the data,¹⁸ and as the grievant has not presented evidence raising a sufficient question as to whether his agency misapplied or unfairly applied policy, this Department is compelled to deny qualification of this issue.

APPEAL RIGHTS AND OTHER INFORMATION

For additional 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 circuit court, he 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 notifies the agency that he does not wish to proceed.

Claudia T. Farr
Director

Susan L. Curtis
EDR Consultant

¹⁷ *Id.*

¹⁸ According to the second-step respondent, the DHRM Compensation Consultant indicated that the amount of time and level of research and analysis involved in reviewing the grievant's position were more comprehensive than any other single position review she has ever conducted. *See* Second Resolution Step response, dated January 28, 2003.