

Issue: Qualification/Compensation/Leave; Ruling date: June 30, 2003; Ruling #2003-077; Agency: Department of Corrections; Outcome: not qualified



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

QUALIFICATION RULING OF DIRECTOR

In the matter of Department of Corrections

No. 2003-077

June 30, 2003

The grievant has requested a determination on whether her December 30, 2002 grievance with the Department of Corrections (DOC or the agency) qualifies for a hearing. She claims that the agency misapplied or unfairly applied policy by removing the Northern Virginia (NOVA) pay differential after she transferred to a facility outside the NOVA differential area.¹ As relief, she requests that her pay continue to include the differential. For the following reasons, this grievance does not qualify for a hearing.

FACTS

The grievant was employed as a Corrections Officer at a DOC facility within the NOVA pay differential area. Because of budget cuts the facility was designated for closure, but the agency offered her placement as a Corrections Officer outside the NOVA differential area.² Prior to her acceptance of the transfer, the agency notified the grievant

¹ Two issues are stated on the Grievance Form A: (i) the loss of pay due to the grievant's transfer to a different region and (ii) the unfairness of such loss even though the agency notified her prior to her acceptance of the transfer. During the investigation for this ruling, however, the grievant appears to have attempted to re-characterize her grievance. The grievant informed the investigating consultant that, while she was upset about the removal of the NOVA differential, she was primarily concerned about the manner in which the agency handled the closure of the facility and placed employees in other positions or granted severance pay. Significantly, the only reference to the closure of the facility contained in her grievance is the statement that because of the closure employees were forced to transfer or retire or to accept a demotion or a reduction in wages. Even if the grievant presented enough information in her grievance to enable the agency to understand the nature of her claim and respond to it during the grievance process (which does not appear to be the case based upon a review of the grievance materials), such a claim would not be in accordance with the grievance procedure because it would not be timely filed. The agency raised the issue of noncompliance based upon timeliness after the grievant initiated her grievance. This Department ruled that the grievance was timely because she initiated her grievance within 30 calendar days of the reduction in her pay. *See infra*, note 4. However, to timely challenge the manner in which management handled placement decisions resulting from the closure of the facility, the grievant should have initiated a grievance within 30 calendar days of management's actions, all which occurred months before the initiation of this grievance.

² At the time of the initiation of her grievance, the grievant had twenty-one years of state service.

that the NOVA differential would continue for only six months after which her pay would be reduced.³ The grievant asserts that she verbally raised an objection to the removal of the NOVA differential at that time, but nevertheless she accepted the agency's offer on May 25, 2002. On December 30, 2002, the grievant initiated a grievance challenging the loss of the NOVA differential. The grievance proceeded through the management resolution steps, but relief was not granted.⁴ The agency head denied qualification of the grievance, and the grievant now requests a qualification determination from this Department.

DISCUSSION

By statute and under the grievance procedure, management reserves the exclusive right to manage the affairs and operations of state government.⁵ Further, complaints relating solely to the revision of wages, salaries, and position classifications and the transfer and assignment of employees "shall not proceed to a hearing."⁶ Accordingly, challenges to such decisions do not qualify for a hearing unless the grievant presents evidence raising a sufficient question as to whether in compensating her, policy was misapplied, or discrimination, retaliation or discipline improperly influenced the decision.⁷ In this case, the grievant contends that management misapplied or unfairly applied policy by removing her NOVA differential pay six months after her transfer to another DOC facility outside the differential area.

For a claim of policy misapplication to qualify for a hearing, there must be sufficient evidence of a violation of a mandatory policy provision, or evidence that management's actions, in their totality, are 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, including its classification and compensation system is to be "based on merit principles and objective methods of appointment and other incidents of state employment."⁸ With regard to compensation, the Department of Human Resource Management's (DHRM) compensation procedures allow the payment of market-based differentials and supplements in addition to a base salary.⁹ Differentials are base pay adjustments to make salaries more competitive with the market and may be applied to Roles, Salary Reference (or SOC) Titles, Work Titles,

³ The agency made an internal decision to freeze the differential pay for six months from the grievant's date of transfer.

⁴ The agency originally claimed the grievance was not timely filed because it was not initiated within 30 calendar days of when she was advised she would lose the differential pay. Subsequently, the grievant requested a ruling from this Department. We held the grievance was timely filed and in compliance with the grievance procedure because it was filed within 30 calendar days of the event that forms the basis of the grievance, which was the actual reduction of her pay rather than the notice six months earlier that her pay would be reduced. See EDR Ruling, No. 2003-016, dated February 20, 2003.

⁵ Va. Code § 2.2-3004(B).

⁶ Va. Code § 2.2-3004(C).

⁷ Va. Code § 2.2-3004(A); *Grievance Procedure Manual* § 4.1, pages 10-11.

⁸ Va. Code § 2.2-2900.

⁹ See DHRM *Human Resource Management Manual*, Chapter 9, "Differentials and Supplements."

Pay Areas or based on geographic location.¹⁰ In the case of Pay Areas, NOVA is an area where market conditions have consistently required the payment of differentials and are based on the cost of competing for employees to perform specific kinds of work in the NOVA area.¹¹ Significantly, this differential applies only to those employees in *positions* located in the area defined as NOVA.¹²

In support of her claim, the grievant asserts her pay should remain unchanged because of her length of service with the state and because she continues to reside in the NOVA area. On the other hand, the agency maintains the removal of the NOVA differential was in accord with state and agency policy. In this case, management clearly followed state policy by removing the differential pay; the grievant's *position* was no longer located in the NOVA differential area. Indeed, management could have removed the differential at the time of the grievant's transfer, rather than six months later, had they chose to do so. State policy indicates that when an employee changes positions, any differential that might apply to the former position is removed if it does not apply to the new position.¹³ Furthermore, in the case of layoff, if the position offered as a placement option is not assigned a differential similar to the employee's former position, the agency has the authority to remove the differential at the time of placement.¹⁴ Thus, the grievant received six months of differential pay DOC was not required to pay her based upon policy.

While the grievant disagrees with management's action, such action was not a misapplication or unfair application of policy. Therefore, this issue does not qualify for a 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, she 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 she does not wish to proceed.

¹⁰ *Id.* at 1; *see also* DHRM Policy No. 3.05, page 18 of 21, "Differentials" (effective September 25, 2000; revised March 1, 2001).

¹¹ DHRM *Human Resource Management Manual*, Chapter 9, Differentials and Supplements, page 2.

¹² *Id.* (emphasis added).

¹³ *See* DHRM Policy No. 3.05, Compensation, page 18 of 21 (effective September 25, 2000 and revised March 1, 2001).

¹⁴ *See* DHRM Policy No. 1.30, Layoff, page 12 of 21 (effective date, September 25, 200 and revised August 10, 2002). This policy was not in effect when management informed the grievant DOC would discontinue her differential pay; however, it had become effective at the time it actually was removed from her pay.

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