

Issue: Qualification/Separation/Layoff-Recall; Ruling date: August 1, 2003; Ruling #2003-085; 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. 2003-085  
August 1, 2003

The grievant has requested a ruling on whether his grievance initiated on November 18, 2002 with the Department of Corrections (DOC or agency) qualifies for a hearing. The grievant claims the agency misapplied or unfairly applied the layoff policy by placing him in a position outside his Career Group, rather than separating him with severance benefits. For the reasons discussed below, this grievance does not qualify for a hearing.

FACTS

The grievant was employed by DOC in business and administration for over twenty-six years.<sup>1</sup> Due to budget reductions, his facility was designated for closure, and management requested the grievant to indicate his placement preferences. Consequently, the grievant chose one major institution and one correctional field unit as facilities where he possibly would be willing to accept job placement. Neither facility had a position available in the grievant's Career Group.<sup>2</sup> With no similar position available for placement, management reviewed other positions within his geographic area where there would be no salary reduction and for which he was minimally qualified. These criteria were met by an opening for a Corrections Officer at the major institution the grievant had selected as a placement option. However, the grievant then requested DOC to consider available positions outside of his geographic area, if the position was in his Career Group. DOC located such a position for the grievant, but he decided not to accept it because of the lengthy commute. Subsequently, DOC offered the grievant the Corrections Officer position, which he accepted on November 7, 2002.

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<sup>1</sup> Prior to beginning his work with DOC in administration and business, the grievant worked as a Corrections Officer for approximately ten months.

<sup>2</sup> A Career Group is defined as a sub-group of an Occupational Family and identifies a specific occupational field common to the labor market. See the Department of Human Resource Management's website: [www.dpt.state.va.us/compensation/jobstructure.html](http://www.dpt.state.va.us/compensation/jobstructure.html), visited on June 20, 2003.

On November 18, 2002, the grievant initiated a grievance challenging management's actions. Specifically, he asserts that management's placement of him in a different Career Group violates the intent of the policy, and he would rather have received severance benefits. Additionally, he questions his ability to fully function as a Corrections Officers within six months.

The grievance proceeded through the management resolution steps, but relief was not granted. During the management resolutions steps, management asserted that the grievant was placed appropriately based upon policy and that he was ineligible for severance benefits because he was not placed on Leave Without Pay (LWOP) – Layoff.<sup>3</sup> On April 3, 2002, the agency head denied qualification of the grievance. 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.<sup>4</sup> Further, complaints relating solely to layoff or to the transfer and assignment of employees “shall not proceed to a hearing.”<sup>5</sup> Accordingly, challenges to such decisions do not qualify for a hearing unless the grievant presents evidence raising a sufficient question as to whether the agency misapplied or unfairly applied policy, or discrimination, retaliation or discipline improperly influenced the transfer decision.<sup>6</sup> Here, the grievant claims the agency misapplied or unfairly applied the layoff policy by placing him in a position outside his Career Group, rather than separating him with severance benefits.

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.

The controlling policy in this case is the Department of Human Resource Management (DHRM) Layoff Policy, which addresses the issue of placement opportunities within an agency prior to layoff.<sup>7</sup> According to the policy, after an agency identifies all employees eligible for placement, the agency must attempt to place them by seniority in any valid vacancies agency-wide in the current or a lower Pay Band.<sup>8</sup> Additionally, the placement must “be in the highest position available for which the

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<sup>3</sup> See Third Resolution Step Response, dated March 10, 2003.

<sup>4</sup> Va.Code § 2.2-3004(B).

<sup>5</sup> Va. Code § 2.2-3004(C).

<sup>6</sup> Va. Code § 2.2-3004(A); *Grievance Procedure Manual* § 4.1, pages 10-11.

<sup>7</sup> See DHRM Policy No. 1.30, Layoff, page 10 of 21 (effective September 25, 2000, revised August 10, 2002).

<sup>8</sup> *Id.*

employee is *minimally qualified* at the same or lower level in the same or lower Pay Band, regardless of work hours or shift.”<sup>9</sup> If such a position is offered and declined by the employee, the agency is under no obligation to consider additional placement options for the employee.<sup>10</sup>

The grievant first asserts that DOC violated policy when management failed to place him in his same Career Group. However, such a placement is not required by the layoff policy. As stated above, placement must be to the highest position for which the employee is minimally qualified at the same or lower level in the same or lower Pay Band. Significantly, the grievant does not claim management failed to place him in the highest available position for which he was minimally qualified. Further, the agency actually offered the grievant a similar position in his Career Group, but the grievant declined the position because it was located outside his geographic area. In light of the above, the grievant has failed to present evidence raising a sufficient question as to whether management violated a mandatory policy provision.

Additionally, the grievant maintains his placement was an unfair application of policy because it violates the intent of the state’s establishment of Career Groups during Compensation Reform in 2000. In support of this position, he notes that one of the goals of the new Compensation Management System is to promote growth and professional development through the identification of career paths, and his career path for the last twenty-five years of employment with DOC has been in administration and business. Thus, he disputes his placement outside his Career Group, in a position very different from his former position. When examined, however, this claim essentially challenges the content of the layoff policy itself -- the language and stipulations that were included in or excluded from the policy, which permit internal placement to be outside an employee’s Career Group. While any claim raised in a timely grievance may proceed through the management resolution step process, by statute and under the grievance procedure, challenges to the *contents* of established personnel policies, procedures, and rules and regulations do not qualify for hearing.<sup>11</sup>

Also, the grievant has clearly indicated his preference for layoff rather than placement in the position of Corrections Officer, thereby entitling him to receive severance benefits. However, under the layoff policy, once the agency has identified employees eligible for placement, management *must* attempt to place them by seniority into the highest position available at the same or lower level in the same or lower Pay Band for which the employee is minimally qualified. In this case, management presented a placement option to the grievant that complied with these requirements, and he subsequently accepted the offer. Thus, while he may have preferred to receive severance

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<sup>9</sup> *Id.* (emphasis in original).

<sup>10</sup> *Id.*

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

benefits, management could not be viewed as having misapplied or unfairly applied state policy.<sup>12</sup>

Lastly, in his attachment to his Grievance Form A, the grievant appears to contend that he doubts his ability to become minimally qualified<sup>13</sup> for the Corrections Officer position within six months. However, he later contradicted this contention when he stated that the “minimum requirements for a Correctional Officer are so small that almost anybody can meet the minimum qualifications for the position.”<sup>14</sup>

In sum, while the grievant’s concern for the change in his career path is understandable, he has not presented evidence raising a sufficient question as to whether there was a misapplication or unfair application of the layoff policy when DOC placed him in the Corrections Officer position.

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.

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Claudia T. Farr  
Director

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<sup>12</sup> While the grievant meets many of the requirements for eligibility for severance benefits, significantly, under the Workforce Transition Act of 1995 (WTA) he must establish that reemployment with the Commonwealth is not possible because there is no available position for which he is qualified or the position offered to him requires relocation or a reduction in salary. *See* Va. Code § 2.2-3202(A). The Workforce Transition Act of 1995 can be found at § 2.2-3200 *et seq.*

<sup>13</sup> *Minimally qualified* is defined as “[e]mployees who are determined by agency management to (1) possess the necessary knowledge, skills, abilities (KSAs) and other bona fide job requirements as outlined in the Employee Work Profile (or other document used by the agency to describe the nature of the position and the position’s qualifications) and (2) be able to satisfactorily perform the duties of the position after a six-month period of orientation in the new position.” DHRM Policy 1.30, page 3 of 21 (effective date September 25, 2000, revised August 10, 2002).

<sup>14</sup> *See* Letter from grievant, To Whom it May Concern, dated April 17, 2003.