

Issue: Qualification/Separation/Layoff/Recall; Ruling Date: July 3, 2003; Ruling #2003-088; 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  
Ruling Number 2003-088  
July 3, 2003

The grievant has requested a ruling on whether his December 11, 2002 grievance with the Department of Corrections (DOC or the agency) qualifies for a hearing. The grievant claims that during the layoff placement process, he was not considered for two open positions for which he was qualified and was not allowed to pick his placement, unlike others selected for layoff at the correctional institution where the grievant was formerly employed (Facility A). For the reasons discussed below, this grievance does not qualify for hearing.

FACTS

On or about October 21, 2002, the grievant was notified that business reasons necessitated his lay off. At the time, the grievant was employed as a Building and Grounds Supervisor A at Facility A.<sup>1</sup> On November 22, 2002, the grievant was offered placement at Facility B as a Boiler Operator.<sup>2</sup> The grievant accepted the position offered and began working at Facility B on December 10, 2002. On May 9, 2003, the grievant was offered and accepted a recall to his previous Role of Trades Technician IV at Facility C.

DISCUSSION

*Placement Process*

The essence of the grievant's claim is a misapplication or unfair application of the layoff policy's placement procedures. For an allegation of misapplication of policy or 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

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<sup>1</sup> The working title for this position is Building and Grounds Supervisor A while the Role title is Trades Technician IV. This position is in Pay Band 4.

<sup>2</sup> The working title for this position is Boiler Operator while the Role is Utility Plant Specialist II. This position is in Pay Band 3.

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

The applicable policies are DHRM Policy 1.30 *Layoff* and DOC Procedure 5-39 *Layoffs: Reductions in Work Force*. DHRM policy mandates that the agency make an attempt to place an employee by *seniority* to any valid vacancy agency-wide in the current or a lower Pay Band.<sup>3</sup> Additionally, “such placement shall be in the highest position available for which the employee is minimally qualified at the same or lower level in the same or lower Pay Band, regardless of work hours or shift.”<sup>4</sup> DOC Procedure 5-39 states that “[t]he agency must first consider any vacant full-time positions within the agency that it intends to fill at the same or lower level as the position to be discontinued and that are in the employee’s pay band.”<sup>5</sup> Procedure 5-39 further states that “if there is more than one minimally qualified employee for the position, the position will be awarded according to *seniority*.”<sup>6</sup> Moreover, “[i]f there is more than one (1) vacant position, agency management may determine which vacancy to offer.”<sup>7</sup>

The grievant claims that there were two other positions available that he should have been offered as placement options during the layoff process. The first was a CE Production Supervisor position at Facility A and the other was an Equipment Repair Technician Senior position at Facility C. In support of his contention, the grievant claims that both positions were closer to his home than the Facility B position, he was more qualified for these two positions than the position he was offered, and others were allowed to pick their desired placement, while he was not.<sup>8</sup> Additionally, the grievant claims that the CE Production Supervisor position was still open as of December 5, 2002 and that the employee placed in the Equipment Repair Technician Senior position was not qualified to perform the job.

On November 15, 2002, the CE Production Supervisor position was offered to an employee with more seniority than the grievant. Similarly, on November 19, 2002, the Equipment Repair Technician Senior position was offered to an employee with more seniority than the grievant.<sup>9</sup> As such, both the CE Production Supervisor and the Equipment Repair Technician positions were unavailable as placement options on November 22, 2002, the date the grievant was offered placement at Facility B. Moreover, it appears that both positions had been filled by employees with more seniority than the grievant, in accordance with policy. Further, while the employees at Facility A were allowed to fill out placement preference forms, and other, more senior employees

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<sup>3</sup> See DHRM Policy 1.30, page 10 of 22 (emphasis added).

<sup>4</sup> *Id.*

<sup>5</sup> DOC Procedure Number 5-39.7 (C) (1).

<sup>6</sup> DOC Procedure Number 5-39.7 (D) (2) (emphasis added).

<sup>7</sup> DOC Procedure Number 5-39.7 (D) (3).

<sup>8</sup> The grievant does not claim that he was treated differently as a result of his membership in a protected class, but merely states that he does not know why he was precluded from choosing his placement, while others selected for layoff were allowed to select their placement positions.

<sup>9</sup> Both employees were minimally qualified for the positions and began working in their new positions on December 10, 2002.

were allowed to pick their desired placement until dwindling placement options made this increasingly more difficult, policy does not require that an employee be allowed to pick his placement, or be offered only placement options within a certain distance from his home.<sup>10</sup>

Additionally, even if the CE Production Supervisor and the Equipment Repair Technician positions had been open and the grievant had been more qualified for these positions than the Boiler Operator position, policy does not require that an employee be offered placement in a position for which he is *most* qualified.<sup>11</sup> Similarly, policy does not require that the most qualified employee be offered placement in a particular position.<sup>12</sup> Finally, this grievance presents insufficient evidence of any unfair application of policy, as the agency has presented a legitimate business reason why it was unable to allow the grievant to pick his desired placement, in contrast to other, more senior employees at Facility A.

#### 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 he does not wish to proceed.

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Director

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<sup>10</sup> See DHRM Policy 1.30, *Placement Within the Agency*, page 10 of 22 (“[a]fter an agency has identified all employees eligible for placement, an attempt must be made to place them by seniority to any valid vacancies **agency-wide** in the current or a lower Pay Band.” (emphasis added)).

<sup>11</sup> See DHRM Policy 1.30, *Placement Within the Agency*, page 10 of 22 (placement shall be in the highest position available for which the employee is *minimally qualified*). See also DOC Procedure Number 5-39.7 (C)(1) and (2).

<sup>12</sup> *Id.*