

Issue: Qualification/Work Conditions/Inclement weather and agency closing; Ruling date: July 9, 2003; Ruling #2003-089; Agency: Department of Health; Outcome: not qualified



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

QUALIFICATION RULING OF DIRECTOR

In the matter of Department of Health/ No. 2003-089
July 9, 2003

The grievant has requested a ruling on whether her February 20, 2003 grievance with the Department of Health (VDH) qualifies for a hearing. The grievant essentially claims that the agency's inclement weather policy contradicts Department of Human Resource Management (DHRM) Policy 1.35. For the following reasons, this grievance does not qualify for a hearing.

FACTS

The grievant is a Public Health Nurse for VDH. She claims that on numerous occasions in 2002-2003 her office remained open during inclement weather. In particular, the grievant cites several hazardous conditions, which, according to the grievant, should have warranted the closing of her local VDH office on January 23, 2003. The grievant argues that employees are forced to (1) travel in unsafe conditions or (2) use annual leave time when there is inclement weather.

The Commonwealth has established a policy for emergency closings.¹ This policy provides that for facilities outside of Richmond, individual agency heads or their designees shall make emergency closing decisions.² The grievant claims that VDH Policy 1.35 on emergency closings is unfair, because it states that the decision to close offices located outside of the Richmond area is based on the decision of the local governing body.³ She further notes that other state offices in her area were closed on the days in question, and that her office should be closed when other state offices are closed due to dangerous weather conditions. She requests that the policy be amended so that emergency closing decisions are not tied to the local government offices.⁴

¹ DHRM Policy 1.35.

² *Id.*, "Determination of Authorized Closings," pages 2-3.

³ *See* VDH Policy 1.35, "Responsibility for Closing Decision." VDH Policy 1.35 grants district or office directors the discretion to make closing decisions and states that "VDH work units will not be closed if the administrative offices of the local jurisdiction remain open." *Id* at page 1.

⁴ Specifically, she offers the following suggestions: (1) that offices should be closed when the State Police recommends that citizens not drive except in cases of emergency; (2) decisions should follow the area court systems, which follow "strict yet fair standards" for closing; (3) VDH offices should close when two or

DISCUSSION

By statute and under the grievance procedure, management reserves the exclusive right to manage the affairs and operations of state government.⁵ Thus, all claims relating to issues such as the means, methods, and personnel by which work activities are to be carried out generally do not qualify for hearing, unless the grievant presents evidence raising a sufficient question as to whether discrimination, retaliation, or discipline may have improperly influenced management's decision, or whether state policy may have been misapplied.⁶

In this case, the grievant asserts that the VDH misapplied state policy by promulgating an emergency closing policy that allegedly contradicts DHRM Policy 1.35. However, it does not appear that VDH Policy 1.35 violates any mandatory provision in DHRM Policy 1.35. State policy requires, for state offices located outside of the metropolitan Richmond area, that "individual agency heads or their designees . . . shall make closing decisions affecting their agencies or institutions."⁷ VDH's agency head has determined that closing decisions for local VDH offices shall follow the decisions of local government authorities.⁸ In this case, the grievant's county government favors keeping its governmental offices open. State policy places the responsibility for closing decisions within the agency head's discretion. The fact that the grievant's perception of when weather conditions justify an office closing differs from that of management cannot support a claim that the agency misapplied or unfairly applied policy.

The grievant is, in essence, disputing the contents of the policy, not its application. The grievant is not arguing that the policy is *applied* unfairly, rather, she is arguing that the policy *is* unfair, because she disagrees with the county government's assessment of what constitutes "inclement weather." Indeed, she suggests ways in which the policy's content could be amended to incorporate standards for unsafe travel conditions. However, the grievance procedure expressly excludes challenges to the "contents of . . . personnel policies" from qualification, unless there is some support for a claim of discrimination, retaliation, or discipline.⁹ The grievant asserts no such claim in

more state agencies in the area are closed; (4) decisions should be made by the area Health Director without any influence from the local government; or (5) policy should establish a standard that addresses specific weather conditions, such as "an inch or more of snow" or "significant icing." See Grievance Form A, dated February 20, 2003.

⁵ Va. Code § 2.2-3004(B).

⁶ Va. Code § 2.2-3004(A) and (C); *Grievance Procedure Manual* § 4.1(b) and (c), pages 10-11.

⁷ DHRM Policy 1.35, "Determination of Authorized Closings" pages 2 -3.

⁸ See VDH Policy 1.35, "Responsibility for Closing Decisions."

⁹ *Grievance Procedure Manual* § 4.1(c), page 11. The grievant describes the issue as follows: "*This grievance is directed toward HR Policy 1.35 of the Virginia Department of Health. The section 3.b.1. states that the decision of the District or Office Director will be based on the governing body to close city or county administrative offices. The policy does not address areas where the county administrative office does not close. In our area, our administrative building houses the 911 Call Center and as such, will not close. Therefore, I feel that a directive should be added for those agencies that fall under this category.*" Grievance Form A (emphasis added).

this instance. Concerns about the contents of state policies are more appropriately addressed to the Department of Human Resource Management, the state agency that, by statute, has the authority to promulgate and interpret state personnel policies.¹⁰ Accordingly, this issue does not qualify for 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 the qualification determination to the circuit court, the grievant 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 wishes to conclude the grievance and notifies the agency of that desire.

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¹⁰ Va. Code § 2.2-1201(13).