

Issue: Qualification/Compensation/Leave/Internal Pay Alignment; Ruling Date:
November 17, 2003; Ruling #2003-097; Agency: Virginia 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
Ruling No. 2003-097
November 17, 2003

The grievant has requested a ruling on whether his February 28, 2003 grievance with the Department of Health (VDH or agency) qualifies for a hearing. The grievant claims that he was improperly denied his request for an internal pay alignment. For the following reasons, this grievance does not qualify for a hearing.

FACTS

The grievant is employed by VDH as an Environmental Health Specialist Senior. On January 23, 2003, he requested an In-Band Adjustment for internal alignment purposes. Upon review, it was determined that the grievant was not eligible for a salary increase because his salary was *above* the VDH mean for employees. Subsequently, the agency concluded that the data used to make the determination of ineligibility contained errors and that the grievant's salary was below the mean salaries of VDH and district employees.¹ Analysis of the correct data determined that while the grievant was in fact "eligible for consideration [for] an internal alignment under current policy," none was recommended because his salary was *within* 15% of the mean salary of comparable co-workers in his organizational unit.²

The agency explains that it adopted the "mean minus 15%" test as an objective benchmark to "help determine whether an employee's salary is sufficiently out of alignment with comparable employees (employees in the same health district or program office, at the same pay band and responsibility benchmark level, performing similar work, with equivalent KSA's etc.) so as to indicate a salary adjustment may in order."³ The agency uses a computer program to calculate the organizational mean salary by computing the average salary of all employees in a work unit who are in the same role, pay band and responsibility benchmark level, and have the same working title as the

¹ March 19, 2003, Second-Step Response.

² *Id.*

³ Memorandum to this Department from the Agency's Personnel Practices Manager, Sr., dated September 26, 2003.

subject employee.⁴ For eligible⁵ employees with salaries below the organizational mean, minus 15%, the software recommends a salary adjustment to bring the employee up to the “mean minus 15%” level. The grievant’s primary claim appears to be that in adopting and utilizing the “mean minus 15%” rule, the agency misapplies state policy because that rule does not consider the objective factors cited in DHRM policy for granting internal salary alignments.⁶

DISCUSSION

By statute and under the grievance procedure, management reserves the exclusive right to manage the affairs and operations of state government.⁷ Thus, all claims relating to issues such as the means, methods, and personnel by which activities are to be carried out generally do not qualify for a 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.⁸ The grievant claims that the agency has misapplied state policy in this case, by promulgating and applying a “mean minus 15%” rule, which he asserts conflicts with DHRM Policy 3.05.

Department of Human Resource Management (DHRM) Policy 3.05, allows agencies to grant in-band adjustments, up to align an employee’s salary more closely with other employees in comparable positions.⁹ Policy 3.05 also requires all agencies, to develop an agency Salary Administration Plan (SAP).¹⁰ A SAP outlines how the agency will implement the Commonwealth’s compensation management system, and is “the foundation for ensuring consistent application of pay decisions.”¹¹ Here, the agency has complied with this requirement by developing a SAP, which describes the process by which in-band adjustments may be awarded to deserving agency employees. Further, during the course of its investigation, this Department sought and received an interpretation of the applicable state and agency compensation policies from the Department of Human Resources Management (DHRM), the state agency charged with

⁴ This calculation of the organizational mean excludes the salary of the employee under consideration which means that an employee is not disadvantaged if his/her salary is lower than the organizational mean.

⁵ One cannot receive an in-band adjustment if otherwise deemed ineligible by policy. For example, an employee cannot receive more than a 10% increase from an in-band adjustment in any given fiscal year.

⁶ See DHRM Policy 3.05, *Internal Salary Alignment*, page 3. Objective factors include the proximity of one employee’s salary to the salaries of others who have comparable levels of training and experience; duties and responsibilities; performance; and knowledge, skills, abilities and competencies.

⁷ Va. Code § 2.2-3004(B).

⁸ Va. Code § 2.2-3004(A) and (C); *Grievance Procedure Manual* § 4.1(b) and (c), pages 10-11.

⁹ DHRM Policy 3.05, page 11 of 21.

¹⁰ See DHRM Policy 3.05. The SAP “addresses the agency’s internal compensation philosophy and policies, responsibilities and approval processes; recruitment and selection process; performance management; administration of pay practices; program evaluation; appeal process; EEO considerations and the communication plan.” DHRM Policy 3.05, page 1 of 21.

¹¹ DHRM Policy 3.05, page 1 of 21.

the responsibility for promulgating and interpreting state personnel policies. DHRM opined that the agency's compensation policy (SAP) does not conflict with or otherwise violate state policy.¹² Thus, this Department cannot qualify the grievance on the basis of that the agency's policy conflicts with state policy.

Regarding *agency* policy, there is no evidence that VDH has misapplied or unfairly applied its own policy in this case.¹³ While the agency has repeatedly stated that adjustments are only recommended when an employee's salary falls 15% below the salary mean,¹⁴ this general "rule" is not absolute. If "extraordinary circumstances" exist, the agency may deviate from the "mean minus 15%" rule and offer an adjustment when a salary does not fall below that level.¹⁵ The grievant's situation does not appear to be one involving "extraordinary circumstances." Of the nineteen Environmental Health Specialist Seniors (EHS) in the grievant's district, only three received internal alignment increases. The salary of each of those individuals was below the organizational mean minus 15%. Moreover, no EHS Seniors in the grievant's district who had salaries above the organizational mean minus 15% received internal alignment increases. Accordingly, this Department cannot conclude that the agency has misapplied or unfairly applied its compensation policy in this case.

CONCLUSION

For the reasons discussed above, this grievance does not qualify for a hearing. 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, the grievant should notify the human resources office, in writing, within

¹² The agency claims that the grievant is challenging the contents of agency policy. The agency is correct that grievances that relate solely to the contents of personnel policies cannot proceed to hearing. See, *Grievance Procedure Manual*, §4.1(c), page 11. However, grievances that present evidence that agency policy or practice conflicts with state policy can proceed to hearing. The Department of Human Resources Management (DHRM) has the final authority to make the determination regarding any such conflict. Because DHRM has ruled that the agency's policy does not conflict with state policy, the grievance cannot be qualified on this basis.

¹³ The grievant did not expressly claim that the "mean minus 15%" rule was not uniformly or fairly applied. However, during the course of this Department's investigation, it was discovered that the agency has granted a number of exceptions to this general 'rule.' Nine of the thirty-one employees who received in-band adjustments during the July 2002-July 2003 fiscal year had salaries that "did not fall below the organization mean minus 15%." Because the grievant has asserted a claim of "misapplication of [compensation] policies," this Department believes it appropriate to address the agency's consistency in applying its "mean minus 15%" rule.

¹⁴ See the Agency Head's [Qualification] Determination in which the Agency Head states that "[a]djustments are recommended when an employee's salary falls below 15% of the salary mean." The agency has since corrected this statement. The agency clarified that it intended to state that adjustments are "recommended when an employee's salary falls 15% below the salary mean." Memorandum to this Department from the Agency's Personnel Practices Manger, Sr., dated September 26, 2003. The agency similarly claimed in the Second-Step Response that "[a]djustments are recommended only for those individuals with salaries falling less than 15% below the mean salary."

¹⁵ See VDH Policy No. 3.05.2, *In-Band Adjustment-Internal Alignment*, (4)(h)(1-3) and (5)(a-b).

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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.

Claudia T. Farr,
Director

June M. Foy
EDR Consultant, Sr.