

Issue: Qualification/FLSA/overtime; Ruling Date: September 4, 2003; Ruling #2003-109; Agency: Department of State Police; Outcome: not qualified



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

QUALIFICATION RULING OF DIRECTOR

In the matter of Department of State Police
Ruling Number: 2003-109
September 4, 2003

The grievant has requested a ruling on whether his April 28, 2003 grievance with the Virginia Department of State Police (VSP or the agency) qualifies for hearing. The grievant claims that management unfairly and inconsistently applied the agency's overtime leave policy. For the reasons discussed below, this grievance does not qualify for hearing.

FACTS

The grievant is employed as a non-exempt sworn employee in the VSP Safety Division. To ensure compliance with agency policy and maintain minimal impact on the agency budget, VSP upper management instructed the Safety Division Commander to make certain that all sworn employees' overtime leave accruals remain below 96 hours. To accomplish this directive, the Safety Division Commander instructed its supervisors that when a sworn employee's overtime leave accrual reaches 88 hours, they were to offer the employee the option of taking 8 or more hours of overtime leave.¹ Further, if the employee failed to voluntarily take the leave, management was instructed to assign the leave in increments of no less than 8 hours. As such, when the grievant's overtime leave accrual reached 88 hours, he was required to take 8 hours of overtime leave.

DISCUSSION

By statute and under the grievance procedure, management reserves the exclusive right to manage the affairs and operations of state government.² Therefore, claims relating to issues such as the methods, means and personnel by which work activities are carried on and the contents of established personnel policies, procedures, rules and regulations generally do not qualify for hearing, unless the grievant presents evidence

¹ Since that time, the Safety Division Commander has reduced the maximum accrual of overtime leave to 80 hours. In contrast, non-exempt sworn employees in other VSP divisions are permitted to accrue 96 hours of overtime leave.

² See Va. Code § 2.2-3004(B).

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.³ This grievance presents no claim or evidence of improper discrimination or retaliation; therefore the grievant's claim of unfair or inconsistent application of policy will be the only issue addressed in this ruling.⁴

Misapplication or Unfair Application of Policy

For a claim of policy misapplication or unfair application of policy to qualify for a hearing, there must be evidence raising a sufficient question as to whether management violated 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.

In this case, the applicable policies are Department of Human Resource Management (DHRM) Policy No. 3.15, *Overtime Leave* and VSP General Order No. 41, *Overtime Policy*. Under DHRM Policy No. 3.15, agencies may establish a maximum amount of overtime leave that an employee is allowed to accrue, not to exceed 240 hours or 480 hours if the employee holds a non-exempt public safety, emergency or seasonal position.⁵ Consequently, VSP enacted General Order No. 41, which provides:

Non-exempt sworn employees will be paid overtime at one and one-half rate for all hours worked after an accumulation of 96 hours of overtime leave. The first 48 hours of accumulated overtime leave may be taken as leave or retained at the employee's option. Additional hours shall be managed (assigned) by supervision to ensure sworn employee accruals remain below 96 hours. Overtime leave assigned by supervisors will not assigned in less than eight-hour increments unless a lesser increment is requested by the sworn employee and approved by the supervisor.⁶

Although not expressly endorsed in state policy, DHRM, the state agency charged with the development and interpretation of state personnel policy, has confirmed with this Department that there is no violation of state policy should an agency exercise its prerogative to unilaterally schedule an employee's use of overtime leave. Moreover, during this Department's investigation DHRM affirmed that agencies may impose consistent overtime leave accrual limits for all of its divisions or may let divisions set differing limits as long as such limits remain within state and agency policy guidelines.

The grievant claims that requiring him to use eight hours of overtime leave when he had an accumulation of only 88 hours of such leave was an unfair and inconsistent application of VSP General Order No. 41. More specifically, the grievant questions his

³ See Va. Code § 2.2-3004; *Grievance Procedure Manual* §4.1(c), page 10.

⁴ The grievant's express claim of unfair application of policy will be treated broadly for purposes of this ruling as a claim of unfair and misapplication of policy.

⁵ See DHRM Policy 3.15(III)(B) and (C), page 2 of 4.

⁶ Department of State Police General Order No. 41, paragraph 4(a)(1)(b), page 41-3.

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required use of overtime leave upon reaching an accumulation of 88 hours, when other non-exempt sworn employees outside of his division, but within VSP, are permitted to carry overtime leave balances in excess of 88 hours. However, because both the agency's overtime leave accrual limits under VSP General Order No. 41 and the more restrictive Safety Division limits conform to state policy, VSP has not misapplied or inconsistently applied agency policy. As such, this grievance 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 this Department's 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 notifies the agency that he wishes to conclude the grievance.

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