

Issue: Qualification/Severance/Layoff; Ruling date: September 4, 2003; Ruling #2003-138; Agency: Polytechnic Institute and State University; Outcome: qualified



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

QUALIFICATION RULING OF DIRECTOR

In the matter of Virginia Polytechnic Institute and State University
Ruling Number 2003-138
September 4, 2003

The grievant has requested a ruling on whether her June 3, 2003 grievance with Virginia Polytechnic Institute and State University (VPI&SU or Virginia Tech) qualifies for a hearing. The grievant claims that she is entitled to full layoff rights, including severance benefits and that Virginia Tech has misapplied state policy by denying her severance benefits. For the reasons discussed below, this grievance qualifies for hearing.

FACTS

On July 1, 2001, the grievant began employment with Virginia Tech pursuant to a contract between Virginia Tech and the Department of Social Services (DSS).¹ The grievant's position with Virginia Tech was a restricted² full-time position that was sustained with 50% federal funding and 50% state funding. Upon cessation of the funding, the grievant's position was eliminated and she was informed that she would be laid off effective June 9, 2003. The grievant was subsequently denied severance benefits and initiated her grievance on June 3, 2003.

DISCUSSION

Virginia Tech claims that the grievant is ineligible for severance benefits because her position was contingent upon grant funds from federal sources.³ The grievant claims that her denial of severance benefits is a misapplication or unfair application of the state severance benefits policy. Specifically, the grievant claims that (1) it is unclear whether

¹ Prior to her employment with Virginia Tech, the grievant was employed in a full-time classified position with DSS.

² Restricted employees are defined as "[e]mployees whose positions receive 10 percent or more of required funding from non-continuous or non-recurring funding sources, such as grants, donations, contracts, capital outlay projects, or higher education auxiliary enterprise revenues." DHRM Policy No. 2.20 II(A)(2).

³ In making this determination, Virginia Tech relies upon the Workforce Transition Act (WTA). Specifically, Va. Code § 2.2-3202(B) states "[a]n otherwise eligible employee whose position is contingent upon project grants as defined in the Catalogue of Federal Domestic Assistance, shall not be eligible for the transitional severance benefit conferred by this chapter unless the funding source had agreed to assume all financial responsibility therefore in its written contract with the Commonwealth."

the 50% federal funding source for her position came from grant funds as defined in the Catalog of Federal Domestic Assistance (CFDA); and (2) even if the 50% federal funding was CFDA grant funds, she is still entitled to severance benefits because at least 50% of the funding for her position came from state sources.

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.

The policy in question in the present case is the Department of Human Resource Management (DHRM) Policy No. 1.57; *Severance Benefits*. Policy 1.57 states that restricted full-time employees are eligible to receive severance benefits.⁴ However, as similarly stated in the WTA, "restricted employees in *grant-funded* positions as defined in the Catalog of Federal Domestic Assistance are eligible to receive severance benefits only if the funding source has agreed to assume all financial responsibility in its written contract with the Commonwealth."⁵ Policy 1.57 further states that in regard to severance payments, "[r]estricted employees who are *partially funded* by grant funds may be eligible to receive severance based on the percentage of non-grant funded salary."⁶ In sum, Policy 1.57 confers severance payment benefits upon eligible restricted full-time employees partially funded by non-grant funds commensurate with the percentage of salary that is provided by non-grant funds.⁷ In contrast, the WTA is silent as to severance payments for employees whose positions are partially funded by non-grant sources.

In the present case, it is undisputed that the grievant occupied a restricted full-time position with Virginia Tech. Moreover, it appears that at least 50% of the funding for her position came from non-grant funds from Commonwealth of Virginia resources, not the federal government. Therefore, while the extent of severance benefits to which the grievant is entitled is unclear, it appears that at the very least, under policy, the grievant would be entitled to severance payments based on the percentage of non-grant funds. Virginia Tech has denied the grievant any type of severance benefit. As such, this grievance qualifies for further review of the facts, policy and law by a hearing officer.

Because this Department has concluded that the grievance qualifies for hearing based on the grievant's position being funded in part by non-grant funds, it is unnecessary to determine whether the other funding source was grant funds as defined in

⁴ See DHRM Policy No. 1.57, page 1 of 10. See also DHRM Policy 1.57, page 3 of 10 (Severance benefits include: severance payments, continued state contribution toward health insurance premiums, and continued state contribution of life insurance premiums, OR enhanced retirement option.)

⁵ DHRM Policy No. 1.57, page 1 of 10. See also Va. Code § 2.2-3202(B).

⁶ DHRM Policy No. 1.57, page 2 of 10. During this Department's investigation, DHRM confirmed that grant funds in this context referred to grant funds as defined in the CFDA and that non-grant funds would be all other types of state funding.

⁷ As part of its investigation, this Department's confirmed with DHRM its reading of Policy 1.57.

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the CFDA. That decision and the consequential appropriate amount of total severance benefits conferred upon the grievant will be left to the hearing officer for determination.

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CONCLUSION

For the reasons discussed above, this Department qualifies the June 3, 2003 grievance for a hearing. This qualification ruling in no way determines that the agency's decision to deny the grievant severance benefits was a misapplication of policy or otherwise improper, only that further exploration of the facts by a hearing officer is appropriate.

For information regarding the actions the grievant may take as a result of this ruling, please refer to the enclosed sheet.

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