

Issue: Qualification/Misapplication of layoff policy; Ruling Date: November 19, 2003;
Ruling #2003-414; 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 2003-414
November 19, 2003

The grievant has requested a ruling on whether her April 30, 2003 grievance with the Department of Corrections (DOC) qualifies for a hearing. The grievant claims that management misapplied the layoff policy. For the reasons set forth below, this grievance is not qualified for hearing.

FACTS

The grievant, an Office Services Assistant who worked under the role title of Administrative Office Specialist II, was placed on layoff on December 9, 2002. An Office Services Specialist position, which also fell under the role of Administrative Office Specialist II, became vacant in 2003. The vacant position was filled by another employee who was purportedly displaced by the streamlining of another facility. The grievant alleges that she should have been placed in the vacant position instead of the other employee.

DISCUSSION

By statute and under the grievance procedure, management reserves the exclusive right to manage the affairs and operations of state government.¹ 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.² The grievant claims that the agency misapplied the layoff policy by not offering her the vacant position.

Misapplication of Policy

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

¹ Va. Code § 2.2-3004(B).

² Va. Code § 2.2-3004(A); *Grievance Procedure Manual* § 4.1, pages 10-11.

management violated a mandatory policy provision, or 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 policy in this case is the Layoff policy, Department of Human Resources Management (DHRM) Policy 1.30. On or about May 21, 2003, the DHRM Director, the sole authority charged with the promulgation and interpretation of state policy,³ concluded after reviewing the facts of this case that “[t]he action taken by the agency was consistent with the State Layoff Policy.”⁴ Because the DHRM Director has reviewed the facts of this case and found no misapplication of the Commonwealth’s layoff policy, this Department is compelled to deny qualification of this issue.

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, 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.

Claudia T. Farr
Director

³ Murray v. Stokes, 237 Va. 653; 378 S.E.2d 834 (1989).

⁴ In her May 21, 2003 response to the grievant, the DHRM Director explained that:

The reason you were not recalled to the vacancy at White Post was because the work was at a higher level (“Office Service Specialist”) within your Role. The Layoff policy was not intended as a process through which employees receive salary increases or higher-level positions within an organization. This premise is addressed in the portion of Policy 1.30 that addresses Placement within the agency. (“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.”) Although not specifically mentioned throughout the policy, this premise applies to all layoff actions, including recall. The intent of recall is to make the employee “whole.” The policy states: “Recall is intended to restore an employee to a position in his or her own agency and to the Role and salary held at layoff.” We have interpreted “the Role and salary held at layoff” as including the same level within the Role if the agency has identified levels within the Role designations...to make the employee whole.

Perhaps a clearer example would be the former “Corrections Sergeant” and “Corrections Lieutenant” classes that were consolidated into the same Role Title, Security Officer IV. Just as the Department would not place a Corrections Sergeant into a Corrections Lieutenant vacancy in lieu of layoff or upon recall, it would not be appropriate to recall an Office Services Assistant to the Office Services Specialist level. The action taken by the agency was consistent with the State Layoff Policy.

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