

Issue: Compliance/30-day rule; Qualification/layoff and severance upon facility closing;  
Ruling Date: December 31, 2003; Ruling #2003-434; Agency: Department of  
Corrections; Outcome: grievance is timely; not qualified



*COMMONWEALTH of VIRGINIA*  
*Department of Employment Dispute Resolution*

COMPLIANCE AND QUALIFICATION RULING OF DIRECTOR

In the matter of Department of Corrections/ No. 2003-434  
December 31, 2003

The grievant has requested a ruling on whether his June 2, 2003 grievance with the Department of Corrections (DOC) qualifies for a hearing. The grievant claims that during the layoff process he was not granted severance benefits when his facility closed on June 9, 2003, as agency management allegedly had promised. The agency declined to qualify the grievance on the basis that the grievant did not initiate his grievance within 30 calendar days of the event that forms the basis of the grievance. For the following reasons, the grievance is ruled timely but does not qualify for a hearing.

FACTS

The grievant was a Store and Warehouse Specialist III at a correctional facility identified for permanent closure (Facility A). On November 5, 2002, the grievant was presented with a Notice of Layoff or Placement (Layoff Notice 1) which gave him the option of either accepting a Retail Specialist 1 (Store Clerk) position at another correctional facility (Facility B) or declining that position and “proced[ing] to the next placement opportunity for which [he was] eligible.”<sup>1</sup> The grievant declined the placement to Facility B on November 8, 2002. He asserts that the agency informed him that he could sign up for enhanced retirement benefits, in other words, retire with severance benefits.

On November 19, 2002, the grievant was presented with a second Notice of Layoff or Placement (Layoff Notice 2) which gave him the option of accepting placement into his then current position of Store and Warehouse Specialist III at Facility A. This second Notice informed the grievant that because this placement would not result in a salary decrease or require relocation, if he did not accept the placement into his current position that he would not be entitled to severance benefits. Layoff Notice 2 had an effective date of December 9, 2002 through June 9, 2003. The grievant accepted the placement on November 25, 2002.

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<sup>1</sup> Notice of Layoff or Placement, dated November 5, 2002.

On May 20, 2003, the grievant was presented with a third Notice Layoff or Placement (Layoff Notice 3), with an effective date of June 10, 2003, which gave him the option of accepting a position at yet another DOC facility (Facility C) as a Retail Specialist II (Store Operations Supervisor). Layoff Notice 3 also informed the grievant that because this placement would not result in a salary decrease or require relocation, if he did not accept the placement into the Store Operations Supervisor Position he would not be entitled to severance benefits. The grievant accepted the placement on May 23, 2003 but never actually worked in the position. Instead, the grievant retired, effective July 1, 2003, and received no severance benefits.

On June 2, 2003, the grievant initiated the grievance that is the subject of this ruling in which he essentially claims that he should have received the severance benefits that he was implicitly promised when he turned down the November 5, 2002 placement offer (Layoff Notice 1).

## DISCUSSION

### *Compliance—30 Day Rule*

The agency refused to qualify the grievance on the basis that it was initiated more than 30 calendar days beyond the event that forms the basis of the grievance. The agency contends that the “grievance is based on a decision that [the grievant] made on November 25, 2002, and is therefore ruled to be out of compliance with the grievance procedure.”<sup>2</sup>

The grievance procedure provides that an employee must initiate a written grievance within 30 calendar days of the date he knew or should have known of the event or action that is the basis of the grievance.<sup>3</sup> When an employee initiates a grievance beyond the 30-calendar day period without just cause, the grievance is not in compliance with the grievance procedure, and may be administratively closed.

The agency views the event that forms the basis of the grievance as the grievant’s November 25, 2002 acceptance of his then current position offered via Layoff Notice 2. However, the grievant does not appear to be challenging the fact that he did not receive severance benefits in November of 2002 while still employed by DOC. Rather, a fair reading of the grievance is that the event that forms its basis is the agency’s stated refusal to pay the grievant severance benefits if he refused the new placement offer upon the abolition of his position on June 9, 2003.<sup>4</sup> Read in this light, the grievance cannot be said to be initiated more than 30 calendar days beyond the event that forms the basis of the grievance. Accordingly, this Department concludes that the grievance is timely.<sup>5</sup>

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<sup>2</sup> First Step Response, dated June 16, 2003.

<sup>3</sup> Va. Code § 2.2-3003(C); *Grievance Procedure Manual* § 2.4, page 6.

<sup>4</sup> See May 20, 2003 Notice of Layoff or Placement.

<sup>5</sup> The agency is correct that the grievance is untimely to the extent the grievance attempts to challenge DOC’s November 19, 2002 decision to offer the grievant his then current position as a placement option

*Qualification—Misapplication of the Layoff Policy*

The grievant essentially claims that the agency misapplied policy by not providing him with severance benefits when it finally abolished his position in June of 2003. For a grievance claiming a misapplication of policy or an unfair application of policy to qualify for a hearing, there must be facts that raise a sufficient question as to whether 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.

*Severance Benefits*

The controlling policy in this case is the Department of Human Resource Management (DHRM) Policy 1.30 *Layoff*, which addresses the issue of placement opportunities within an agency prior to layoff.<sup>6</sup> According to the policy, after initial notice, but prior to final notice of layoff, an agency must identify all employees eligible for placement and attempt to place them by seniority in any valid vacancies agency-wide in the current or a lower Pay Band.<sup>7</sup> Additionally, the placement must “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.”<sup>8</sup> If such a position is offered and declined by the employee, the agency is under no obligation to consider additional placement options for the employee.<sup>9</sup> Moreover, DHRM’s layoff policy explicitly states that “[a]n employee who declines a classified vacancy in the same or lower Pay Band that (1) would not require relocation or (2) would not result in a reduction in salary will be separated (separated-layoff) and will not be entitled to other benefits under this policy or to severance benefits.”<sup>10</sup>

Once DOC offered the grievant the placement option at Facility B, he had the choice of either accepting or declining the offer. Because the vacancy at Facility B required relocation, the grievant would have been entitled to layoff and severance benefits. However, on November 19, 2002, prior to the December 9, 2002 effective date of Layoff Notice 1, the agency offered the grievant another placement offer: his current position of Store and Warehouse Specialist III at Facility A. (The agency apparently concluded that to properly shut down facility A, it would need to temporarily retain several of the employees, including the grievant, who had originally been told that they would be laid off on December 9, 2002.) Essentially, the agency merely extended the

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rather than providing him with enhanced severance benefits on December 9, 2002, the effective date of Layoff Notice 1.

<sup>6</sup> See DHRM Policy 1.30, page 10 of 21.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* (emphasis in original).

<sup>9</sup> *Id.*

<sup>10</sup> DHRM Policy 1.30, page 12 of 21. See also DHRM Policy 1.57, Severance Benefits.

effective date of the layoff by offering the grievant his then current position for a period of six months.

As an initial matter, this Department knows of no mandatory prohibition under policy that would preclude an agency from extending the effective date of a layoff in the manner utilized by DOC in this case.<sup>11</sup> More to the point, DOC was prohibited by policy from offering the grievant an option between placement *or* retirement with severance benefits on when his position of Store and Warehouse Specialist III was finally abolished June 9, 2003. Because a placement was available at that time at Facility C, the agency was *required* under policy to offer it to the grievant.<sup>12</sup> Therefore, it does not appear that DOC misapplied or unfairly applied policy by not offering the grievant retirement with severance benefits. Accordingly, this grievance does not qualify for a 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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Claudia T. Farr  
Director

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William G. Anderson, Jr.  
EDR Consultant, Sr.

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<sup>11</sup> And as noted above, a challenge to the six-month extension of the effective date of the layoff would be untimely.

<sup>12</sup> “[A]n attempt *must* be made to place [employees eligible for placement] . . . to any valid vacancies agency-wide.” *Id.*, page 10 of 21 (emphasis added).

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