

Issue: Qualification/grievant claims agency pay practices are unfair; Ruling Date: February 13, 2004; Ruling #2003-439; Agency: Virginia Department of Transportation; Outcome: not qualified



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

QUALIFICATION RULING OF DIRECTOR

In the matter of Department of Transportation/ No. 2003-439
February 13, 2004

The grievant has requested a ruling on whether his September 23, 2003 grievance with the Virginia Department of Transportation (VDOT) qualifies for a hearing. The grievant claims that the agency's pay practices have been unfair and that he has made significantly less than a similarly-situated employee. For the following reasons, this grievance does not qualify for a hearing.

FACTS

Until his resignation on December 31, 2003, the grievant was a Bridge/Structure Inspector with VDOT. The grievant began his employment with VDOT on January 25, 2000. Since then he has received two salary differentials for his work in hazardous conditions (in February and November 2000) and one in-band adjustment (in April 2001).

In September 2003, the grievant learned that a new employee's salary was 30% greater than his. The grievant claims that they are similarly-situated, attended similar training sessions, and have a similar number of years' experience and certifications.¹ The agency claims that both the grievant and the new employee were offered salaries based on the compensation policies in effect at the times of their hires.² The grievant argues, however, that state policy allows agencies to correct pay inequities (i.e. through the use of in-band adjustments).

DISCUSSION

To fully investigate the issues set forth in the grievant's September 23, 2003 grievance, this Department attempted, unsuccessfully, to contact the grievant on numerous

¹ The grievant acknowledges that his co-worker had more experience at the time of his hire than the grievant had at the time of the grievant's hire, but claims that they *now* have similar experience. He states that the salary difference can be explained by their salaries in their respective former positions (the co-worker came to VDOT from a position in the private sector while the grievance came from a job in the military, making less than "market rate," according to the grievant).

² The grievant was hired in January 2000, prior to a major reform of the Commonwealth's compensation plan in September 2000. The co-worker was hired after the September 2000 implementation of the new compensation plan, which allowed him to bargain for a substantially higher salary and allowed the agency to start his salary at a higher rate. *See* DHRM Policy 3.05, which states that starting pay is negotiable between the minimum of the pay band and up to 15% above the applicant's salary.

occasions between January 6 and January 22, 2004. In addition, this Department sent a letter to the grievant requesting that he contact the investigating Consultant by January 30, 2004.³ The letter further noted this Department's understanding that because the grievance challenged the grievant's salary, it would appear that his issues were rendered moot by his resignation from VDOT. The grievant failed to contact this Department by January 30, 2004 and has presented no evidence to the contrary.

In light of all the above, it appears that there is no effectual relief that a hearing officer could order in this grievance. The *Grievance Procedure Manual* expressly states that "establishing or revising compensation" cannot be granted as relief.⁴ Accordingly, a hearing officer would not be able to order that the VDOT revise the grievant's salary. Also, the grievance record reflects that the grievant resigned, effective December 31, 2003, so any further relief or recommendations (such as ordering or recommending that the agency review the grievant's position to determine whether an in-band adjustment would be appropriate) are moot. Accordingly, this issue 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.

Claudia T. Farr
Director

Leigh A. Brabrand
EDR Consultant

³ This Department attempted to contact the grievant using the telephone number and home address provided by the grievant on his Form A, dated September 23, 2003.

⁴ *Grievance Procedure Manual* § 5.9 (b), page 15.

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