

Issue: Qualification/compensation (interclass advance after completion of probationary period); Ruling Date: April 9, 2004, Ruling #2003-559; 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
EDR Ruling No. 2003-559
April 9, 2004

The grievant has requested a ruling on whether his August 18, 2003 grievance with the Department of Corrections (DOC or the agency) qualifies for a hearing. The grievant claims the agency misapplied and/or unfairly applied compensation policy by failing to grant him an Interclass Advance after the completion of his probationary period. For the following reasons, his grievance does not qualify for a hearing.

FACTS

The grievant is employed as a Correctional Officer with DOC. At the time of his hire, he had over seven years experience in the corrections field.¹ The advertised salary range for the position was \$22,361 to \$33,811. The Human Resource Officer (HRO) offered him an annual starting salary of \$28,500 and informed him that he would not be eligible to receive the Interclass Advance often awarded at the completion of the one year probationary period.² The same information was later included in a letter to the grievant from the HRO discussing the terms of his employment. Believing the denial of an Interclass Advance to be normal procedure when an applicant had prior experience, the grievant accepted the offer. However, after working at DOC, the grievant states he determined that other officers with prior experience received the Interclass Advance upon completion of their probationary periods. Thus, on August 18, 2003, the grievant initiated a grievance challenging management's failure to grant him an Interclass Advance as a misapplication or unfair application of DOC's compensation policy.

In response to the grievant's allegations, management asserts it is common practice for corrections officers to be hired with the condition that no Interclass Advance will be granted after satisfactory completion of the one-year probationary period. Additionally, management claims the terms of the grievant's offer were consistent with the agency's internal salary alignment and the grievant's experience, education and

¹ The grievant was employed in another state prior to relocating to Virginia to accept his current position.

² An Interclass Advance is a departmental compensation practice whereby a Correctional Officer may be granted a salary increase once the officer has successfully completed the one-year probationary period.

background. During the investigation for this ruling, DOC management indicated that those applicants who have prior experience or relevant educational background generally receive a higher starting salary as an acknowledgement of the skills they bring to the position. Thus, according to the Director of Compensation for DOC, the individuals who receive higher starting salaries are rewarded on the front end, rather than on the back with an Interclass Advance.³

Simultaneous with his request to the agency that his grievance be qualified for hearing, the grievant provided the Regional Director with a list of names of corrections officers who allegedly received the same (or higher) starting salary as the grievant and then received an Interclass Advance after completing the probationary period. Upon this Department's request, the agency provided the investigating consultant with the starting salary of each employee named by the grievant and whether that person received an Interclass Advance. Of the ten corrections officers cited by the grievant, only one individual was hired at the same (or higher) starting salary than the grievant and then granted an Interclass Advance. With respect to that employee, he had substantial prior correctional experience within the federal system, at the rank of Captain, and was hired a number of years ago. More recently, an employee was hired at a higher salary than the grievant and, like the grievant, was not offered the Interclass Advance.

DISCUSSION

By statute and under the grievance procedure, management is reserved the exclusive right to manage the affairs and operations of state government.⁴ Further, complaints relating solely to the revision of wages and salaries "shall not proceed to hearing" unless there is sufficient evidence of discrimination, retaliation, discipline, or a misapplication or unfair application of policy.⁵ In this case, the grievant claims the agency misapplied or unfairly applied state and agency compensation policies by failing to grant him an Interclass Advance upon completion of his one-year probationary period.

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 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. Here, no written state or agency policies provide parameters for when an Interclass Advance should be granted. Thus, management did not violate a mandatory policy provision by failing to offer the grievant an Interclass Advance. Nor does the evidence presented show that management's decision regarding the Interclass Advance was unfair or inconsistent with similar prior actions. Only two of the individuals named by the grievant as comparators had the same or higher starting salaries. In these instances, one

³ To ensure DOC maintains fairness in compensation practices, the decision of whether to grant an Interclass Advance is a joint decision of the facility HRO and HR management in the Central Office. Also, the Central Office routinely reviews any salary offer above minimum pay.

⁴ Va. Code § 2.2-3004(B).

⁵ Va. Code § 2.2-3004(C); *Grievance Procedure Manual* § 4.1(b), page 10.

employee was offered the Interclass Advance, and one was not. With respect to the employee who received the Interclass Advance, the circumstances in that case are not sufficiently similar to the grievant's to support a claim of unfair application of policy or practice -- the two actions are not proximate in time (the other employee was hired a number of years ago) and he also possessed substantially more correctional experience than the grievant. Therefore, 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 this 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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