

Issue: Qualification/grievant claims misapplication of policy during voluntary transfer;  
Ruling Date: May 14, 2004; Ruling #2004-649; 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/ No. 2004-649  
May 14, 2004

The grievant has requested a ruling on whether her December 12, 2003 grievance with the Department of Corrections (DOC) qualifies for a hearing. The grievant claims that DOC misapplied or unfairly applied policy when it transferred her to the position of Lieutenant without a pay increase. For the following reasons, this grievance does not qualify for a hearing.

FACTS

The grievant is a Corrections Lieutenant (Security Manager I) with DOC. On June 10, 2002, the grievant accepted a voluntary transfer from Lieutenant to Sergeant (Security Officer IV) in lieu of layoff when her facility closed.<sup>1</sup> The grievant was able to retain her salary level with the voluntary transfer. On June 9, 2003, the grievant's recall rights under the Commonwealth's layoff policy expired.<sup>2</sup> However, on November 10, 2003, the grievant received a competitive transfer to Lieutenant, again with no change in salary. The grievant claims that it has been the past practice of the facility and DOC to adjust a "promoted" employee's salary by 10%. During this Department's investigation,

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<sup>1</sup> The Commonwealth's old compensation plan, effective prior to September 25, 2000, consisted of 23 pay grades, with 21 fixed pay steps within each pay grade. Under the new compensation plan, effective September 25, 2000, the 23 pay grades were consolidated into nine pay bands, with no fixed pay steps. Both Corrections Lieutenant and Corrections Sergeant are in Pay Band 4, so the grievant's June 2002 transfer is considered a voluntary transfer under the state's compensation plan, which is defined as a transfer to "a different position in the same Pay Band." Department of Human Resource Management (DHRM) Policy 3.05, *Compensation*, page 8 of 21. However, under the old compensation policy, Lieutenant was a pay grade 11 position, while Sergeant was a pay grade 10. See [www.dhrm.state.va.us/compensation/careergroups/pubsafe/SecurityServices69110.htm](http://www.dhrm.state.va.us/compensation/careergroups/pubsafe/SecurityServices69110.htm) <last visited April 30, 2004.> It appears that DOC and the grievant incorrectly categorize the grievant's June 2002 transfer as a "demotion." It is true that under the old compensation policy, a move from Lieutenant, a grade 11 position, to Sergeant, a grade 10 position, would have been a demotion. However, under current compensation policy, the move is considered a "voluntary transfer."

<sup>2</sup> See DHRM Policy 1.30, *Layoff*. Under the layoff policy, recall rights are in effect for 12 months from the date of layoff or demotion in lieu of layoff.

the agency acknowledged that a 10% pay adjustment is usually granted for promotions.<sup>3</sup> Moreover, on November 7, 2003, human resources requested a 10% pay increase for the grievant, which was denied by DOC's Central Office. The agency claims that the grievant's situation is unique from other employees who transfer from Sergeant to Lieutenant, because she had already been a Lieutenant and suffered no loss in pay when she voluntarily transferred to Sergeant. Accordingly, the agency argues, a 10% pay increase was not necessary because she was already making a Lieutenant's salary.

### DISCUSSION

For a claim of misapplication 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. The controlling policy in this grievance is DHRM Policy 3.05.<sup>4</sup> According to Policy 3.05, when an employee competes for a different position in the same Pay Band, the action is considered a Voluntary Transfer – Competitive and the employee's salary is negotiable between the minimum of the Pay Band up to 15% above the current salary.<sup>5</sup> Thus, under that Policy, the negotiated salary may not exceed the Pay Band maximum and may even be less than the employee's current salary.<sup>6</sup>

In November 2003, the grievant successfully competed for a transfer to a *different position* (Lieutenant) in the *same Pay Band* (Pay Band 4), thus, the grievant's move into the Lieutenant position is properly classified as a Voluntary Transfer – Competitive. Accordingly, under Policy 3.05, the grievant could have received a salary offer anywhere from \$27,323 (the minimum of the Pay Band) up to \$43,888 (15% above the grievant's current salary as a Sergeant). The grievant was approved for a salary of \$38,163. This salary fell within the parameters set by policy. Accordingly, it does not appear that DOC violated a mandatory policy provision in denying the grievant a 10% pay increase with her transfer to Lieutenant.

Moreover, it does not appear that the agency's actions were so unfair as to amount to a disregard of the intent of the applicable pay policies. While the facility ordinarily grants a 10% pay increase for transfers from Sergeant to Lieutenant, special circumstances existed in the grievant's case – the June 2002 transfer from Lieutenant to Sergeant with no loss in pay. Indeed, it appears that DOC has, through competitive recruitment, returned the grievant to her pre-layoff status, in both title and salary. Therefore, it does not appear that the agency unfairly applied policy in this case.

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<sup>3</sup> The agency stated during this Department's investigation that it considers a move from Sergeant to Lieutenant a "promotion," even though under compensation policy it is a transfer to another position in the same Pay Band.

<sup>4</sup> DHRM Policy 3.05, *Compensation*, effective September 25, 2000, revised March 1, 2001.

<sup>5</sup> DHRM Policy 3.05, "Voluntary Transfer," page 8 of 21.

<sup>6</sup> *Id.*

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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