

Issue: Qualification/Recruitment/Selection; Ruling Date: August 26, 2004; Ruling #2004-665; Agency: University of Virginia; Outcome: not qualified



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

QUALIFICATION RULING OF DIRECTOR

In the matter of University of Virginia
Ruling Number 2004-665
August 26, 2004

The grievant has requested a ruling on whether his December 8, 2003 grievance with the University of Virginia (UVA or the university) qualifies for a hearing. The grievant claims that UVA's failure to ask him whether he would be interested in filling a temporary supervisory position, despite his many years of experience and qualifications, is unfair.¹ For the following reasons, this grievance does not qualify for a hearing.

FACTS

The grievant is employed as a Trades Technician III with UVA. On October 10, 2003, the position of supervisor in the grievant's division became vacant on a temporary basis. The supervisor position was a temporary position with the possibility of becoming a full-time position after six months. In a November 10, 2003 meeting with members of the grievant's division, management announced who it had chosen for temporary reassignment to the supervisor position. The grievant was not chosen for the temporary supervisor position.

¹ Although not mentioned specifically on his Form A, in a December 30, 2003 letter, the grievant claims that failure to select him for the temporary supervisory position is discriminatory and a result of favoritism. To the extent that the grievant's claims of discrimination and favoritism could be considered further clarification of his unfairness claim, such issues would fail to qualify for hearing. In order to prevail on a claim of racial discrimination, there must be more than a mere allegation of discrimination—there must be facts that raise a sufficient question as to whether the grievant suffered an adverse employment action *because* of his membership in a protected class. *See Hutchinson v. INOVA Health System, Inc.*, 1998 U.S. Dist. LEXIS 7723 (E.D. Va. 1998) (citing *St. Mary's Honor Center v. Hicks*, 509 U.S. 502 (1993)). Similarly, for the grievant to prevail on his claim of favoritism, he must present evidence to show that the decision to fill the temporary supervisor position was based on something other than the agency's exercise of business judgment or that there was a misapplication or unfair application of the Commonwealth's general policy that personnel actions be "based on merit principles and objective methods" of decisionmaking. *See Va. Code § 2.2-2900* and EDR Ruling # 2002-026, 2002-029. In this case, the grievant has presented insufficient evidence to support qualification of either a race discrimination or favoritism claim.

DISCUSSION

By statute and under the grievance procedure, management reserves the exclusive right to manage the affairs and operations of state government.² Thus, all claims relating to issues such as the methods, means, and personnel by which work activities are to be carried out, or to the transfer or reassignment of employees within the agency 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 or applied unfairly.³ The grievant asserts that management misapplied or unfairly applied policy by failing to consider him for the temporary supervisory position, despite his many years of experience and qualifications.

For an allegation 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.

Under Department of Human Resource Management (DHRM) Policy 3.05, *Compensation*, management may reassign employees to new positions when agency staffing or operational needs require such a move.⁴ Further, the grievance procedure recognizes management's exclusive right to manage the operations of state government, including the temporary reassignment of employees within an agency.⁵ Inherent in this right is the authority to weigh the relative qualifications and determine the "best-suited" person for a particular position based on the knowledge, skills, and abilities required.

In this case, failure to find a temporary supervisor would have left the grievant and other employees in his area without supervision for a period of approximately 9 months. UVA management felt that leaving the group of employees unsupervised for this period of time would be "detrimental to both the short and long-term health of the operation."⁶ Further, UVA management claims that the person selected to fill the temporary supervisor position has 13 years of experience in the relevant field, three years of supervisory experience, the ability to take on multiple and varied tasks, and demonstrated initiative. As such, this Department

² Va. Code § 2.2-3004(B).

³ Va. Code § 2.2-3004(A) and (C); *Grievance Procedure Manual* § 4.1(b) and (c).

⁴ See DHRM Policy 3.05

⁵ See Va. Code § 2.2-3004(B).

⁶ See First Step-Response to Employee Grievance, December 12, 2003.

concludes that management's actions did not violate any mandatory policy provisions or amount to an unfair application of policy.

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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