

Issue: Qualification/salary increase dispute; Ruling Date: November 19, 2004; Ruling #2004-783; Agency: Department of Health; Outcome: not qualified



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

QUALIFICATION RULING OF DIRECTOR

In the matter of Department of Health
Ruling No. 2004-783
November 19, 2004

The grievant has requested a ruling on whether his April 1, 2004 grievance with the Department of Health (VDH) qualifies for a hearing. The grievant claims that the agency has failed to honor an agreement to grant him a salary increase of 10%-- a 6% increase immediately upon his voluntary transfer effective on February 25, 2003 and 4% at a later date. For the following reasons, this grievance does not qualify for a hearing.

FACTS

The grievant is employed as an Environmental Health Specialist Senior. In January 2003, he applied for an Environmental Health Specialist position within the same Pay Band.¹ The grievant was determined to be the best suited applicant and was offered the position. In determining the amount of salary increase for transfer to the new position, the District Director recommended a 15% salary increase. Under VDH Policy No. 3.05.1, *Pay Practices*, (6)(c)(2), in existence at the time of the grievant's transfer, requests for pay increases between 10-15% above the applicant's current salary required the approval of the Associate or Deputy Commissioner. Upon review, the Deputy Commissioner approved an increase of only 6%. A consideration in his final determination of the amount of salary increase was a draft study recommendation for a policy change to grant a 4% professional development increase to Environmental Health staff who progressed to a new proposed compensable level (4C). Under the draft criteria at that time, it appeared that the grievant would qualify for the 4% increase.

As background, an Environmental Health workgroup had been established to study and recommend ways to strengthen the VDH Environmental Health Program. One of the key recommendations of the workgroup was to establish a new career plan with a compensable level of 4C within the Pay Band. Certification as a Registered Environmental Health Specialist (REHS) was established as a prerequisite for

¹ Voluntary Transfer-Competitive- This pay practice applies to the movement of an employee from one position to a different position *within the same pay band*, in the same role or in a different role, at a higher, lower or equal responsibility benchmark level, through a competitive selection process. (See also DHRM Policy 3.05, *Pay Practices*, pages 7 & 8 of 21. and VDH Policy 3.05.1, *Pay Practices*, (6) (c) (2), page 4.

progression to the 4C level. Environmental Health staff who progressed to the 4C level would be eligible for a 4% salary increase for professional development. Also included was a recommendation to grandfather employees, like the grievant, who were currently performing milk inspection duties but who did not have the REHS certification.

In the agency's final approval of the proposed career plan, the recommendation of a 4% salary increase for professional development was changed to a flat \$1,500 bonus and the special grandfather recommendation for milk inspectors was disapproved. As a result of the disapproval of the grandfather provision and establishment of other benchmark responsibilities, the grievant was not eligible to automatically receive the 4% increase which would be awarded for progression to the 4C level.² The grievant's primary claim appears to be that in establishing the criteria for progression to Responsibility Benchmark level 4C for Environmental Health Technical Specialist, the agency failed to grandfather employees, like himself, making them eligible for a 4% salary increase.³

DISCUSSION

By statute and under the grievance procedure, management reserves the exclusive right to manage the affairs and operations of state government.⁴ Thus, all claims relating to issues such as the means, methods, and personnel by which activities are to be carried out generally do not qualify for a 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.⁵ The grievant claims that the agency failed to honor an agreement to grant him a 4% percent salary increase as a result of changes in qualification requirements.

Department of Human Resource Management (DHRM) Policy 3.05, grants agencies the authority to implement pay practices for setting and changing the base pay

² 4C Responsibility Benchmark Description – Serves as environmental health technical leader, mentor & subject matter expert as an advanced practitioner for the district in one or more EH programs such as food sanitation, on-site soils evaluation, private well inspection, rabies abatement, communicable disease investigation, migrant labor camp inspection, classification of shellfish growing areas and investigation of complaints. Performs complex environmental health functions, provides consultation and training to EH staff, assists OEHS in conducting training and may provide formal input into performance evaluations of EH staff. To be considered for positions at this level, employees should be certified as a Registered Environmental Health Specialist & at least one of the following: Authorized On-Site Soils Evaluator, Certified Professional Soils Scientist, Certified Food Safety Standardization Officer, NEHA Food Safety Professional or FDA Certified Milk Sanitation Officer. (VDH Compensation Management System-VDH Job Evaluation System, amended September 8, 2003.

³ The VDH job evaluation system provides a basis for identifying compensable differences in duty assignments within the broad pay bands. The VDH system established three "Responsibility Benchmarks Levels" in each pay band and assigned all VHD positions to the appropriate levels. The levels are labeled A, B, and C. (See VDH Pamphlet "Compensation Management System," August 2001).

⁴ Va. Code § 2.2-3004(B).

⁵ Va. Code § 2.2-3004(A) and (C); *Grievance Procedure Manual* § 4.1(b) and (c).

of its employees.⁶ The agency has implemented this authority in VDH Policy 3.05.1, *Pay Practices*, which outlines the agency-specific policies, procedures and guidelines regarding employee compensation. Under the VDH Policy 3.05.1 existing at the time of the grievant's transfer, recommended salary increases of more than 10% above current salary and up to 15% required the approval of the Associate or Deputy Commissioner.⁷ Neither DHRM Policy 3.05 nor VDH Policy 3.05.1 establishes a specific criteria which agency management must apply in determining the amount of salary offered to an employee. Both policies, however, specify that the amount of salary increase is negotiable.

In determining the offer amount of a 6% salary increase in this case, the Deputy Commissioner considered both the unique nature of the position as a principal milk specialist and the pending workgroup recommendation for a policy change, which would grant a 4% increase to the grievant for professional development. Although the grievant was informed of the rationale for the salary offer, including the possibility of a future 4% increase, the offer was for a salary increase of 6%, which the grievant accepted.⁸

There is no evidence that VDH has misapplied or unfairly applied its own policy in this case. While it is unfortunate that management officials made a faulty assumption that the recommended policy change would likely receive final agency approval, and communicated such to the grievant, it was clear that the increase was contingent upon an approved policy change and was not discretionary. Although the grievant may believe that the agency has acted in bad faith, the agency has in fact complied with its written policy guidelines.

The grievant is, in essence, disputing the contents of the policy, not its application. The grievant is not arguing that the policy was *misapplied*, rather, he is arguing that the policy is too narrowly written because it does not grandfather employees, like himself, making them eligible for a 4% salary increase. The grievance procedure, however, expressly excludes challenges to the "content of . . . personnel policies" from qualification, unless there is some support for a claim of misapplication of policy,

⁶ Pay Practices "provide the rules for setting and changing base pay compensation and include Starting Pay, Promotion, Voluntary Transfer, Voluntary Demotion, Temporary Pay, Role Change, In-Band Adjustment, Disciplinary or Performance-Related Salary Action, and Competitive Offer." (See DHRM Policy 3.05, *Pay Practices*, pages 3 and 4).

⁷ A policy change effective on October 1, 2003, removed the authority previously granted to District and Office Directors to approve salary increase of up to 10% above the current pay band and delegated all such authority to the Deputy Commissioner.

⁸ The "offer letter" in this case appears to be in the form of a March 3, 2003, e-mail to the grievant bearing the caption "Good News!" The e-mail states in pertinent part:

As you can see from the following, your new position along with a 6% raise **has been approved**. You will be qualified for the future 4C benchmark, as we previously discussed, so hopefully, 4% more will be coming later? I know this is not all you wanted, but we did the best we could.

discrimination, arbitrary performance evaluation, retaliation, or unwarranted discipline.⁹ The grievant asserts no such claim in this instance.

APPEAL RIGHTS AND OTHER INFORMATION

For the reasons discussed above, this grievance does not qualify for a hearing.¹⁰ 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 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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Director

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⁹ *Grievance Procedure Manual* § 4.1(c).

¹⁰ We note that the result in this case may have been different had the District Director unequivocally offered the grievant 10% which he had in turn accepted. If the Deputy Commissioner had then overturned a 10% formal offer from the District Director, which the SAP in effect at the time had authorized, there would remain a genuine question as to whether such a reversal constituted an unfair or misapplication of policy. In this case, the March 3rd offer was for a 6% increase, which the grievant accepted. The various discussions between the parties prior to March 3 regarding the final terms to be extended to the grievant appear to have been negotiations only.