

Issue: Qualification/misapplication and/or unfair application of hiring policies; Ruling
Date: October 29, 2004; Ruling #2004-828; Agency: Virginia Community College
System; Outcome: not qualified



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

QUALIFICATION RULING OF DIRECTOR

In the matter of Northern Virginia Community College
No. 2004-828
October 29, 2004

The grievant has requested a ruling on whether his June 14, 2004 grievance with Northern Virginia Community College (NVCC or the agency) qualifies for a hearing. The grievant claims that the agency misapplied and/or unfairly applied hiring policies. For the following reasons, this grievance does not qualify for a hearing.

FACTS

The grievant is employed by the agency as a Trainer and Instructor I in its Medical Education Center. In 2003, the agency transferred its medical training programs from its Annandale campus to its new medical campus. In conjunction with this transition, the agency created two new Information Technology Specialist positions to serve the entire campus. The agency also transferred the grievant's position from the Annandale campus to the medical campus. The creation of the two new Information Technology Specialist positions did not affect the grievant's own position as a Trainer and Instructor I.

The grievant did not apply for either Information Technology Specialist position at the time those positions were initially filled, as he states that he was unaware the positions had been created. In the spring of 2004, one of the two new positions became vacant. The grievant subsequently applied for the vacant position, but was not granted an interview.

The grievant maintains the agency misapplied or unfairly applied hiring policy during the selection process. Specifically, he claims that he was qualified for the position and should therefore have been granted an interview. He also contends the agency predetermined that he would not be the successful candidate for the Information Technology Specialist position. In support of his claim of pre-selection, the grievant states that the successful applicant for the position was a current agency employee. The grievant also argues that evidence of pre-selection is provided by the agency's alleged failures to include him in the decision to create the new Information Technology

Specialist positions, to offer him one of the positions upon their creation, and to involve him in the selection process for the positions.

In response, the agency states that, pursuant to policy, it created a ranking matrix for determining which applicants would be interviewed for the position; that the top five applicants, as ranked on this matrix, were interviewed for the position; and that because the grievant was not ranked in the top five on the scoring matrix, he was not interviewed. The agency further states that it has conducted an “independent review” of the hiring action in question and concluded that there were no deviations from established policies and procedures.

DISCUSSION

The grievance procedure recognizes management’s exclusive right to manage the operations of state government, including the hiring or promotion of employees within an agency.¹ Inherent in this right is the authority to weigh the relative qualifications of job applicants and determine the “best-suited” person for a particular position based on the knowledge, skills, and abilities required. Grievances relating solely to the contents of personnel policies and the hiring of employees within an agency “shall not proceed to a hearing.”² Accordingly, a grievance challenging the selection process does not qualify for a hearing unless there is evidence raising a sufficient question as to whether discrimination, retaliation, discipline, or a misapplication of policy tainted the selection process.³ In this case, the grievant claims that the agency misapplied or unfairly applied the hiring policies.

For an allegation of misapplication 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 applicable policies in this case are the Department of Human Resource Management (DHRM) Policy 2.10, *Hiring* and the agency’s hiring/selection policy.

The grievant first alleges that the agency misapplied policy by failing to grant him an interview despite his being qualified for the position. As an initial matter, we note that the grievant himself concedes that he did not have the desired experience regarding the agency’s Cisco IP Phone system. However, even assuming the grievant had all the desired qualifications for the position, the agency was not obligated by policy to grant him an interview. An agency is not required to interview every applicant who satisfies the minimal qualifications for a position; instead, an agency is free to use screening criteria to select a subset of qualified applicants for interviews, provided those criteria are in accordance with the qualifications established for the position and applied

¹ See Va. Code § 2.2-3004(B).

² Va. Code § 2.2-3004(C).

³ *Grievance Procedure Manual* § 4.1(c).

consistently.⁴ In this case, there is no evidence that the agency misapplied or unfairly applied policy in establishing screening criteria and selecting applicants for interviews based on those criteria, and, indeed, the grievant has not identified any basis on which he believes he is more qualified than those applicants selected for interviews. In the absence of such evidence, we cannot conclude that the agency misapplied policy in failing to grant the grievant an interview.

The grievant also alleges that the agency predetermined that he would not be chosen for the position. It is the Commonwealth's policy that hiring and promotions be competitive and based on merit—specifically, an applicant's knowledge, skills, and abilities. Thus, pre-selection (merely going through the motions of the selection process when the outcome has been predetermined), regardless of merit and suitability, violates that policy.

The grievant suggests that evidence of the agency's pre-selection for the position is provided by the agency's alleged decision to open the position to other applicants when it was initially created, rather than awarding the position to him automatically, as well as by the agency's alleged failure to involve him in the decision to create the position and the selection process. Contrary to the grievant's apparent belief, however, management was not under any obligation to involve the grievant in the decision to create a new position, to offer him the newly-created position (particularly as the grievant's own job duties were not affected by the creation of the new position), or to include him in the selection process, and we cannot conclude that these agency actions constituted evidence of improper pre-selection. Further, with respect to the grievant's claim that pre-selection is indicated by the agency's alleged selection of an agency employee to fill the Information Technology Specialist position at issue, this bare assertion, without additional evidence of ill intent or improper motive, is insufficient to warrant qualification of this issue for hearing.

In sum, while the grievant clearly disagrees with management's decision not to interview him for the position, and is understandably disappointed by this decision, he has not presented evidence raising a sufficient question as to whether misapplication or unfair application of policy tainted the selection process. 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 this determination to the circuit court, the grievant should notify the human resources office, in writing, within five workdays 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

⁴ See DHRM Policy 2.10, Hiring.

October 29, 2004
Ruling #2003-828
Page 5

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

Gretchen M. White
EDR Consultant