

Issue: Qualification/grievant claims agency misapplied and/or unfairly applied compensation policy by failing to grant a 10% salary increase; Ruling Date: August 27, 2004; Ruling #2004-839; Outcome: not qualified



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

QUALIFICATION RULING OF DIRECTOR

In the matter of Department of Alcoholic Beverage Control
EDR Ruling No. 2004-839
August 27, 2004

The grievant has requested a ruling on whether his April 8, 2004 grievance with the Department of Alcoholic Beverage Control (ABC or the agency) qualifies for a hearing. The grievant claims the agency misapplied and/or unfairly applied compensation policy by failing to grant him a 10% salary increase. For the following reasons, his grievance does not qualify for a hearing.

FACTS

The grievant is employed as an ABC Store Manager B. In October 2003, the store managed by the grievant was reclassified from an "A" to a "B" level. As a consequence, the grievant received a 2.204% salary increase. The grievant contends that he should have instead received a 10% salary increase, consistent with the increases received by other managers whose stores had been similarly reclassified.

The agency's position is that the grievant was ineligible for the 10% increase because he had already received a reclassification increase during a 1997 reclassification of the store he then managed, and it is the agency's policy that a reclassified manager is eligible for the 10% increase only once. The agency and the grievant agree that the other managers the grievant cites as comparators had not previously been reclassified from "A" to "B" managers.

DISCUSSION

By statute and under the grievance procedure, management is reserved the exclusive right to manage the affairs and operations of state government.¹ 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.² In this case, the grievant claims in his Grievance Form A that the agency misapplied and unfairly applied its compensation

¹ Va. Code § 2.2-3004(B).

² Va. Code § 2.2-3004(C); *Grievance Procedure Manual* § 4.1(b).

policies by failing to grant him a 10% salary increase after he was reclassified to “Store Manager B” in October 2003.

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.³ In the course of this Department’s investigation, the grievant clarified that he does not contend that the agency wrongly applied its policy or treated him unfairly or inconsistently. To the contrary, the grievant admits that the agency applied its policy “verbatim.”⁴ The grievant’s complaint with his failure to receive the 10% raise is not that he should have received the raise under existing agency policy, but instead that the policy itself does not, in his opinion, “make sense.” This type of challenge to the *contents* of a policy, rather than the policy’s application, is expressly excluded from qualification by the grievance statutes. For this reason, 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.

Claudia T. Farr
Director

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³ We note that a mere misapplication of policy in itself is insufficient to qualify for a hearing. The General Assembly has limited issues that may qualify for a hearing to those that involve “adverse employment actions.” Va. Code § 2.2-3004(A). For purposes of this analysis, we assume, without deciding, that denial of a 10% pay increase would constitute an adverse employment action.

⁴ *See*, Grievance Form A (“The fact that the policy is applied to all in the same way does not mean the policy is fair or equal.”).