

Issue: Compliance/grievant challenges closure of grievance on the ground that grievance does not pertain directly and personally to grievant's own employment; Ruling Date: January 19, 2005; Ruling #2004-928; Agency: Department of Motor Vehicles; Outcome: grievance in compliance



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of Department of Motor Vehicles
Ruling Number 2004-928
January 19, 2005

The grievant has requested a compliance ruling in her October 14, 2004 grievance with the Department of Motor Vehicles (DMV or the agency). The grievant challenges the agency's decision to close her grievance as out of compliance with the grievance procedure on the ground that the grievance does not pertain directly and personally to the grievant's own employment.

FACTS

The grievant is employed as a Program Support Technician. On or about September 14, 2004, the agency advertised a position identical to that held by the grievant with a salary range of \$25,000 to \$36,000. As the grievant earned less than \$25,000 in her position, she brought the discrepancy between her salary and the salary advertised for the vacant position to the attention of management. She also applied for the position. The agency subsequently revised the posting to show a salary range of \$20,915 to \$42,925, the entire salary band for the position.

On October 14, 2004, the grievant initiated a grievance challenging the agency's actions. In her grievance, the grievant states that she performs the same job duties as the advertised position but was hired at the bottom of the applicable pay scale and has only received pay increases because of her performance evaluations. She also alleges that the salary for the vacant position was adjusted downward after she had expressed an interest in applying for the position. The relief she seeks is to have her salary increased to \$25,000.

The first-step respondent denied the grievant's request for relief, explaining that the initial stated salary range was an error and was not necessarily indicative of the amount the successful applicant would be paid. The first-step respondent also advised the grievant that the agency considered the grievance to be non-compliant with the grievance procedure, as the issue raised did not personally and directly pertain to the grievant and the posted vacancy had not yet been filled. The grievant was told, however, that notwithstanding the agency's belief that her grievance was not in compliance with the grievance procedure, the agency would allow the grievance to go through the remaining management steps.

The second-step respondent also denied the grievant's request for relief, on the grounds that no adverse employment action had been taken against her and no applicable policy had been violated. The second-step respondent agreed, however, to review the grievant's concerns with

her Assistant Division Manager and submit a Pay Action Request to increase her salary to \$25,000 or by 10%, whichever is greater. After receiving the second-step response, the grievant elected to advance her grievance to the third resolution step.

The third-step respondent again denied the grievant's request for relief, noting that the grievant had not suffered an adverse employment action, the advertised salary was no "guarantee" of the salary that would be paid to the successful candidate for the posted vacancy, and the salary initially advertised for that vacancy was an error. The third-step respondent then directed that the grievance be closed for non-compliance, on the grounds that the issue raised by the grievant did not pertain personally and directly to the grievant. The grievant has now asked this Department to determine whether the agency's actions were in compliance with the grievance procedure.

DISCUSSION

Under the grievance procedure, an employee's grievance must "[p]ertain directly and personally to the employee's employment."¹ The agency contends that recruitment for the vacant position does not pertain directly and personally to the grievant's own employment and that her grievance is therefore out of compliance with the grievance procedure.

As the agency itself admitted in its third-step response, however, the grievant's complaint is less about recruitment for the vacant position than it is about her current rate of pay. The grievant does not seek to have the salary for the vacant position reduced; rather, she seeks to have her own salary increased. There can be little that pertains more personally and directly to an individual's employment than her salary.

Had the grievant argued merely that she was being underpaid, without reference to any other position, there would be no dispute that she could pursue such a claim through the grievance process (although such a claim would not be qualified for hearing unless the grievant could present evidence showing that the underpayment was the result of a misapplication or unfair application of policy, discrimination or retaliation). That the grievant based her claim of underpayment on the agency's alleged intention to pay a higher salary in an identical position does not change this result. In both situations, the grievant's fundamental claim is that her own salary should be higher: the primary distinction is that in the second situation, the grievant seeks to use the salary paid to another, identical position as evidence to support her own claim of underpayment.

We acknowledge that this ruling is a departure from previous rulings in which we have stated that grievances that challenge the compensation paid to another employee, without more, are out of compliance with the grievance procedure and may be closed. This departure is limited, however, to those situations in which the purpose of the grievance is to challenge the grievant's own salary. A grievance challenging another employee's compensation for the objective of reducing that employee's compensation, or for any other reason not directly related

¹ Va. Code § 2.2-3004 (A); *Grievance Procedure Manual* § 2.4.

to the grievant's own salary, does not involve matters personally and directly pertaining to the grievant and may be closed as out of compliance with the grievance procedure.²

CONCLUSION

For the reasons discussed above, this Department has determined that this grievance directly and personally pertains to the grievant's employment and that the agency erred in closing the grievance for non-compliance. The agency is therefore directed to reopen the October 14, 2004 grievance. This Department's rulings on matters of compliance are final and nonappealable.³

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Director

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² We do not rule on the agency's determination that the grievant had not suffered an adverse employment action because the position had not yet been filled. While this determination is relevant to the qualification of a grievance for hearing, it is not relevant to the question of whether a complaint may properly be grieved through the management steps under the grievance procedure. Provided that an employee has access to the procedure, she may grieve any action or inaction by management which personally and directly pertains to her employment, even if the conduct grieved does not constitute an adverse employment action. *See Grievance Procedure Manual* §2.4 ("Assuming an employee has access to the grievance procedure, *any* employment related issue may be grieved, at least through the management steps....")

³ Va. Code § 2.2-1001 (5).