

Issue: Qualification/misapplication and/or unfair application of compensation policy;  
Ruling Date: February 22, 2006; Ruling #2006-1218; Agency: Department of  
Corrections; Outcome: not qualified



***COMMONWEALTH of VIRGINIA***  
***Department of Employment Dispute Resolution***

**QUALIFICATION RULING OF DIRECTOR**

In the matter of Department of Corrections  
Ruling Number 2006-1218  
February 22, 2006

The grievant has requested a ruling on whether her March 14, 2005 grievance with the Department of Corrections (DOC or the agency) qualifies for a hearing. The grievant alleges that the agency has misapplied and/or unfairly applied compensation policy. For the reasons set forth below, this grievance does not qualify for a hearing.

**FACTS**

The grievant is a Correctional Lieutenant with DOC. She was promoted from the rank of Sergeant to Lieutenant in 2001. She claims that she has trained many corrections officers, some of whom are now Lieutenants themselves and the salaries of certain of these individuals surpass hers. As relief, the grievant seeks an adjustment to her salary.

**DISCUSSION**

The grievance statutes and procedure reserve to management the exclusive right to manage the affairs and operations of state government.<sup>1</sup> Thus, claims relating to issues such as the methods, means and personnel by which work activities are to be carried out and the establishment or revision of compensation 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 or unfairly applied.<sup>2</sup> In this case, the grievant claims that management has misapplied and/or unfairly applied policy and procedure by paying less experienced Lieutenants a higher salary than the grievant

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<sup>1</sup> See Va. Code § 2.2-3004(B).

<sup>2</sup> Va. Code § 2.2-3004(A); *Grievance Procedure Manual*, § 4.1(c).

and failing to provide the grievant with an adjustment to her salary to correct the disparity.<sup>3</sup>

For a misapplication of policy or unfair application of policy claim 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.<sup>4</sup> The primary policy implicated in this grievance is Department of Human Resource Management (DHRM) Policy 3.05,<sup>5</sup> which, pursuant to the Commonwealth's compensation plan, requires all agencies, among other things, to develop an agency Salary Administration Plan (SAP).<sup>6</sup> A SAP outlines how the agency will implement the Commonwealth's compensation management system, and is "the foundation for ensuring consistent application of pay decisions."<sup>7</sup> The agency has complied with this requirement by developing a SAP to address its pay practices.

DHRM Policy 3.05 further requires agencies to continuously review agency compensation practices and actions to ensure that similarly situated employees are treated the same.<sup>8</sup> When an agency determines that similarly situated employees are not being comparably compensated, it may increase the salary of the lesser paid employee by up to 10% each fiscal year through an in-band salary adjustment.<sup>9</sup> In-band adjustments and other pay practices are intended to emphasize merit rather than entitlements, such as across-the-board increases, while providing management with great flexibility and a high degree of accountability for justifying their pay decisions.<sup>10</sup>

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<sup>3</sup> The grievant does not specifically state on her Form A that the agency has misapplied policy by failing to adjust her salary. However in the relief section of the Form A, she requests an adjustment to her salary and during the management resolution steps the agency denies the grievant's request because her salary is "not so far out of alignment as to warrant an in-band adjustment." Based on the grievant's request for a salary adjustment and the agency's denial of such relief, this Department deems it appropriate to address in this ruling whether the agency misapplied or unfairly applied policy by failing to provide the grievant with the requested salary adjustment.

<sup>4</sup> 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 the salary issue grieved would constitute an adverse employment action.

<sup>5</sup> For purposes of this ruling, we will apply DHRM Policy 3.05 as it existed on March 14, 2005, when the grievance was initiated. (This policy was revised on April 25, 2005.)

<sup>6</sup> See generally, DHRM Policy 3.05 (effective 9/25/00, revised 03/01/01). The SAP "addresses the agency's internal compensation philosophy and policies; responsibilities and approval processes; recruitment and selection process; performance management; administration of pay practices; program evaluation; appeal process; EEO considerations and the communication plan." DHRM Policy 3.05, page 1 of 21 (effective 9/25/00, revised 03/01/01).

<sup>7</sup> DHRM Policy 3.05, page 1 of 21 (effective 9/25/00, revised 03/01/01).

<sup>8</sup> See DHRM Policy 3.05, page 6 of 21 (effective 9/25/00, revised 03/01/01).

<sup>9</sup> See DHRM Policy 3.05, page 10-11 of 21 (effective 9/25/00, revised 03/01/01).

<sup>10</sup> See DHRM Human Resource Management Manual, Chapter 8 *Pay Practices*.

Under DHRM Policy 3.05, in-band salary adjustments may be authorized for internal alignment purposes.<sup>11</sup> However, in assessing whether to grant an in-band adjustment, an agency must consider, for each proposed adjustment, each of the following thirteen pay factors: (1) agency business need; (2) duties and responsibilities; (3) performance; (4) work experience and education; (5) knowledge, skills, abilities and competencies; (6) training, certification and licensure; (7) internal salary alignment; (8) market availability; (9) salary reference data; (10) total compensation; (11) budget implications; (12) long term impact; and (13) current salary.<sup>12</sup> Some of these factors relate to employee-related issues, and some to agency-related business and fiscal issues, but the agency has the duty and the broad discretion to weigh each factor for every pay practice decision it makes.

To summarize, both state and agency policies appear to reflect an intent that similarly situated employees be comparably compensated. At the same time, however, both policies also reflect the intent to invest in agency management broad discretion and the corresponding accountability for making individual pay decisions in light of each of the 13 enumerated pay factors. Significantly here, those pay factors include not only employee-related considerations (such as current salary, duties, work experience, and education), but also agency-related considerations (such as business need, market availability, long term impact and budget implications). Likewise, the need for internal salary alignment is just one of the 13 different factors an agency must consider in making the difficult determinations of whether, when and to what extent in-band adjustments should be granted in individual cases and throughout the agency.<sup>13</sup>

While we understand the grievant's concern that employees with less experience and service to the agency may be being paid at the same or higher rates of pay as the grievant, neither DHRM Policy 3.05 nor the agency's SAP mandates that new or more junior employees be paid at a rate lower than the rate paid to existing or more senior employees, or that the rate of existing employees be increased to match or exceed that of newer hires. The grievant has not identified, nor are we aware of, any specific policy requirement violated by the agency's existing salary structure. Likewise, compensating arguably less-experienced Lieutenants at a higher salary than the grievant, though understandably viewed by the grievant as "unfair" in the broadest sense of the term, does not amount to a disregard of the intent of the applicable policies, which allow

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<sup>11</sup> As to an in-band adjustment based on internal alignment (as in this case), DHRM policy indicates that "[a]n increase of 0-10% may be granted to align an employee's salary more closely with those of other employees' within the same agency who have comparable levels of training and experience, similar duties and responsibilities, similar performance and expertise, competencies, and/or knowledge and skills." DHRM Policy 3.05, page 11 of 21 (effective 9/25/00, revised 03/01/01).

<sup>12</sup> See DHRM Policy 3.05, page 3 and 10 of 21 (effective 9/25/00, revised 03/01/01); Department of Corrections Salary Administration Plan.

<sup>13</sup> This is not to say that the agency's discretion in determining which employee should receive an in-band adjustment is without limitations. In particular, an agency could not deny an employee an in-band adjustment on the basis of unlawful retaliation, discrimination or some other improper motive. Here, the grievant has not alleged that the agency's refusal to adjust her salary was retaliatory, discriminatory or based on some other improper motive.

management flexibility in making individual pay decisions in light of its consideration of the 13 pay factors.<sup>14</sup>

Moreover, during the management resolution steps, the second step-respondent stated that the grievant's salary, "although at the lower end when compared with all other Lieutenants in both the region and the department, is not so far out of alignment to warrant an in-band adjustment."<sup>15</sup> In making this determination, the agency looked at the internal salary data on all the Lieutenants at the grievant's facility as well as all the Lieutenants within the grievant's region. During its review, the agency claims it considered "the grievant's salary and its proximity to other Lieutenants having comparable training, experience, performance or similar competencies as well as individual salary progressions since being employed" (factors 3, 4, 5, 6, 7, and 13). As such, the agency appears to have considered the pay factors, and in weighing them, determined that an adjustment to the grievant's salary based on internal alignment is not warranted at this time.

Based on all the above, and in particular, the agency's broad discretion in determining individual pay decisions, this Department concludes that this grievance fails to raise a sufficient question as to whether the relevant compensation policies have been either misapplied and/or unfairly applied and as such, the March 14, 2005 grievance does not qualify for 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 the qualification determination to the circuit court, she should notify the human resources office, in writing, within five workdays of receipt of this ruling. If the court should qualify the grievance, within five workdays of receipt of the court's decision, the agency will request the appointment of a hearing officer unless the grievant notifies the agency that he does not wish to proceed.

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Claudia T. Farr  
Director

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<sup>14</sup> See DHRM Human Resource Management Manual, Chapter 8 *Pay Practices*; DHRM Policy 3.05 (effective 09/25/00, revised 03/01/01); Department of Corrections Salary Administration Plan.

<sup>15</sup> As of May 9, 2005, the grievant's salary was approximately \$2,000 below the average salary of those Correctional Lieutenants within the grievant's facility with 2 to 5 years of experience as a Lieutenant (the grievant had been working as a Lieutenant for 3 ½ years). Further, as of May 9, 2005, the grievant's salary was approximately \$4,000 below the average salary for all Correctional Lieutenants within the grievant's region.

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