

Issue: Qualification/work conditions-other; Ruling Date: March 10, 2006; Ruling #2006-1260; 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
No. 2006-1260
March 10 2006

The grievant has requested a ruling on whether his October 19, 2005 grievance with the Department of Corrections (DOC or the agency) qualifies for a hearing. The grievant has challenged management's decision to require staff to wear their winter uniforms after October 17, 2005. The grievant asserts that previously, staff were allowed an optional period during which they could wear either summer or winter uniforms. For the following reasons, this grievance is not qualified for a hearing.

FACTS

The grievant is employed by the agency as a Correction Officer Senior. On September 14, 2005, the agency's Deputy Director issued a memorandum with a subject line: "Clarification-Procedure 5-23 Corrections Officers Uniform Optional Periods." In pertinent part, the memo states that:

The winter to summer uniform changeover option period shall be from March 15th to May 14th, the summer to winter uniform changeover optional period shall be from September 15th to November 14th.

The actual date for changing of uniforms shall be determined by the Warden/Superintendent and all staff shall change at the same time.

The Major issued a memo stating that the date for changing from summer to winter uniforms would be October 17, 2005. The grievant claims that he and other officers were not given an optional period in the fall during which they could wear either summer or winter clothes.

DISCUSSION

By statute and under the grievance procedure, management reserves the exclusive right to manage the affairs and operations of state government.¹ Thus, all claims relating to issues such as the methods, means, and personnel by which work activities are to be carried out, or to the transfer or reassignment of employees within the agency generally do not qualify for 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 applied unfairly.²

In addition, for a grievance to qualify for hearing, the grievant must show that the conduct grieved involves an "adverse employment action."³ An adverse employment action is defined as a "tangible employment act constituting a significant change in employment status, such as hiring, firing, failing to promote, reassignment with significantly different responsibilities, or a decision causing a significant change in benefits."⁴

Here, the grievant was not allowed to wear his summer uniform beyond October 17, 2006. Under the facts of this case, this action alone simply does not rise to the level of an "adverse employment action." Accordingly, this grievance cannot be qualified for a hearing.⁵

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, 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.

¹ Va. Code § 2.2-3004(B).

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

³ Va. Code § 2.2-3004(A).

⁴ *Burlington Industries, Inc. v. Ellerth*, 118 S. Ct. 2257, 2268 (1998).

⁵ This Department deems it worthy to note although the Deputy Director's memo states that the Warden/Superintendent shall determine the date for uniform change for each institution, nothing in the memo appears to prohibit the Warden/Superintendent from delegating this determination to another individual, such as the Major. We further note that management's decision to have all security personnel change uniforms on the same date appears entirely consistent with Procedure 5-23 and the Deputy Director's memo.

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