

Issue: Qualification/Management Actions/Recruitment & Selection; Ruling Date:
August 29, 2006; Ruling #2006-1309; 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 2006-1309
August 29, 2006

The grievant has requested a ruling on whether his December 30, 2005, grievance with the Department of Corrections (DOC or the agency) qualifies for a hearing. The grievant essentially claims that the agency misapplied and/or unfairly applied state and agency policy during the recruitment for a Lieutenant position. In particular, he objects to the agency's: (1) extending the recruitment period for an additional three weeks; (2) allowing individuals who do not possess all required certifications to apply for the Lieutenant position; (3) failure to rectify placement inequities that stemmed from extensive agency restructuring that took place three to four years ago; and (4) preference for a particular answer in response to an interview question.

FACTS

The grievant is employed with DOC as a Sergeant. The grievant applied and interviewed for a vacant Lieutenant position. After the original recruitment period had ended, the agency elected to extend it for an additional three weeks. The grievant was not selected for the position.¹

DISCUSSION

By statute and under the grievance procedure, management has the authority to determine who is best suited for a particular position by determining the knowledge, skills, and abilities necessary for the position and by assessing the qualifications of the candidates. Accordingly, claims relating to a selection process 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 the process, or whether policy may have been misapplied.²

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

¹ Since the initiation of the December 30, 2005 grievance (the subject of this ruling), the Lieutenant position was vacated. The grievant subsequently applied for and was selected to fill that position, which he holds today.

² Va. Code § 2.2-3004; *Grievance Procedure Manual* § 4.1.

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 policy, DOC Procedure 5.7.

Extension of the Recruitment Period

The grievant objects to the agency's extension of the recruitment period. He contends that because at least four qualified internal applicants had applied for the job, the agency should have selected among the four rather than extending the recruitment period.

State hiring policy is designed not only to determine who may be qualified for the position, but also to ascertain which candidate is best-suited for the position. In determining who is the best-suited candidate, an agency has wide discretion. If the agency determines that extending the recruitment period and re-advertising the position would be beneficial, state and agency policy expressly allow the agency to do so.³ The determination of whether to reopen is left to the discretion of the agency, and absent any allegation of improper reason for the extension, which is not present here, there is no basis to qualify this issue.

Allowing Individuals to Complete Certifications After Hire

The grievant asserts that the agency allows employees to meet certification requirements after they have been hired. The agency does not appear to dispute this. The grievant states that the agency should "stop hiring personnel that are not qualified or certified to do their job at time of hire."⁴

This Department found no provision in state hiring policy that prohibits an agency from hiring an individual contingent on completion of a particular certification within a certain timeframe. EDR then consulted with the Department of Human Resource Management (DHRM) to determine whether such a practice would violate state policy.⁵ A DHRM Policy Analyst indicated that such a practice does not violate policy. Accordingly, this issue is not qualified.

³ Department of Human Resources Management (DHRM) Policy 2.10, p. 5, ("If initial recruitment does not result in an adequate applicant pool, agencies may reopen recruitment as necessary."); DOC Procedure 5-7.9(E), ("The organizational unit may readvertise a vacant position if additional qualified applicants are desired from which to select.") It is true that under DOC policy the agency must readvertise the position if the original advertisement does not produce three qualified applicants, unless an exception to readvertisement is approved by the Employee Relations Unit. However, the fact that the original advertisement yields at least three qualified applicants does not prohibit the agency from re-advertising the position if it believes that doing so may enhance the available applicant pool.

⁴ Emphasis in original.

⁵ The DHRM Policy Analyst, however, suggested that if an agency intends to allow to employees to complete certification requirements after hire, the agency should so state in the job announcement so that that those who do not currently possess the certification are not discouraged from applying.

Failure to Correct Inequities Caused by Layoff Placements

The grievant asserts that the agency has not corrected unfair circumstances caused by the placement of laid-off employees. He asserts that certain individuals, himself included, went through the promotion process and were selected to the next higher rank but were passed over as a result of the agency's efforts to place persons who had been subject to lay-offs associated with facility closings. The grievant asserts that he was passed over as a result of a lay-off placement three and one-half years ago.

While the grievant's frustration and disappointment over having been passed over is understandable, the agency violated no policy that when it placed laid-off employees in vacant positions. To the contrary, during the time between initial notice and final notice of layoff, agencies are required to attempt to identify internal placement options for its employees and must place employees by seniority to any valid vacancies agency-wide in the current or a lower pay band.⁶ Moreover, the DHRM Policy Analyst opined that the obligation to place laid-off employees takes precedence over the agency's intent to offer promotional opportunities. In addition, according to DHRM, there is no policy that would allow the agency to simply promote the grievant directly into a vacant position without going through the recruitment process. Thus, this issue is not qualified for hearing.

Agency's Preference for a Particular Sort of Answer to Interview Question

The grievant asserts that the agency unfairly penalized him by having an unstated preference for an "outside the box" answer to one of the interview questions. He essentially contends that by seeking an "outside the box" answer to one of the questions without so informing applicants of this preference, current employees would tend to answer the question based on standard agency operating procedures, which are by their very nature "inside the box." Applicants from outside the agency, on the other hand, are more likely to respond with an "outside the box" answer because they are not aware of the standard operating procedures that form "the box." The grievant asserts that he was informed by one of the panel members that he accurately answered the question.⁷

⁶ DHRM Policy 1.30. Such placement shall be in the highest position available for which the employee is *minimally qualified* at the same or lower level in the same or lower Pay Band, regardless of work hours or shift.

⁷ The question posed was: "Based on ACA [American Correctional Association] required training, DCJS [Department of Criminal Justice Services] required training and ongoing performance issues that require additional non schedule training tell the panel in detail what resources you would utilize to ensure compliance?" The successful candidate responded that he would look at the organization to see what was available and to other institutions and academics. The grievant answered that he would review ACA folders and add new information, use internal audits by experts, and use ASD [Academy for Staff Development] resources. Both said they would look to the schedule/calendar.

However, as noted above, the grievant has now successfully competed for the Lieutenant position. Accordingly, there is no effectual relief available to the grievant under the particular facts of this case. Therefore, this issue is not qualified 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 this 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