

Issue: Management Actions/ transfer (non-disciplinary); Ruling Date: October 27, 2006;
Ruling #2006-1335; Agency: Department of State Police; Outcome: not qualified



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution
QUALIFICATION RULING OF THE DIRECTOR
In the matter of Department of State Police
No. 2006-1335
October 27, 2006

The grievant has requested a qualification ruling regarding the February 17, 2006 grievance that he initiated with the Department of State Police (agency). For the reasons set forth below, this grievance is not qualified for hearing.

FACTS

The grievant serves as a Special Agent. The grievant asserts that on February 9, 2006, he discovered that position number 02210 had been reallocated as duty post 6, in a new location. Accordingly, on that same day, the grievant submitted a lateral transfer request for that position. The agency informed the grievant that by the time the grievant's request for a lateral transfer was received, the position had been posted as a promotional opportunity for qualified Troopers and, under a new policy, could not be offered to him.¹ The grievant characterizes the reallocated position as a "new" position that should have been made available to existing special agents before it was advertised to Troopers as a promotional opportunity.

DISCUSSION

The grievant asserts that the agency has misapplied or unfairly applied policy. For such a claim to advance to 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.²

In denying the grievant's transfer request, the agency quotes Informational Bulletin 2006 - No. 13, which states that "Lateral transfer requests received on or after the date of the written announcement will not be given consideration."³ The grievant asserts that despite Informational Bulletin 2006 No. 13, other employees were allowed to transfer into positions that had been announced in writing as promotional opportunities. The grievant cites to transfers associated with positions 02458 and 03146 as examples of such exceptions.

¹ Position 02210 was advertised as a promotional opportunity for Troopers on February 2, 2006.

² Va. Code § 2.2-3004(A)(ii); *Grievance Procedure Manual* § 4.1(b)(1).

³ Emphasis in original.

The agency has provided documentation that indicates that with the two positions named by the grievant as exceptions, the employees in each case had submitted their requests prior to Informational Bulletin 2006 - No. 13's effective date of February 1, 2006. Based on this documentation, it does not appear that the grievant is similarly situated to the other two employees who submitted their requests prior to the advertisement of the positions. (It is not disputed that the grievant submitted his request to transfer to position 02210 (duty post 6) until February 9th, nine days after the February 1st effective date.) Accordingly, this grievance cannot be qualified on the basis of an unfair application of policy.

The grievant also challenges the agency's denial of the transfer on the basis that there was no way that he could have submitted a request for transfer prior to the announcement because he was not aware of the transfer. According to the grievant, General Order 16 states that "Anticipated openings for new divisions, units, or positions shall be advertised in writing by the BASS Deputy Director (Sworn Programs) before such openings are filled." He claims that this position was never advertised and thus, because of his lack of knowledge of the opening, there was no way that he could have submitted a transfer request prior to becoming aware of the opening on February 9th.

According to the agency, the policy provision cited by the grievant does not apply in this case because the position in question is not a new position. Rather, the agency states that position 02210 was created in 1986 and has had 3 incumbents in that position since its inception. The agency explains that position 02210 was merely transferred from one duty post to another and therefore does not constitute a new position.⁴ As the policy provision in question is an agency policy, and the agency's interpretation does not contradict the plain language of the written policy, the agency is entitled to deference in its interpretation of its meaning. Accordingly, we conclude that the agency did not violate a mandatory policy provision when it failed to first post the position for current special agents before offering it as a promotional opportunity.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 this determination to the circuit court, the grievant should notify the human resources office,

⁴ The agency has provided an example of a new position that it is in the process of creating. The agency points to a trooper recruiter position that is being abolished and a sergeant position that is being created to replace the abolished position. The agency states that this position will be offered to current sergeants before it is advertised as a promotional opportunity for troopers.

⁵ The grievant also objects to the agency's failure to advertise the "establishment" of duty post 6 under General Order One. As with General Order 16, the agency's position is that this is not a newly established duty post, rather it is duty post that was merely moved from one location to another. Again, the agency is entitled to deference regarding the interpretation of their own policy, unless, for example, the interpretation is contradictory to the plain language of the policy, which is not the case here.

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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 notifies the agency that he wishes to conclude the grievance.

Claudia T. Farr
Director