

Issue: Qualification/Compensation/role change; Ruling Date: February 15, 2007; Ruling #2007-1541; Agency: Radford University; Outcome: not qualified



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

QUALIFICATION RULING OF DIRECTOR

In the matter of Radford University
No. 2007-1541
February 15, 2007

The grievant has requested a ruling on whether his November 28, 2006 grievance with Radford University (the university) qualifies for a hearing. The grievant claims that the university has misapplied or unfairly applied state policy by failing to reclassify him as a plasterer or alternatively to pay him as a plasterer. For the reasons discussed below, this grievance does not qualify for a hearing.

FACTS

The grievant works as a Trades Technician III at the university. His functional role title is "painter." The grievant claims that he has been performing the work of a "plasterer," a different functional role title of Trades Technician III employees, and requests an "upgrade" to that position and back pay for the previous work done.

The work profile of the painter position includes the application of paints and coatings, preparation of surfaces prior to painting, clean-up, and other paint related duties. A plasterer's job duties break down as 60% application of plaster¹ (plus application and finishing of drywall compounds to new walls and repairs to existing walls²), 30% application of protective coatings, and 10% masonry duties. In November 2006, the work profiles of painters were allegedly supplemented to include drywall finishing.

The grievant asserts that prior to October or November 2006, he was primarily working as a plasterer. He has stated that his supervisor assigned him to work in the residence life areas of the university, where most of the work involved plaster. After the grievant raised concerns regarding his job duties to management, he was allegedly told not to perform plastering work anymore. Though the grievant's work profile was changed to include drywall finishing, he has not been asked to perform this type of work since the change.

¹ For purposes of this ruling, the application of plaster to walls and ceilings to facilitate repairs to existing surfaces will be referred to as "plastering."

² For purposes of this ruling, this task will be referred to as "drywall finishing."

The plasterer position used to be in a higher pay grade under the former state salary system. Both positions now appear in pay band 3. There is currently only one plasterer on staff at the university. That plasterer receives a higher salary than the grievant. However, the university has stated that the reasons for the salary difference are: a) the plasterer has worked at the university for over sixteen years longer than the grievant, and b) the plasterer would have been hired at a higher starting salary under the former pay grade system.

DISCUSSION

By statute and under the grievance procedure, complaints relating solely to the establishment and revision of salaries and position classifications “shall not proceed to hearing”³ unless there is sufficient evidence of discrimination, retaliation, unwarranted discipline, or a misapplication or unfair application of policy. In this case, the grievant claims that he performed the work of a different role title and has been assigned recently, as part of his work profile, the duties of a different role title. He seeks a change in role and salary and back pay to remedy this alleged misapplication or unfair application of policy.

For the grievant’s claim to qualify for a hearing, there must be evidence raising a sufficient question as to whether management violated a mandatory policy or whether the challenged action, in its totality, is so unfair as to amount to a disregard of the intent of the applicable policy. The General Assembly has recognized that the Commonwealth’s system of personnel administration should be “based on merit principles and objective methods” of decision-making.⁴ In addition, the Commonwealth’s classification plan “shall provide for the grouping of all positions in classes based upon the respective duties, authority, and responsibilities,” with each position “allocated to the appropriate class title.”⁵

The above statutes evince a policy that would require state agencies and institutions to allocate positions having substantially the same duties and responsibilities to the same role. Importantly, the grievance procedure accords much deference to management’s exercise of judgment, including management’s assessment of the degree of change, if any, in the job duties of a position. Accordingly, this Department has long held that a hearing officer may not substitute his or her judgment for that of management regarding the correct classification of a position.⁶ Thus, a grievance that challenges the substance of a university’s assessment of a position’s job duties does not qualify for a hearing, unless there is sufficient evidence that the resulting determination was plainly

³ Va. Code § 2.2-3004(C).

⁴ Va. Code § 2.2-2900.

⁵ Va. Code § 2.2-103(B)(1).

⁶ See EDR Ruling No. 2006-1325; EDR Ruling No. 2003-045; EDR Ruling No. 2001-062.

inconsistent with other similar decisions within the university or that the assessment was otherwise arbitrary or capricious.⁷

In this case, it appears that the university has exercised appropriate discretion under policy in determining the classification of the grievant's position. The agency admits that the positions of painter and plasterer are subject to overlap. Certainly, one of a plasterer's tasks is drywall finishing, which was added to the grievant's work profile. In addition, a portion of the plasterer's job is to paint. However, it is apparent that the core difference between the job duties of a plasterer and a painter is working with plaster. The university has not added plastering work to the grievant's work profile. Indeed, the grievant admits that he has been asked to cease performing plastering work. Consequently, this Department cannot find that the agency's decision to maintain the grievant's role as a painter was in disregard of the facts, without a reasoned basis, or plainly inconsistent with other similar job classification decisions.

To the extent that the grievant's assumed work as a plasterer would be considered a lateral role change, i.e., a change to a different role in the same pay band, there is no mandatory provision of the state's compensation policy that would require the agency to provide any salary increase.⁸ The policy does provide the agency the discretion to increase an employee's salary in such a case, but it is not mandatory.⁹ Consequently, absent some other evidence of inconsistency or arbitrary or capricious conduct, an agency would not misapply state policy by refusing to provide a salary increase for an employee who undergoes a lateral role change within the same pay band.

In addition, once again assuming that the grievant performed the job of a plasterer in the past and now has been assigned several of the job duties of a plasterer, there is no evidence that the agency has been inconsistent or otherwise arbitrary or capricious in paying the grievant at his current salary. The grievant's position as a painter falls in pay band 3, as does the plasterer position. Though the plasterer on staff has a higher salary than the grievant, the reasons for this discrepancy are the plasterer's extended length of service with the university and the fact that the plasterer position was formerly in a higher pay grade.¹⁰ There is no evidence that a plasterer position currently carries a *de facto* higher salary than a painter. Therefore, even if the grievant were assigned the role title of plasterer, there is no indication that the agency would violate any mandatory policy or be

⁷ See *Grievance Procedure Manual* § 9. Arbitrary or capricious is defined as a decision made "[i]n disregard of the facts or without a reasoned basis."

⁸ See DHRM Policy 3.05, *Compensation*, p. 11 of 22.

⁹ *Id.*

¹⁰ Even if the grievant performed the work of a plasterer while it was at a higher pay grade under the old compensation system, a hearing officer would not have the authority to award back pay for work that occurred that long ago. Under the *Rules for Conducting Grievance Hearings*, a hearing officer is limited in awarding back pay in a non-disciplinary action to the 30 calendar day period immediately preceding the initiation of the grievance. *Rules for Conducting Grievance Hearings* § VI(C)(1). Because there is no effectual relief that a hearing officer could order for work performed under the former compensation system, this portion of the grievant's arguments will not support qualification of the grievance for hearing.

inconsistent or otherwise arbitrary or capricious in paying the grievant at his current salary.

For the reasons stated above, this grievance does not qualify for hearing. There is no evidence that the agency has misapplied or unfairly applied policy, or that it was arbitrary or capricious in its treatment of the grievant's salary, even assuming that the grievant performed the role of a plasterer in the past and has effectively been assigned portions of that role for the future. The grievant has not raised a sufficient question to 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, 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 university will request the appointment of a hearing officer unless the grievant wishes to conclude the grievance and notifies the university of that desire.

Claudia T. Farr
Director