

Issue: Qualification – Management Actions (assignment of duties); Ruling Date:
December 12, 2007; Ruling #2008-1845; Agency: University of Mary Washington;
Outcome: Not Qualified.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

QUALIFICATION RULING OF DIRECTOR

In the matter of the University of Mary Washington
No. 2008-1845
December 12, 2007

The grievant has requested qualification of his August 8, 2007 grievance with the University of Mary Washington (the University) regarding the reorganization of his job duties and supervisory structure. For the reasons set forth below, the grievance does not qualify for hearing.

FACTS

On or about June 19, 2007, the grievant's former supervisor reorganized her unit. The result of this reorganization was that the grievant's job duties were altered and he was assigned to a different supervisor, the operations manager. In short, while the grievant used to perform technical support on location at the University, he now works as a senior technician at the help desk to correct problems remotely. The grievant was also assigned certain new administrative tasks. The grievant challenged the reorganization in a grievance dated August 8, 2007.

DISCUSSION

Although state employees with access to the grievance procedure may grieve anything related to their employment, only certain grievances qualify for a hearing.¹ By statute and under the grievance procedure, complaints relating solely to issues such as the methods, means, and personnel by which work activities are to be carried out, as well as hiring, promotion, transfer, assignment, and retention of employees within the agency "shall not proceed to hearing" unless there is sufficient evidence of discrimination, retaliation, unwarranted discipline, or a misapplication or unfair application of policy.² In this case, the grievant claims that the reorganization changed his job duties and subjected him to different expectations and rules than his coworkers. The grievant has not alleged that he has been the victim of discrimination or retaliation. However, the grievant's claim can be fairly read as an

¹ See *Grievance Procedure Manual* § 4.1.

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

allegation that the University has misapplied or unfairly applied policy in executing the reorganization.

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.³ This statute evinces a policy that would require state agencies to execute a reorganization like that at issue here consistent with merit principles and objective decision making.

Importantly, however, 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 held that a grievance that challenges the substance of an agency'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 inconsistent with other similar decisions within the agency or that the assessment was otherwise arbitrary or capricious.⁴ This standard is appropriate to utilize in this case, as well.

Further, the grievance procedure generally limits grievances that qualify for a hearing to those that involve "adverse employment actions."⁵ Thus, typically, a threshold question is whether the grievant has suffered an adverse employment action.⁶ An adverse employment action is defined as a "tangible employment action constitut[ing] 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."⁷ Adverse employment actions include any agency actions that have an adverse effect *on the terms, conditions, or benefits* of one's employment.⁸

³ Va. Code § 2.2-2900.

⁴ See *Grievance Procedure Manual* § 9 (defining arbitrary or capricious as a decision made "[i]n disregard of the facts or without a reasoned basis"); see also EDR Ruling No. 2008-1760 (applying arbitrary or capricious standard to agency's assessment of applicants during a selection process); EDR Ruling No. 2008-1736 (same); EDR Ruling No. 2007-1721 (same); EDR Ruling No. 2007-1541 (applying arbitrary or capricious standard to classification of grievant's job duties and salary determination); EDR Ruling No. 2005-947 and 2005-1007 (applying arbitrary or capricious standard to agency's assessment of a position's job duties); EDR Ruling No. 2003-007 (applying arbitrary or capricious standard to agency's denial of upward role change).

⁵ See *Grievance Procedure Manual* § 4.1(b).

⁶ While evidence suggesting that the grievant suffered an "adverse employment action" is generally required in order for a grievance to advance to hearing, certain grievances may proceed to hearing absent evidence of an "adverse employment action." For example, consistent with recent developments in Title VII law, this Department substitutes a lessened "materially adverse" standard for the "adverse employment action" standard in retaliation grievances. See EDR Ruling No. 2007-1538.

⁷ *Burlington Indus., Inc. v. Ellerth*, 524 U.S. 742, 761 (1998).

⁸ *Von Gunten v. Maryland Department of the Environment*, 243 F.3d 858, 866 (4th Cir 2001)(citing *Munday v. Waste Management of North America, Inc.*, 126 F.3d 239, 243 (4th Cir. 1997)).

Even assuming for the purposes of this ruling only that the actions at issue in this grievance rose to the level of an adverse employment action, it does not appear that the University's reorganization was without a reasoned basis. Rather, the University states that the reorganization was to "maximize efficiencies." Specifically, the University identifies various reasons why there is likely to be an increase in work for the help desk, requiring senior level assistance by the grievant. In addition, the grievant's former supervisor became aware that many issues that were addressed during on-site visits could have been handled remotely from the help desk with senior technical support. The reorganization was used to put the grievant in such a position to enhance the services of the help desk. Additionally, because the grievant is now working at the help desk, he was moved under the supervision of the operations manager who supervises the help desk. In summary, it cannot be said that the University lacked a reasoned basis for the reorganization.

While the grievant may disagree with the University's rationale for the reorganization, it does not mean that the action was arbitrary or capricious, or otherwise a misapplication of policy. Therefore, this 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, 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