

Issues: Qualification – Compensation (Salary Dispute) and Consolidation of Grievances for Purpose of Hearing; Ruling Date: April 9, 2008; Ruling #2008-1920, 2008-1993; Agency: Department of State Police; Outcome: Qualified and Consolidated.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

**QUALIFICATION AND
CONSOLIDATION RULING OF DIRECTOR**

In the matter of Virginia State Police
Ruling Numbers 2008-1920, 2008-1993
April 9, 2008

The grievant has requested a ruling on whether his December 19, 2007 grievance with the Virginia State Police (VSP or the agency) qualifies for a hearing. For the reasons discussed below, the December 19th grievance is qualified and consolidated with the grievant's pending November 29, 2007 grievance for a single hearing.

FACTS

The grievant was employed by the agency as a Special Agent and Task Force Coordinator. On November 16, 2007, the grievant received a Group III Written Notice for allegedly falsifying an official state document. In connection with the Written Notice, the grievant was transferred to the position of Senior Trooper, with a ten percent pay reduction. On November 29, 2007, the grievant initiated a grievance challenging this disciplinary action. On December 10, 2007, the agency head qualified the grievance for hearing.

Subsequently, on December 19, 2007, the grievant initiated a second grievance. This grievance alleges that the grievant was subjected to a 20% pay reduction, rather than the ten percent reduction noted in the Written Notice. The agency does not deny that the grievant's pay was reduced 20%, but states that half of this amount was due to the grievant's removal as Task Force Coordinator (apparently in connection with the disciplinary action), while the other half reflected the ten percent disciplinary reduction cited in the Written Notice.

After the parties failed to resolve the December 19th grievance during the management resolution steps, the grievant asked the agency head to qualify the grievance for hearing. The agency head denied the grievant's request, and the grievant has appealed to this Department.

DISCUSSION

Qualification

By statute and under the grievance procedure, management is reserved the exclusive right to manage the affairs and operations of state government.¹ Thus, claims relating to issues such

¹ Va. Code § 2.2-3004(B).

as the methods, means and personnel by which work activities are to be carried out generally do not qualify for a hearing, unless the agency's actions result in an adverse employment action² and the grievant presents evidence raising a sufficient question as to whether the actions were taken for disciplinary reasons, were influenced by discrimination or retaliation, or were the result of a misapplication or unfair application of policy.³

In this case, the agency action challenged by the December 19th grievance appears to be significantly intertwined with the Written Notice addressed by the November 29th grievance. Because the grievant will be afforded a hearing to challenge the Written Notice, it simply makes sense to send his grievance challenging the financial impact of that disciplinary action to hearing as well, particularly as any relief received by the grievant on his November 29th grievance could affect the pay reduction at issue in the December 19th grievance.⁴ We note, however, that this qualification ruling in no way determines that the pay reduction challenged by the December 19th grievance was a misapplication or unfair application of policy, or otherwise improper, but rather only determines that further exploration of the facts by a hearing officer is appropriate.

Consolidation

EDR strongly favors consolidation of grievances for hearing and will grant consolidation when grievances involve the same parties, legal issues, policies, and/or factual background, unless there is a persuasive reason to process the grievances individually.⁵ This Department finds that consolidation of the November 29th and December 19th grievances is appropriate.⁶ The grievances involve the same parties and share a related factual background. Moreover, consolidation is not impracticable in this instance.

In the interests of efficiency, as the agency has already requested the appointment of a hearing officer in the November 29th grievance, this Department shall assume that the grievant wishes to advance his December 19th grievance to hearing and appoint a hearing officer to hear the consolidated grievances. If the grievant does not wish to pursue his December 19th grievance to hearing, he should notify this Department within 5 days of the date of this ruling.

This Department's rulings on compliance are final and nonappealable.⁷

Claudia T. Farr
Director

² 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." *Burlington Industries, Inc. v. Ellerth*, 118 S. Ct. 2257, 2268 (1998).

³ Va. Code § 2.2-3004 (A) and (C); *Grievance Procedure Manual* § 4.1 (C).

⁴ See EDR Ruling No. 2005-957.

⁵ *Grievance Procedure Manual* § 8.5.

⁶ By letter dated January 17, 2008, the grievant, through his attorney, requested consolidation of the two grievances.

⁷ Va. Code § 2.2-1001(5).