

Issue: Qualification – Work Conditions (Hours of Duty/Shift); Ruling Date: September 3, 2008; Ruling #2009-2105; Agency: Virginia Department of Transportation; Outcome: Not Qualified.



*COMMONWEALTH of VIRGINIA*  
*Department of Employment Dispute Resolution*

**QUALIFICATION RULING OF DIRECTOR**

In the matter of Department of Transportation  
Ruling No. 2009-2105  
September 3, 2008

The grievant has requested a ruling on whether her June 9, 2008 grievance with the Department of Transportation (the agency) qualifies for a hearing. For the reasons discussed below, this grievance does not qualify for a hearing.

FACTS

This grievance concerns the grievant's claims regarding work schedules. About ten years ago, the grievant was removed from a particular shift because it was no longer available due to staffing issues. She recently became aware that a co-worker had been approved to work the shift the grievant used to work ten years ago. The grievant asserts that the agency should have told her the shift had become available and requests to work that shift.

Employees at the grievant's facility can request a shift change by submitting a "Work Schedule Change Request Form." The language of that form instructs employees to

update and forward this form to [management] immediately upon a change of interest in their work schedule, or every January and June of each year. Whenever the employee submits a new request, the previous request will be voided and the request with the most recent date will be valid. To be considered for a change in work schedule, your line change request form, "MUST", be on file, "PRIOR", to the occurrence of a vacancy.

The grievant had submitted such forms over the past year and on at least one of these forms indicated "NO Change request at all!"

DISCUSSION

The grievance statutes and procedure reserve to management the exclusive right to manage the affairs and operations of state government.<sup>1</sup> Further, by statute and under the grievance procedure, complaints relating solely to the methods, means, and personnel

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<sup>1</sup> See Va. Code § 2.2-3004(B).

by which work activities are to be carried out “shall not proceed to hearing”<sup>2</sup> unless there is sufficient evidence of discrimination, retaliation, unwarranted discipline, or a misapplication or unfair application of policy. The grievant has not alleged discrimination or retaliation. Therefore, the only question on which this grievance might qualify for hearing is whether the agency misapplied or unfairly applied policy.

For an allegation of misapplication of policy or unfair application of policy to qualify for 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.

The grievant has not identified any specific policy requirement violated by the agency in handling the shift changes. Additionally, there is no evidence that the agency disregarded the intent of any applicable policy or the schedule change program. It appears that the agency has adhered to the language of the change request form. The grievant had not requested to change her schedule, but another employee had. This Department has found no policy that would have required management to notify the grievant that a particular schedule had become available. Indeed, the schedule change form requires that an employee submit a change request *prior* to any such vacancy occurring. The grievant has also presented no evidence that the agency’s actions were inconsistent with other decisions made by the agency or otherwise arbitrary or capricious.<sup>3</sup> As such, there is no basis to qualify this grievance for a 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 and file a notice of appeal with the circuit court pursuant to Va. Code § 2.2-3004(E). 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.

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Claudia T. Farr  
Director

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<sup>2</sup> Va. Code § 2.2-3004(C).

<sup>3</sup> See *Grievance Procedure Manual* § 9 (defining arbitrary or capricious as a decision made “[i]n disregard of the facts or without a reasoned basis”).