

Issue: Qualification – Management Actions (Recruitment/Selection); Ruling
Date: September 24, 2008; Ruling #2009-2111; 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. 2009-2111
September 24, 2008

The grievant has requested a ruling on whether his June 19, 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 competition for a re-advertised Inmate Crew Lead position with the agency. The grievant was offered the position on May 23, 2008. The agency offered him a 12% salary increase if he took the job. The grievant, however, wanted to negotiate the starting salary. The agency maintained its offer of a 12% salary increase and did not entertain additional negotiations. It appears the grievant then did not accept the position.

The grievant had previously applied for this same Inmate Crew Lead position in 2007. He was similarly offered the job in December 2007. According to the agency, a 12% salary increase was also offered to the grievant at that time after negotiations with the grievant. However, the grievant declined the position, which led to the re-advertisement of the Inmate Crew Lead job in 2008.

The grievant has stated that he should have been allowed to negotiate the salary for the position offered to him in May 2008. The grievant points to the job posting, which stated next to "Hiring Range": "Negotiable based on training and experience." The grievant also cites to Department of Human Resource Management (DHRM) Policy 3.05, *Compensation*. In addition to this argument, the grievant claims that his "human rights" were violated. He states that he was asked during the interview for this position, if he was offered the job, "what kind of salary you are looking at."

DISCUSSION

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.¹ The grievant primarily alleges misapplication or unfair application of policy.

Misapplication or Unfair Application of 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. DHRM Policy 3.05 provides that “[s]alary negotiations for promotions consider the Pay Factors and provisions of the Agency’s Salary Administration Plan.” Further, the Policy indicates that “[w]hen an employee is promoted ..., the promotional increase is negotiable from the minimum of the new Salary Range up to 15% above the current salary.” While this Department is not the final authority for interpreting state policy,² there does not appear to be any portion of this policy that mandates formal negotiations of the type the grievant appears to argue are required.³ The policy appears to reflect the intent to invest in agency management broad discretion for making individual pay decisions and the corresponding accountability in light of each of the 13 enumerated pay factors.

The grievant has not shown that the agency’s refusal to agree to offer any salary other than a 12% increase violated a specific mandatory policy provision or was outside the scope of the discretion granted to the agency by the applicable compensation policy. Both DHRM Policy 3.05 and the language in the job posting appear to provide the agency the flexibility in determining the applicable salary, rather than requiring a formal negotiation. The grievant has also presented no evidence that the agency’s action was inconsistent with other decisions made by the agency or otherwise arbitrary or capricious. As such, there is no basis to qualify this claim for a hearing.

Human Rights

The grievant also asserts that there has been a violation of “human rights” in this case. The basis of the grievant’s claim is unclear, however. The grievant appears to indicate that the question posed to him during the interview about what salary he was looking for was not appropriate. As an initial matter, this does not appear to be an inappropriate question on its face. This Department has found no provision of state policy that such a question violates. Further, there is no indication that any of the grievant’s “human rights” have been violated in this selection. The grievant has not

¹ Va. Code § 2.2-3004(C); *Grievance Procedure Manual* § 4.1(c).

² E.g., DHRM Policy 3.05, *Compensation* (“The Director of the [DHRM] is responsible for official interpretation of this policy, in accordance with section 2.2-1201 of the Code of Virginia.”).

³ Further, there is no indication in policy that an agency would engage in an inappropriate negotiation tactic by simply holding to its original offer. During this Department’s investigation for this ruling, this analysis was unofficially confirmed in an informal discussion with a member of DHRM’s Policy Development and Administration staff.

indicated any basis for his claim of a “human rights” violation. Because the grievant has presented no evidence to support or explain his “human rights” claim, it 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 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.

Claudia T. Farr
Director