

Issues: Qualification – Compensation (Salary Dispute) and Management Actions (Assignment of Duties); Ruling Date: August 13, 2009; Ruling #2010-2380; Agency: University of Virginia; Outcome: Not Qualified.



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

**QUALIFICATION RULING OF DIRECTOR**

In the matter of the University of Virginia  
Ruling Number 2010-2380  
August 13, 2009

The grievant has requested a ruling on whether his June 3, 2009 grievance with the University of Virginia (UVA or the university) qualifies for hearing. The grievant alleges that he was wrongfully switched to the day shift from the second shift. For the reasons discussed below, this grievance does not qualify for hearing.

FACTS

The grievant is employed with UVA as a Utility Plant Specialist. The grievant states that although he was hired as a second-shift employee, on or about May 2, 2009, he was transferred to the day shift, resulting in the loss of a two-dollar-an-hour second-shift bonus. On June 3, 2009, the grievant initiated a grievance challenging the shift change. After the parties failed to resolve the grievance during the management resolution steps, the grievant asked the agency head to qualify his grievance for hearing. The agency head's apparent designee denied the grievant's request, and the grievant has appealed to this Department.

DISCUSSION

By statute and under the grievance procedure, management is reserved the exclusive right to manage the affairs and operations of state government.<sup>1</sup> Thus, claims relating to issues such as the method, means and personnel by which work activities are to be carried out generally do not qualify for a hearing, unless the grievant presents evidence raising a sufficient question as to whether discrimination, retaliation, or discipline may have influenced management's decision, or whether state policy may have been misapplied or unfairly applied.<sup>2</sup> Further, the General Assembly has limited issues that may qualify for a hearing to those that involve "adverse employment actions."<sup>3</sup> An adverse employment action is defined as a "tangible employment action constitute[ing] a significant change in employment status, such as hiring, firing, failing to promote,

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

<sup>2</sup> Va. Code § 2.2-3004 (A) and (C); *Grievance Procedure Manual* § 4.1 (c).

<sup>3</sup> Va. Code § 2.2-3004(A).

reassignment with significantly different responsibilities, or a decision causing a significant change in benefits.”<sup>4</sup> For purposes of this ruling only, we will assume that the grievant’s transfer from the second shift to the day shift constitutes an adverse employment action, as it apparently resulted in the grievant’s receiving a lower rate of pay.

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. In this case, the university states that the grievant’s shift was changed after he received a promotion. According to the university, the individuals working in the grievant’s new job title were allowed to select from available shift openings by seniority, in accordance with past practice. The university also states that its assignment of the grievant was within management’s discretion to assign employees according to business needs. As the grievant has not identified any policy violated by the university’s actions, and there is no indication that the shift change was so extreme or arbitrary to rise to the level of a misapplication or unfair application of policy, there is no basis to qualify this claim 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. 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>4</sup> Burlington Industries, Inc. v. Ellerth, 524 U.S. 742,761.