

Issue: Qualification – Separation from State (Layoff/Recall); Ruling Date: December 30, 2009; Ruling #2010-2468; Agency: University of Mary Washington; Outcome: Not Qualified.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

QUALIFICATION RULING OF DIRECTOR

In the matter of University of Mary Washington
Ruling No. 2010-2468
December 30, 2009

The grievant has requested a ruling on whether his November 9, 2009 grievance with the University of Mary Washington (the University) qualifies for a hearing. For the reasons discussed below, this grievance does not qualify for a hearing.

FACTS

On or around November 3, 2009, the grievant was notified that his position was being eliminated and he was subject to layoff. The University determined that the duties he performed were no longer necessary because they had been outsourced, reassigned, no longer needed, and/or duplicative of other employees' duties. The grievant disputes the University's determinations and seeks the reinstatement of his position. For instance, the grievant states that the University based its determinations on an obsolete Employee Work Profile (EWP), which did not accurately describe the duties he was performing. The grievant argues that the University has failed to follow policy.

DISCUSSION

Layoff

By statute and under the grievance procedure, management reserves the exclusive right to manage the affairs and operations of state government.¹ Further, complaints relating solely to layoff "shall not proceed to a hearing."² Accordingly, challenges to such decisions do not qualify for a hearing unless the grievant presents evidence raising a sufficient question as to whether the University misapplied or unfairly applied policy, or discrimination, retaliation or discipline improperly influenced the decision.³ In this case, the grievant claims that the University misapplied and/or unfairly applied policy.

Misapplication or Unfair Application of Policy

¹ Va. Code § 2.2-3004(B).

² Va. Code § 2.2-3004(C).

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

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 Department of Human Resource Management (DHRM) Layoff Policy allows “agencies to implement reductions in work force according to uniform criteria when it becomes necessary to reduce the number of employees or to reconfigure the work force.”⁴ Policy mandates that each agency identify employees for layoff in a manner consistent with its business needs and the provisions of the Layoff Policy. As such, the policy states that before implementing layoff, agencies must:

- determine whether the entire agency or only certain designated work unit(s) are to be affected;
- designate business functions to be eliminated or reassigned;
- designate work unit(s) to be affected as appropriate;
- review all vacant positions to identify valid vacancies that can be used as placement options during layoff, and
- determine if they will offer the option that allows other employee(s) in the same work unit, Role, and performing substantially the same duties to request to be considered for layoff if no placement options are available for employee(s) initially identified for layoff.⁵

The University determined that the grievant’s position was no longer needed based on the outsourcing of certain functions, the reassignment of duties, and duplication of others. An agency’s decisions as to what work units will be affected by layoff and the business functions to be eliminated or reassigned are generally within the agency’s discretion; however, that discretion is not without limitation. Rather, this Department has repeatedly held that even where an agency has significant discretion to make decisions (for example, an agency’s assessment of a position’s job duties), qualification is warranted where evidence presented by the grievant raises a sufficient question as to whether the agency’s determination was plainly inconsistent with other similar decisions within the agency or otherwise arbitrary or capricious.⁶

The grievant states that the University evaluated his position for elimination based on an obsolete EWP. Assuming that the grievant’s allegation is correct and the alleged differences could have had a material impact on the University’s assessment of his duties, the University remedied any such problems by seeking input from the grievant about the duties he performed. The University still determined that the grievant’s position was no longer needed. The grievant also asserts that his training functions were the majority of his job and were too important to be eliminated. However, the University states that it has no intention of needing an additional position for training in the grievant’s former department even after losing another part-time trainer who recently resigned. Though the grievant may disagree with the University’s

⁴ DHRM Policy 1.30, *Layoff*.

⁵ *Id.*

⁶ 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, e.g., EDR Ruling 2008-1879.

determinations, his arguments do not raise a sufficient question that the University's decisions were arbitrary or capricious.

The grievant has not presented any evidence suggesting that the University has failed to follow policy in executing this layoff. The grievant's arguments do not indicate that the layoff determinations were inconsistent with other decisions made by the University or otherwise arbitrary or capricious. There is no basis to qualify this grievance for a hearing.

Updated EWP

Another matter the grievant appears to be raising in his grievance is the University's alleged misapplication of policy in not providing him an updated EWP.⁷ Assuming for purposes of this ruling only that the grievant's allegations are true and that failing to provide him with an updated EWP violated policy, there are still some cases when qualification is inappropriate even if policy has been violated or misapplied. For example, during the resolution steps, an issue may have become moot, either because the agency granted the specific relief requested by the grievant or an interim event prevents a hearing officer from being able to grant any meaningful relief. Additionally, qualification may be inappropriate when the hearing officer does not have the authority to grant the relief requested by the grievant and no other effectual relief is available.

Because the grievant's layoff claim does not qualify for hearing, any relief the hearing officer could award on the alleged misapplication of policy regarding the grievant's outdated EWP would be ineffectual and moot. When there has been a misapplication of policy, a hearing officer could order that the agency reapply policy correctly. However, as a practical matter, "reapplying policy" to provide the grievant with an updated EWP for a job he no longer has would have little effect in this case. Consequently, effectual relief is unavailable to the grievant through the grievance procedure regarding this claim. In light of the foregoing, the grievance does not qualify 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 this 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 pursuant to the provisions of Va. Code § 2.2-3004(E). If the court should qualify this grievance, within five workdays of receipt of the court's decision, the University will request the appointment of a hearing officer unless the grievant notifies the University that he does not wish to proceed.

Claudia T. Farr
Director

⁷ For instance, as part of the grievant's requested relief, he appears to be seeking an updated EWP.