

Issue: Qualification – Work Conditions (Co-Worker Conflict); Ruling Date: March 5, 2010; Ruling #2010-2555; Agency: Department of Corrections; Outcome: Not Qualified.



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

**QUALIFICATION RULING OF DIRECTOR**

In the matter of the Department of Corrections  
Ruling Number 2010-2555  
March 5, 2010

The grievant has requested a ruling on whether his November 16, 2009 grievance with the Department of Corrections (the agency) qualifies for a hearing. For the reasons discussed below, this grievance does not qualify for a hearing.

FACTS

On November 10, 2009, the grievant's team leader requested a copy of his work schedule. After the grievant gave him a copy, the team leader asked how many hours the grievant would be working each day. When the grievant explained that he did not know, the team leader ripped up the copy of the grievant's work schedule and allegedly stated that he was "going to fix" the grievant. The grievant complained to a supervisor and initiated this grievance. During the course of this grievance, the team leader has acknowledged that his comments were unprofessional and indicated that he would apologize. As the parties were apparently unable to resolve this grievance, the grievant now requests that the grievance be qualified for a hearing.

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.

Further, the grievance procedure generally limits grievances that qualify for a hearing to those that involve "adverse employment actions."<sup>2</sup> Thus, typically, the threshold question is whether the grievant has suffered an adverse employment action.<sup>3</sup> An adverse employment

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<sup>1</sup> Va. Code § 2.2-3004(B).

<sup>2</sup> See *Grievance Procedure Manual* § 4.1(b).

<sup>3</sup> While evidence suggesting that the grievant suffered an "adverse employment action" is generally required in order for a grievance to advance to hearing, certain grievances may proceed to hearing absent evidence of an

action is defined as a “tangible employment act 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.”<sup>4</sup> Adverse employment actions include any agency actions that have an adverse effect *on the terms, conditions, or benefits* of one’s employment.<sup>5</sup>

This Department has reviewed the grievance record and finds that none of the grievant’s allegations amount to an adverse employment action. Consequently, this grievance does not qualify for a hearing.

Although this grievance does not qualify for a hearing, mediation may be a viable option for the parties to pursue. EDR’s mediation program is a voluntary and confidential process in which one or more mediators, neutrals from outside the grievant’s agency, help the parties in conflict to identify specific areas of conflict and work out possible solutions that are acceptable to each of the parties. Mediation has the potential to effect positive, long-term changes of great benefit to the parties and work unit involved. For more information on this Department’s Workplace Mediation program, the parties should call 888-232-3842 (toll free) or 804-786-7994.

#### 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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“adverse employment action.” For example, consistent with recent developments in Title VII law, this Department substitutes a lessened “materially adverse” standard for the “adverse employment action” standard in retaliation grievances. See EDR Ruling No. 2007-1538. The allegations in this grievance do not include retaliation, nor is a sufficient question of retaliation raised.

<sup>4</sup> Burlington Industries, Inc. v. Ellerth, 524 U.S. 742, 761 (1998).

<sup>5</sup> Holland v. Washington Homes, Inc., 487 F.3d 208, 219 (4<sup>th</sup> Cir. 2007).