

Issue: Qualification – Compensation (Acting Pay); Ruling Date: July 2, 2010; Ruling #2010-2638; Agency: Old Dominion University; Outcome: Not Qualified.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

QUALIFICATION RULING OF DIRECTOR

In the matter of Old Dominion University
Ruling No. 2010-2638
July 2, 2010

The grievant has requested a ruling on whether his March 8, 2010 grievance with Old Dominion University (the agency) qualifies for a hearing. For the following reasons, this grievance does not qualify for hearing.

FACTS

The grievant is an Equipment Technician. His grievance challenges the agency's designation of another employee as the acting supervisor for the Motor Pool where they both work. The grievant asserts that he is better qualified than his co-worker for this acting role.

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"¹ unless there is sufficient evidence of discrimination, retaliation, unwarranted discipline, or a misapplication or unfair application of policy.² While not expressly couched as such, the grievant seems to assert that the agency's actions constitute a potential unfair application or misapplication of policy.

Misapplication/Unfair Application of Policy

In this case, there is apparently no policy that directly addresses the selection of individuals for acting positions. In conjunction with an investigation for a previous ruling regarding acting pay, this Department contacted the Department of Human Resource Management (DHRM) for guidance on relevant state policy and whether there are any requirements associated with selections for acting positions--for example, announcements or

¹ Va. Code § 2.2-3004(C).

² *Grievance Procedure Manual* § 4.1(c).

interviews.³ A DHRM Consultant for Policy stated that “DHRM does not publish any guidance or requirements concerning the selection process for these positions.”⁴ In addition, the agency asserts that the other employee has had language in his Employee Work Profile (EWP) for years --at least since the grievant’s arrival to the agency--which required the co-worker to assume managerial duties in the regular supervisor’s absence. The agency provided evidence to support this assertion. Thus, based on this evidence and the DHRM response, this Department can find no basis to qualify this grievance on the assertion of an unfair or misapplication of policy.

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 agency will request the appointment of a hearing officer unless the grievant notifies the agency that he does not wish to proceed.

Claudia Farr
Director

³ See Va. Code § 2.2-1201(13) (Director of the Department of Human Resource Management “shall have the final authority to establish and interpret personnel policies”); *Murray v. Stokes*, 237 Va. 653, 657, 378 S.E.2d 834, 836 (1989) (stating that the “ ‘final authority’ language ... supports and is consistent with a legislative intent ... to preclude judicial review”); *Grievance Procedure Manual* § 7.2(c) (noting that decisions by the Director of Department of Human Resource Management (DHRM) are final and nonappealable).

⁴ See EDR Ruling No. 2009-2041.