



JANET L. LAWSON
DIRECTOR

COMMONWEALTH OF VIRGINIA
Department Of Human Resource Management
Office of Employment Dispute Resolution

James Monroe Building
101 N. 14th Street, 12th Floor
Richmond, Virginia 23219
Tel: (804) 225-2131
(TTY) 711

QUALIFICATION RULING

In the matter of the Marine Resources Commission
Ruling Number 2024-5696
May 2, 2024

The grievant has requested a ruling from the Office of Employment Dispute Resolution (EDR) at the Department of Human Resource Management (DHRM) on whether his March 27, 2024 grievance with the Marine Resources Commission (the “commission” or “agency”) qualifies for a hearing. For the reasons discussed below, this grievance does not qualify for a hearing.

FACTS

The grievant works as a special agent in the agency’s law enforcement department. On or about March 27, 2024, he initiated a grievance challenging the agency’s decision to relocate the offices of his work unit. According to the grievant, his unit has until recently worked in offices owned by a local police department, separate from the agency’s main headquarters. He alleged that, on March 19, 2024, a deputy commissioner ordered his unit to vacate their offices and relocate to the agency’s main headquarters. The grievant argued that this decision poses significant safety concerns for himself and members of his unit, in part because their work may require undercover engagement with commercial fishers who often visit the agency’s public headquarters and would be able to learn the true identities of covert agents if they could be seen working there. After the grievance proceeded through the management steps, the agency commissioner declined to grant relief or to qualify the grievance for a hearing. The grievant now appeals the commissioner’s qualification determination to EDR.

DISCUSSION

Although state employees with access to the grievance procedure may generally grieve anything related to their employment, only certain grievances qualify for a hearing.¹ The grievance procedure generally limits grievances that qualify for a hearing to those that involve “adverse employment actions.”² Thus, typically, the threshold question for qualification is whether the grievant has experienced an adverse employment action that could be remedied by a hearing officer. As this ruling is determined on other grounds, we need not reach the question of whether an adverse employment action has occurred in this case.

¹ See *Grievance Procedure Manual* § 4.1.

² See *id.* § 4.1(b); see Va. Code § 2.2-3004(A).

Additionally, the grievance statutes and procedure reserve to management the exclusive right to manage the affairs and operations of state government.³ Thus, claims relating to issues such as the methods, 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 improperly influenced management's decision, or whether state or agency policy may have been misapplied or unfairly applied.⁴

The grievant in this matter essentially argues that the agency's decision to relocate his unit's offices into the main public headquarters is a misapplication of DHRM Policy 2.35, *Civility in the Workplace*, and its intention "to ensure that agencies provide a welcoming, safe, and civil workplace for their employees"⁵ Specifically, he cites the policy's provision that "[b]ehaviors that undermine team cohesion, staff morale, individual self-worth, productivity, and safety are not acceptable."⁶ As it relates to workplace safety, Policy 2.35 requires agencies to "establish and communicate protocols for assessing and addressing emergency situations involving threatening or violent behaviors."⁷ They must also communicate a "commitment to providing a safe work environment"⁸ More generally, the policy and its associated guidance make clear that agencies must not tolerate workplace conduct that is disrespectful, demeaning, disparaging, denigrating, humiliating, dishonest, insensitive, rude, unprofessional, or unwelcome.

However, these requirements must be read together with agencies' broader authority to manage the means, methods, and personnel by which agency work is performed.⁹ While this authority is not without limit, Policy 2.35 is not intended to constrain agency management's general discretion to determine, among other things, the worksites where employees will be required to complete their duties, or its judgment and preferred approach to risk management. Such considerations are squarely within the means and methods by which agency work is performed. Accordingly, even assuming that the grievant has articulated an adverse employment action, EDR cannot conclude that the grievance raises a sufficient question of whether the agency has misapplied or unfairly applied Policy 2.35 or any other policy.

In its response to the grievant's concerns, the agency's management has stated that relocating his unit to the main headquarters is intended to improve management oversight over personnel and sensitive equipment in a variety of ways. For example, the deputy commissioner stated a priority to establish more cohesive staff operations and expressed concerns about management's ability to access the facility where the grievant currently works. He further

³ Va. Code § 2.2-3004(B).

⁴ *Id.* § 2.2-3004(A); *Grievance Procedure Manual* §§ 4.1(b), (c).

⁵ DHRM Policy 2.35, *Civility in the Workplace*, at 1.

⁶ *Id.* at 3. EDR notes that federal and state laws also require employers to provide safe workplaces. For example, under the Occupational Safety and Health Act of 1970, employers must establish "place[s] of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm" to employees. 29 U.S.C. § 654(a)(1). In addition, employees of the Commonwealth are covered by the Virginia Occupational Safety and Health Program, which requires "every employer to furnish to each of his employees safe employment and a place of employment that is free from recognized hazards that are causing or are likely to cause death or serious harm to his employees" Va. Code § 40.1-51.1(A); *see* 16 Va. Admin. Code § 25-60-30.

⁷ DHRM Policy 2.35, *Civility in the Workplace*, at 5.

⁸ *Id.*

⁹ Va. Code § 2.2-3004(B).

expressed a belief that the main headquarters does not pose a heightened safety risk to the grievant or his unit. It is clear that the grievant strongly disagrees with management's assessments. He asserts that this relocation "would put any officer at an unnecessary risk of confrontation with individuals who have been affected by [them], often in a manner that has been unfavorable and detrimental to the individual[s] freedom, employment and financial well-being." He further contends that it "would place the agents and investigators of [his unit] in a position where their names, true identities, faces, vehicles, etc. would almost certainly be obtained by commercial watermen who visit [the main public] facility on a nearly daily basis. This location has the potential to put the safety of these agents['] and investigators['] family members at risk as well."

Although the grievant has articulated his concerns in detail and EDR has no basis to doubt them, we are not aware of any policy that would provide support for a hearing officer to conclude that the grievant's judgment in this regard outweighs that of the agency's leadership. Although the grievant cites language in DHRM Policy 2.35 requiring agencies to provide a safe work environment for employees, the policy does not impinge on each agency's discretion to weigh and manage the various risks that may be particular to their operations, beyond requiring that they address prohibited conduct appropriately. Without facts to suggest that the relocation decision was disciplinary, hostile, or retaliatory against the grievant himself, EDR cannot conclude that management's judgment in this regard is within the scope of conduct prohibited by Policy 2.35. Accordingly, because the grievance does not raise a sufficient question as to whether the agency has misapplied or unfairly applied policy, it does not qualify for a hearing.

Recommendations

This ruling determines only that the grievance does not meet the statutory requirements to qualify for an administrative hearing. It is not intended to address or evaluate the legitimacy of the grievant's safety concerns regarding his worksite. Given the nature of these concerns, EDR encourages the agency to engage in continuing discussions with the grievant and other members of his unit regarding the safety of their worksite and potential mitigations, consistent with the commitment required by DHRM Policy 2.35.

EDR's qualification rulings are final and nonappealable.¹⁰

Christopher M. Grab
Director
Office of Employment Dispute Resolution

¹⁰ Va. Code § 2.2-1202.1(5).