



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 Virginia Community College System
Ruling Number 2024-5627
January 25, 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 her August 28, 2023 grievance with a community college in the Virginia Community College System (the “college” or “agency”) qualifies for a hearing. For the reasons discussed below, this grievance is not qualified for a hearing.

FACTS

Since March 25, 2020, the grievant has been employed at her college as a TRIO Director. Prior to her having this role, the TRIO Director position was an administrative faculty classification. However, the college changed the position’s classification prior to the recruitment in which the grievant competed. As such, she was hired into the TRIO Director position as a classified employee (Education Administrator II). Across the agency’s community colleges, or at least for the approximately 20 positions surveyed by the grievant, TRIO Directors are administrative faculty members. As relief, the grievant seeks “fair and equitable” treatment by having her positions reclassified as administrative faculty. The grievance has completed the applicable management steps, with the college denying the grievant’s request for a hearing. The grievant now appeals that 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 Additionally, the grievance statutes and procedure reserve to management the exclusive right to manage the affairs and operations of state government.² Claims relating solely to the establishment and revision of salaries, wages, and general benefits 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

¹ See *Grievance Procedure Manual* §§ 4.1 (a), (b).

² See Va. Code § 2.2-3004(B).

policy may have been misapplied or unfairly applied.³ 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.

Further, the grievance procedure generally limits grievances that qualify for a hearing to those that involve “adverse employment actions.”⁴ Thus, typically, the threshold question is whether the grievant has suffered an adverse employment action. An adverse employment action is defined as a “tangible employment action 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.”⁵ Adverse employment actions include any agency actions that have an adverse effect *on the terms, conditions, or benefits* of one’s employment.⁶

It appears that the grievant’s primary concern is that her position has been designated a classified position rather than an administrative faculty position like TRIO Directors at other community colleges. As it relates to job classifications such as the one challenged here, the General Assembly has recognized that the Commonwealth’s system of personnel administration should be “based on merit principles and objective methods” of decision-making.⁷ In addition, the Commonwealth’s classification plan “shall provide for the grouping of all positions in classes based upon the respective duties, authority, and responsibilities,” with each position “allocated to the appropriate class title.”⁸ The grievance procedure accords much deference to management’s exercise of judgment, including management’s assessment of the degree of change, if any, in the job duties of a position. While agencies are afforded great flexibility in making decisions such as those at issue here, agency discretion is not without limitation. Rather, EDR has repeatedly held that even where an agency has significant discretion to make decisions (for example, classifying a position in a particular role), 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.⁹

Considering the totality of the information available, EDR finds that the grievance does not raise a sufficient question whether the college has violated any mandatory policy or unfairly applied such policy to the point of disregarding its intent. No provision of policy would require the uniformity that would appear to be sought by the grievant in this case across its community colleges. The fact that one of the agency’s individual community colleges has sought to classify a TRIO Director differently than other community colleges in the system does not automatically render such a decision improper under the discretion granted by policy. Lastly, our review of the

³ *Id.* § 2.2-3004(A); *Grievance Procedure Manual* §§ 4.1(b), (c).

⁴ *See Grievance Procedure Manual* § 4.1(b).

⁵ *Ray v. Int’l Paper Co.*, 909 F.3d 661, 667 (4th Cir. 2018) (quoting *Burlington Indus., Inc. v. Ellerth*, 524 U.S. 742, 761 (1998)).

⁶ *Laird v. Fairfax County*, 978 F.3d 887, 893 (4th Cir. 2020) (citing *Holland v. Wash. Homes, Inc.*, 487 F.3d 208, 219 (4th Cir. 2007)) (an adverse employment action requires more than a change that the employee finds “less appealing”).

⁷ Va. Code § 2.2-2900.

⁸ *Id.* § 2.2-103(B)(1).

⁹ *See Grievance Procedure Manual* § 9 (defining arbitrary or capricious as “[i]n disregard of the facts or without a reasoned basis”); *see also*, e.g., EDR Ruling 2010-2365; EDR Ruling No. 2008-1879.

grievant's position classification would also indicate that her role title accurately reflects her duties and responsibilities.¹⁰ Accordingly, we have no basis to second guess the college's classification decision here. EDR cannot find that the college has disregarded the facts or made a classification decision without a reasoned basis.

Although not specifically requested as relief, the grievant's grievance also alludes to a disparity in her compensation when compared to other TRIO Directors. DHRM Policy 3.05, *Compensation*, is relatively broad when discussing the requirements of agencies in overseeing pay actions. In particular, it states that agencies must "conduct[] market and/or salary alignment studies on a periodic basis as needed" and "continuously review[] agency compensation practices and actions to ensure that similarly situated employees are treated consistently"¹¹ Like all pay practices, salary questions emphasize merit, rather than entitlements such as across-the-board increases, while providing management with great flexibility and a high degree of accountability for justifying their pay decisions.¹² Although DHRM Policy 3.05 reflects the intent that similarly situated employees should be comparably compensated, it also invests agency management with broad discretion to make individual pay decisions in light of 13 enumerated Pay Factors: (1) agency business need; (2) duties and responsibilities; (3) performance; (4) work experience and education; (5) knowledge, skills, abilities and competencies; (6) training, certification and licensure; (7) internal salary alignment; (8) market availability; (9) salary reference data; (10) total compensation; (11) budget implications; (12) long term impact; and (13) current salary.¹³ Because agencies are afforded great flexibility in making pay decisions, EDR has repeatedly held that qualification is warranted only 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.¹⁴

Here, the grievant arguably demonstrates significant disparities between her salary and that of potentially comparable TRIO Directors at other community colleges. However, given that these TRIO Directors are at other institutions, the weight and applicability of the various pay factors are necessarily not the same and involve different decision-makers. Accordingly, we cannot say that policy would mandate that the other TRIO Director positions be considered direct comparators such that alignment would be required by policy. Further, given that the grievant's position is classified and compensated according to a different salary structure than administrative faculty members, there is not a basis for EDR to determine that a sufficient question has been raised as to a misapplication of policy to qualify for a hearing.

Much deference is granted to agencies when considering salary increases and the enumerated Pay Factors. While the grievance does not qualify for a hearing, EDR finds the apparent vast difference in TRIO Director compensation could demonstrate a compelling concern with the grievant's salary being the apparent lowest across the community colleges for which the grievant has provided information. While we would acknowledge that there are likely variables between the TRIO Directors not addressed here, such as years of experience and the situations

¹⁰ See Commonwealth Salary and Job Structure at <https://www.dhrm.virginia.gov/jobs-and-careers/jobs-and-salary-structure/occupational-families>.

¹¹ DHRM Policy 3.05, *Compensation*, at 5.

¹² See DHRM Human Resource Management Manual, Ch. 8, *Pay Practices*.

¹³ See DHRM Policy 3.05, *Compensation*, at 19-24.

¹⁴ 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 No. 2008-1879 (and authorities cited therein).

specific to each institution, EDR would nevertheless recommend that the college revisit the grievant's salary to determine whether a salary increase is appropriate, assuming the grievant's performance is satisfactory, as may be supported by the applicable federal grant funding for the position.

CONCLUSION

For the reasons discussed above, EDR finds that the facts presented in the grievance record do not constitute a claim that qualifies for a hearing under the grievance procedure.¹⁵ EDR's qualification rulings are final and nonappealable.¹⁶

Christopher M. Grab
Director
Office of Employment Dispute Resolution

¹⁵ *Grievance Procedure Manual* § 4.1.

¹⁶ *See* Va. Code § 2.2-1202.1(5).