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## QUALIFICATION RULING

In the matter of Old Dominion University  
Ruling Numbers 2025-5796, 2025-5826  
May 6, 2025

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 grievances initiated on or about September 23, 2024 and January 14, 2025 with Old Dominion University (the “agency” or “university”) qualify for a hearing. For the reasons discussed below, neither grievance is qualified for a hearing.

### FACTS

#### *Grievance 1*

The grievant was employed by the university as a Business Intelligence Data Analyst. On or about September 23, 2024, the grievant filed a grievance on the basis of alleged improper compensation, job classification, and not being allowed to “explore other groups to work in with potential for upward mobility.” The grievant appears to allege that higher pay adjustments were made for other employees in her division, despite having less experience, years of service, and technical duties than her, and that she and other similarly situated colleagues are handling more intensive, technical work, without being appropriately compensated for that work. She adds that she was tasked with learning new skills without being appropriately compensated or recognized. She also alleges that the university has communication issues and does not properly administer career investments such as mentoring and educational opportunities. As relief, the grievant requested to move to a position under a different supervisor, and to move into that supervisor’s job after he retires, with a willingness to discuss other options.

As one example, the grievant has claimed that the university was essentially phasing out Cognos, the reporting system relevant to the grievant’s skills. Despite this, the grievant claims that she was continuing to be asked to carry out Cognos-related tasks and teach others how to use the program, and that her former supervisor is also using Cognos. The grievant also claims that, despite being told that her Employee Work Profile (“EWP”) would be revised by around late October 2024, that never occurred. The grievant describes her duties as “database development, report writing, documentation, help desk and problem resolution, data analysis, business process analyst,

[and] application administrator." She asserts that non-IT personnel do not accurately understand her duties and therefore misclassify them.

As to the compensation issue, the grievant has supplied EDR with several job postings to apparently suggest the university is not properly reviewing employee salaries and is awarding higher pay to those with less experience and duties. Specifically, she mentions on appeal that another university employee allegedly promoted in 2023 manages Power BI (reporting system) and two direct reports. She compares that with her own duties of managing several different reporting systems, team-leading for projects, managing a direct report, and having to learn a wide variety of skills outside her expertise. She has also supplied EDR with several emails related to a former supervisor who she feels is getting compensated at an unfair, higher rate for doing less work. She also alleges that this former supervisor is doing work that should be meant for the grievant and her colleague. Specifically, she claims that the former supervisor is doing Cognos-related work which she alleges should be reserved for her and her colleague. Conversely, she claims that she and her coworker were being tasked with completing work that should have been assigned to that former supervisor.

As to the grievant's general claims of lack of recognition and communication issues, the grievant has supplied EDR with several emails and Microsoft Teams message screenshots documenting her day-to-day, work-related discussions with other university staff – most commonly messages between herself and the mentioned former supervisor. The grievant contends that she has advocated for changes in the way work activities are carried out, to little or no positive response. The grievant has also included email chains suggesting that other employees are able to request and receive projects with ease. As to the claim of a lack of upward mobility, the grievant has since asserted in her appeal that several employees in the university, including herself, have been denied promotional opportunities.

As the first grievance proceeded through the management steps, the first-step respondent stated that two units within a university division ("ITS" and "Distance Learning") were merged, which included the grievant's Data Analytics team, and that this resulted in the university reassessing roles, responsibilities, and salaries for all employees within that division. The second-step respondent added that salaries across the grievant's division were assessed, and it was determined that the grievant's salary was appropriate. The second-step respondent added that, as to the grievant's claims of lack of recognition and advancement, the step respondent encouraged the grievant to engage in discussions with her supervisor about training and development resources. Finally, they added that there were no open positions available for her relief request outside of the open recruitment process. The university President declined to qualify the grievance for a hearing. The grievant now appeals this determination to EDR.

Shortly after the grievant appealed this determination, EDR spoke with the university and confirmed that the alleged reclassification is due to the restructuring of the grievant's entire department, leading to the grievant being reassigned to a new supervisor. They claim that, while they have not done an individual comprehensive salary study for the grievant, they did a comprehensive review of all department employees, including the grievant, which involved a "quick" review of each employee to ensure their salary was properly aligned. The grievant has also, since the opening of this file, submitted to EDR several pieces of documentation relating to past incidents at the university over the span of several years, seemingly in support of her claims of arbitrary and capricious management actions.

The university has since further elaborated on the restructuring initiative that began in or around April 2024, and that changes specifically to the grievant's unit began in or around September 2024. Essentially, the university conducted a "workforce reduction affecting [the grievant's team]," which was decided following "a thorough analysis of organizational needs, budget considerations, and operational requirements." Specifically, the decision-making process included an organizational assessment where the university "[c]onducted comprehensive review of all positions and functions," "[a]nalyzed workload distribution across departments," "[i]dentified areas of operational overlap," and "[e]valuated essential vs. non-essential functions." It also included a budget analysis where they "[r]eviewed current fiscal year budget allocations," "[p]rojected future funding scenarios," "[i]dentified required cost reductions," and "[a]ssessed impact on program delivery." They then carried out position reviews where they "[e]valuated all positions within affected work units," "[r]eviewed position descriptions and classifications," "[a]nalyzed reporting relationships," and "[a]ssessed impact on service delivery."

### *Grievance 2*

On or about January 14, 2025, after being told that the university was reorganizing the grievant's division and that she may be laid off, the grievant filed an expedited grievance. In her grievance, she argues that she was actively carrying out work on multiple reporting systems and that the university did in fact require that work to continue. She adds that since the filing of her initial grievance, she has been "treated differently," and claims that she was laid off as retaliation for her filing a grievance. She adds that other university employees, who allegedly have not had substantial work to do, are being kept on the division. On or about February 13, 2025, the grievant was formally notified that she would be laid off with an effective date of that same day.

### Layoff Rationale

The university has explained to EDR that the reorganization process began when the Data Analytics team was consolidated into a single unit, which prompted the need to evaluate the positions. As was alluded to in the first grievance discussion, the entire reorganization initiative began in April 2024, but the initiative specifically concerning the Data Analytics team began in September 2024. Ultimately, it was determined that the Data Analytics team could be adequately supported by retaining one business intelligence data analyst instead of the two that were on staff. The process concluded with seniority considerations, where the university calculated continuous state service, verified veterans' preference status, and considered current role codes and career groups. Regarding the grievant's situation, the university then evaluated the two similar positions in the unit (business intelligence data analysts) and determined that the data analyst with longer tenure should be retained. Prior to making layoff determinations, the university claims that it first reduced discretionary spending and reviewed all vacant positions. Finally, the university has stated that the Cognos reporting system – allegedly the grievant's expertise – is no longer being used, and neither are the other reporting programs the grievant has mentioned. The university further emphasized that the layoff determination was not only due to the phasing out of Cognos and other reporting systems, but due to only needing one of the two data analysts.

Regarding placement options, the university reached out to the grievant on January 16 to set up a new meeting to discuss placement opportunities, as the grievant apparently did not attend the initially scheduled meeting. In this email, the university also provided the grievant with a Preferential Hiring Yellow Card Form. The university later explained to the grievant that, after

attempting to identify a potential role for her based on her experience, a role was not found; however, they claimed their recruitment team was continuing to look for potential roles across the university.

### Grievant's Arguments

The grievant has brought a variety of claims and arguments contesting the university's layoff and subsequent placement options analysis. Regarding overall work performance and job duties, the grievant presents evidence of satisfactory performance based on her most recent performance evaluation. The grievant also disputes the university's assertion that the Cognos reporting system being phased out was a basis for her layoff, as she contends that she works with other reporting systems. For example, she has provided undated evidence of her former supervisor stating that she needs to continue work with Ellucian. The grievant has provided communication from her supervisor who stated that, due to restructuring of the university's new division, she "would fully expect" all job descriptions to be reviewed and potentially revised moving forward. The same supervisor also stated to the grievant that Tableau would be the new reporting system moving forward.<sup>1</sup>

Additionally, the grievant has made a general argument that the university's layoff determination is arbitrary and capricious, giving an example of the way the university already has efficiency issues within her Data Analytics team and that those issues were never addressed before layoffs were made. She adds that her coworker who remained was frequently overworked, and that the university failed to get the Data Analytics team the help that it needed. The grievant has also asserted that the university initially stated that no one would be laid off due to those with Ellucian coming to assist the Data Analytics team, only to notify her of her layoff weeks later. The grievant has provided EDR with several university job postings, many of which she claims are evidence that the university is still seeking to fill positions that carry out the same duties as her and the data analyst who was not laid off. She is essentially arguing that the university is attempting to hire positions for work that she was already doing or was qualified to carry out. She has also sent a job posting relating to entry-level positions that advertise work she feels she is capable of carrying out, while also arguing that entry-level job postings (Research Associate) contradict the university's assertion that a single business intelligence data analyst is sufficient for the Data Analytics team. Finally, the grievant has contested the university's seniority determinations, arguing that she had been a part of a new team since August, and that she was no longer the one with the least amount of seniority.

As to her dispute with the university's placement options analysis, the grievant has, over the course of several weeks, provided several emails, notes, and other correspondence related to other university position salaries, including various salaries for a Director for Analytics position.<sup>2</sup> She has also provided job postings for jobs adjacent to or synonymous with the Director position, for some of which she has submitted applications. She has also made the argument that many job

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<sup>1</sup> The grievant has since argued that she also holds experience with Tableau and Power BI, either through attending classes or experience in general, and that she was promised but not provided additional training for Power BI.

<sup>2</sup> Regarding the Director of Analytics position, the grievant further argues that she is qualified for the position, and that she attempted to apply, but the posting was apparently cancelled soon after she initiated her application. The agency has since confirmed that the Director position was taken down due to it needing to be revised, but regardless, it was not an applicable placement option for the grievant in part due to it being an Administrative and Professional (A/P) Faculty position.

postings within the university that require a master's degree should only require a bachelor's degree. The grievant has also provided additional evidence that she sought alternative employment on her own, though many of these positions are with other agencies. Finally, she adds that there was allegedly a probationary employee that retained employment in the Data Analytics team and a non-classified employee who was reassigned to a different unit – questioning why she cannot be a classified employee and have the Director of Analytics position.

Additionally, the grievant has brought the claim of disparate treatment, specifically claiming that other coworkers are being given preferential treatment (i.e., promotions, bonuses, retaining employment) on the basis of holding VISA/H1B statuses. She has alleged that she, an American, was affected by layoff, whereas other employees the grievant describes as "Indians" were not, despite members of the latter group not putting in sufficient work compared to that of the grievant, in her assessment.

The university has since stated to EDR that most of the university job postings that the grievant has brought to them were designated as Administrative and Professional (A/P) Faculty, a type of job classification that is not considered a "valid vacancy" for placement purposes under the Layoff Policy.<sup>3</sup> More specifically, the university stated that placement options were reviewed three times. Any positions found were either inapplicable for placement options due to A/P Faculty classification or required skillsets that the grievant did not have.<sup>4</sup> The university has claimed that they conducted a "detailed review of [their] internal job postings" and that there were no open positions available within the Data Analytics team, and that the research associate positions mentioned by the grievant are for other departments and classified as A/P Faculty; however, they added that while A/P Faculty positions do not qualify for placement or preferential hiring, the grievant is still free to apply for such positions. Finally, EDR has since inquired about the disparate treatment/discrimination claim to the university, who stated that they had not received any discrimination complaints of this nature from the grievant directly.<sup>5</sup> The university further emphasized that, regardless of the grievant's disparate treatment claims, the layoff decisions were made in "strict adherence to the layoff policy."

The expedited grievance proceeded through the single management step and on or about January 29, 2025, the university President denied qualification for a hearing.<sup>6</sup> The single step respondent stated that the layoff was driven "solely by the organizational changes occurring in the unit," and that she was not the only one in the unit to be laid off. The respondent further indicated that one of the grievant's coworkers continued employment because "the organizational structure requires one person with [the grievant's] skills (not two)," and that the coworker who retained

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<sup>3</sup> DHRM Policy 1.30, *Layoff*, at 5, 25 (defining a valid vacancy as "[a] vacant classified position that is fully funded and has been approved by the appointing authority to be filled"); *see also* DHRM Policy 2.20, *Types of Employment*, at 1.

<sup>4</sup> For example, an A/P Faculty position was found on the university's medical campus, and a network systems senior engineer position was found with unmet required skillsets. The university also found an institutional research associate position and an information management position, but both were A/P Faculty, as well. The university also noted that the grievant was seeking only remote positions.

<sup>5</sup> While the university contends the grievant has not filed an internal discrimination complaint regarding these claims, they did state that the U.S. Department of Justice has since advised the university of such claims that were brought to them.

<sup>6</sup> It appears that the university issued two separate qualification decisions via the expedited grievance form, with the first being done by the Human Resources ("HR") representative. This discrepancy has no effect on the analysis or outcome of this ruling.

employment has more seniority than the grievant.<sup>7</sup> In their qualification decision letter, the President states that the layoff was implemented in accordance with DHRM Policy 1.30, *Layoff*. He further states that the decision was based on legitimate business needs, that proper seniority considerations were applied, and that established procedures for organizational restructuring were followed. The grievant now appeals that determination.

## DISCUSSION

### GRIEVANCE 1

Although state employees with access to the grievance procedure may generally grieve anything related to their employment, only certain grievances qualify for a hearing.<sup>8</sup> Additionally, the grievance statutes and procedure reserve to management the exclusive right to manage the affairs and operations of state government.<sup>9</sup> Claims relating to issues such as the methods, means, and personnel by which work activities are to be carried out, as well as claims relating 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 policy may have been misapplied or unfairly applied.<sup>10</sup>

Further, the grievance procedure generally limits grievances that qualify for a hearing to those that involve "adverse employment actions."<sup>11</sup> Thus, typically, the threshold question is whether the grievant has suffered an adverse employment action that could be remedied by a hearing officer. An adverse employment action involves an act or omission by the employer that results in "harm" or "injury" to an "identifiable term or condition of employment."<sup>12</sup> For purposes of this ruling only, EDR will assume that the grievant has alleged an adverse employment action to the extent the grievant has sought and been denied a pay increase.

Finally, qualification may not be appropriate even if a grievance challenges a management action that might ordinarily qualify for a hearing. For example, an issue may have become moot during the management resolution steps, 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.<sup>13</sup>

The central issue in Grievance 1 concerns whether the university has improperly or significantly altered the grievant's core duties to the extent that a revision of the grievant's

<sup>7</sup> The university has provided EDR with documentation showing that the grievant and one other coworker worked in the same work unit and did similar work, and that the coworker who retained employment had more seniority.

<sup>8</sup> See *Grievance Procedure Manual* §§ 4.1 (a), (b).

<sup>9</sup> See Va. Code § 2.2-3004(B).

<sup>10</sup> *Id.* § 2.2-3004(C); *Grievance Procedure Manual* §§ 4.1(b), (c).

<sup>11</sup> See *Grievance Procedure Manual* § 4.1(b).

<sup>12</sup> See *Muldrow v. City of St. Louis*, 144 S. Ct. 967, 974 (2024) (addressing a required element of a Title VII discrimination claim); see, e.g., *Burlington Indus. v. Ellerth*, 524 U.S. 742, 761 (1998) (defining adverse employment actions under Title VII to include "tangible" acts "such as hiring, firing, failing to promote, reassignment with significantly different responsibilities, or a decision causing a significant change in benefits").

<sup>13</sup> See, e.g., EDR Ruling No. 2021-5261; EDR Ruling No. 2017-4477.

compensation and/or job classification is necessary. Specifically, the grievant is claiming that she handled more intensive, technical work, such as assisting with technical support duties and being tasked with learning new reporting systems while continuing to use and teach others about existing reporting systems. She adds that her EWP was never revised, and that the university has been unable to accurately reflect her duties in her EWP. Finally, the grievant mentions various other employees who she believes are being unfairly compensated at a higher rate than her, claiming that they have less experience and are performing duties at the same or lower level than her own. She adds that, regarding one employee who has a higher salary, she is performing duties that should be reserved for that employee and vice versa.

While the university has not spoken to each of these individual claims, they have generally implied that the restructuring of the grievant's duties and being assigned to a new supervisor are in relation to a broader university restructuring initiative that began in as early as April 2024. This initiative includes the apparent phasing out of the Cognos reporting system that the grievant specializes in, transitioning to other reporting systems. They also stated that, while a thorough individual salary study was not conducted, a broader salary review of all affected employees was conducted, finding that the grievant's salary was proper.

The grievant does not appear to cite any alleged discrimination, retaliation, or discipline that may have improperly influenced the university's actions in relation to Grievance 1. Therefore, for the grievant's claim to qualify for a hearing, there must be evidence raising a sufficient question as to whether management violated a mandatory policy or whether the challenged action, in its totality, is so unfair as to amount to a disregard of the intent of the applicable policy. 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.<sup>14</sup> 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."<sup>15</sup> These statutes evince a policy that would require state agencies and institutions to allocate positions having substantially the same duties and responsibilities to the same role. Importantly, 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.<sup>16</sup>

While the grievant's frustration with the changes in her duties and reporting structure is understandable, the decision to rework the grievant's management chain and some of her duties to fall within the restructured entities (such as the changes in the reporting systems used) appears to be consistent with the university's discretion granted under policy and its business needs pursuant to the ever-changing needs of the university, and that personnel resources must be strategically

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<sup>14</sup> Va. Code § 2.2-2900.

<sup>15</sup> *Id.* § 2.2-103(B)(1).

<sup>16</sup> 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 (and rulings cited therein).

used in the most efficient and productive manner to keep in line with these changes. The grievant argues against these assertions, claiming that she and other employees were still tasked with Cognos-related duties, but this is a factor within the university's discretion to manage the transition to other reporting systems. Additionally, the university has since provided a thorough explanation for their restructuring initiative, essentially stating that a workforce reduction was necessary and that this resulted in a merging of two units that included the grievant's unit, thus altering the duties of the affected employees pursuant to the workforce reduction.

Ultimately, there does not appear to be evidence raising a sufficient question that the changes in the grievant's duties are so significant that a revision of her EWP or job classification is required, or whether the university's alterations of the grievant's duties were otherwise arbitrary or capricious. However, even if there were, due to the grievant's layoff contested in Grievance 2, a hearing officer would be unable to grant any meaningful relief in relation to the grievant's job classification or salary. While the university had not relayed much detail relating to the restructuring that caused the claims of Grievance 1, it has since provided more explanation relating to the grievant's layoff, which will be discussed more in-depth later in this ruling.

The grievant also claims that she was being improperly compensated in comparison to other employees who she alleges were being given higher salaries despite less experience and less intensive, technical duties than the grievant. DHRM Policy 3.05 provides various mechanisms by which the university could offer additional compensation to reflect the grievant's position and duties. For example, DHRM Policy 3.05 recognizes that agencies may implement an in-band adjustment to an employee's base salary for reasons such as a change in duties, internal alignment considerations, or retention efforts.<sup>17</sup> In addition, agencies have broad discretion to offer temporary pay and bonuses reflective of employees' contributions to shorter-term operational imperatives.<sup>18</sup> However, nothing in the policy requires an agency to take such actions. As long as the agency has determined a grievant's salary with due consideration of all the Pay Factors,<sup>19</sup> EDR cannot conclude that the grievant's salary is inconsistent with the discretion granted to agencies by policy.

While the university asserts that it conducted a general salary study of all affected employees and found that the grievant's salary was proper, it does admit that a more thorough, individualized salary study for the grievant had not been conducted. However, even assuming the grievant's claims regarding other employees being unfairly compensated is valid, the primary factor here is once again the fact that, due to the grievant's subsequent layoff, there is no effective relief that a hearing officer would be able to order regarding this grievance.

For similar reasons, the grievant's claims regarding recognition, communication issues, and lack of opportunity for upward mobility, are also claims for which a hearing officer would be unable to grant effective relief. Additionally, the university stated in their step responses for Grievance 1 that they encouraged discussions with the grievant regarding these concerns. For these reasons, EDR cannot find there to be a sufficient question raised to qualify Grievance 1 for a hearing on the basis of any misapplication or unfair application of policy, if such a claim were substantiated, for which a hearing officer could provide effective relief.

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<sup>17</sup> DHRM Policy 3.05, *Compensation*, at 7.

<sup>18</sup> *Id.* at 5-6, 8.

<sup>19</sup> *See id.* at 19-24.

## GRIEVANCE 2

As was stated previously, the threshold question for a grievance to qualify for a hearing is typically whether the grievant has suffered an adverse employment action. With respect to Grievance 2, the grievant has experienced an adverse employment action because she was laid off. Additionally, by statute and under the grievance procedure, complaints relating solely to issues such as the hiring, promotion, transfer, assignment, and retention of employees within the agency and layoff “shall not proceed to a hearing” unless there is sufficient evidence of discrimination, retaliation, unwarranted discipline, or a misapplication or unfair application of policy.<sup>20</sup>

### *Proffered Basis for Layoff*

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 grievance procedure accords much deference to management’s exercise of judgment, including decisions as to what work units will be affected by layoff and the business functions to be eliminated or reassigned and 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, EDR 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 or the need for organizational restructuring), 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.<sup>21</sup>

Further, for state employees subject to the Virginia Personnel Act, appointment, promotion, transfer, layoff, removal, discipline, and other incidents of state employment must be based on merit principles and objective methods and adhere to all applicable statutes and to the policies and procedures promulgated by DHRM.<sup>22</sup> The intent of DHRM Policy 1.30 is “to ensure non-discriminatory implementation of reductions in the workforce that result in the elimination or reduction of positions and employee layoffs,” which “may occur when work functions are eliminated, reduced, or reassigned to meet budgetary or other business needs.”<sup>23</sup> In determining how to implement a layoff, agencies “should assess and document the business need to reduce the number of employees or to reconfigure the work . . . consistent with their business needs and the provisions of [Policy 1.30].”<sup>24</sup>

After a review of the university’s explanation for the layoff, EDR finds that the university has articulated a sufficient legitimate business-related basis. The university has essentially stated that, due to budgetary considerations, they needed to conduct a workforce reduction and did so by analyzing workload distribution across departments, identifying areas of operational overlap, and evaluating essential versus non-essential functions. Eventually, this led to the university merging

<sup>20</sup> Va. Code § 2.2-3004(C); *see Grievance Procedure Manual §§ 4.1(b), (c).*

<sup>21</sup> *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.

<sup>22</sup> Va. Code §§ 2.2-2900 through 2.2-2905.

<sup>23</sup> DHRM Policy 1.30, *Layoff*, at 1.

<sup>24</sup> *Id.* at 2.

two units within a department, which apparently included the grievant's Data Analytics team. The university further found that, when analyzing the various departments for function redundancies, it was determined that the grievant's Data Analytics team could be adequately supported by retaining one business intelligence data analyst. The university has also mentioned that the reporting systems of the grievant's expertise (Cognos) are no longer being used. Finally, the university decided to keep the business intelligence data analyst with longer continuous service (seniority) consistent with the provisions of the Layoff policy.

Notwithstanding her claims of retaliation and discrimination, the grievant has disputed the proffered business need by the university, arguing that her Data Analytics team did in fact require additional personnel, citing to claims of arbitrary and capricious handlings of day-to-day activities. She claims that there have been longstanding efficiency issues within her Data Analytics team, and that the university has not adequately attempted to address those issues before deferring to their restructuring initiative and subsequent layoffs. The grievant also claims that, despite the university's assertions that her utilized reporting systems are being phased out, she and other coworkers have continued to use Cognos, and that she has experience with Tableau and Power BI, the apparent primary reporting systems for the university moving forward.

Additionally, the grievant has presented evidence of several university job postings, essentially contesting the fact that the university is continuing to seek hirings for data analytical roles, despite the university claiming that her role is no longer needed, suggesting to her that the university does in fact require more personnel related to her role. She also asserts that other coworkers on the team, including the other business intelligence data analyst, were often overworked and could use the additional support. The grievant adds that she is aware of other coworkers who complete less intensive, technical work who were able to retain their employment. Finally, the grievant argues that, since being reassigned to a new team prior to the layoff, she was no longer the employee with the least amount of tenure.

A grievance that challenges an agency's determination like the one at issue here does not qualify for a hearing unless there is sufficient indication that it was plainly inconsistent with other similar decisions by the agency, or that the decision was otherwise arbitrary or capricious.<sup>25</sup> Ultimately, the university's proffered business need was that they required only one business intelligence data analyst – a basis that was determined after an analysis of budgetary, organizational, and general restructuring factors. While the university has not offered many specifics in terms of why only one business intelligence data analyst is required, they have nonetheless met their burden of showing a legitimate business need through this stated reason and through their preceding restructuring analysis. The burden of proof would therefore then shift to the grievant to show that the university's layoff determinations were otherwise arbitrary or capricious, or if the proffered business need is mere pretext for some improper motive.

While the grievant has asserted several claims relating to the way in which work activities are handled, the Code of Virginia, as well as state policy, provide agencies with discretion in how the methods, means, and personnel by which work activities are to be carried out. More specifically, the grievant's claims do not directly address or raise a sufficient question as to the university's stated reasoning of needing only one business intelligence data analyst. The grievant does call into question the fact that the university has allowed some of the grievant's coworkers to

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<sup>25</sup> See *Grievance Procedure Manual* § 9.

retain employment, as well as the fact that the university has posted several job postings for data analytical positions. Regarding the contention of other coworkers retaining employment, this once again falls under the university's discretion regarding personnel by which work activities are carried out and does not address the university's contention that only one business intelligence data analyst was needed. Similarly, all mentioned job postings are either outside of the Data Analytics team or are directorial roles, both being outside the scope of a business intelligence data analyst.<sup>26</sup>

As to the claim that the other business intelligence data analyst is overworked and requires additional support, there is insufficient evidence in the record to accord weight to this claim. As was stated previously, the university has shown that a thorough analysis of workforce reduction was carried out, and it was ultimately determined that only one business intelligence data analyst was necessary. Although the grievant appears to disagree with this assertion, she has not presented evidence to raise a sufficient question that the university does in fact require multiple business intelligence data analysts. It could very well be that the other analyst feels overworked due to the university determining that one analyst can sufficiently handle the workload previously assigned to two analysts, and while the grievant may disagree with this determination, such a determination once again falls under the university's discretion regarding personnel by which work activities are carried out.

Finally, the grievant also questions the legitimacy of the university's stance that they are transitioning to newer reporting systems. She claims that she continued to use the older reporting systems, such as Cognos, while also claiming that she holds experience in the reporting system(s) to which the university is transitioning, such as Tableau and/or Power BI. Admittedly, the university has not been entirely clear through its correspondence on exactly which reporting systems are being phased out and which are being utilized moving forward. The university's rationale for the layoff that was given to EDR does not mention anything about reporting systems, and while it was since made known to EDR that reporting systems of the grievant's expertise are being phased out, specifics were not given. However, a review of the record has shown that the grievant's supervisor, prior to the filing of Grievance 1, indicated that the university would be transitioning entirely to Tableau.

As has been previously stated and discussed in relation to Grievance 1, universities are afforded flexibility and discretion in the way in which the structuring is handled, including the way in which university reporting systems are altered. Here, while the grievant contends that she continued to use reporting systems that the university alleges are being phased out, this can be due to the university's handling of the transition and does not necessarily mean that the other reporting systems are completely unused at the time of the transition. Regardless of whether the grievant might have been just as or more qualified than the other business intelligence data analyst, the university properly determined to lay off the employee with shorter tenure.

Having less seniority than the one other business intelligence data analyst, the grievant was one of the employees to be laid off. The grievant disputes this basis by the university, arguing that she had been a part of a new team since August, and that she was no longer the one with the least amount of seniority on that team. The university, pursuant to DHRM Policy 1.30, utilized seniority

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<sup>26</sup> As mentioned previously, while the grievant has provided EDR with several university job postings, all are either directorial roles or roles within other departments.

as the primary factor in determining the grievant's layoff.<sup>27</sup> While the grievant contends that she was no longer the employee with the shortest tenure, the only relevant employees considered in this analysis were the two business intelligence data analysts – not the grievant's entire Data Analytics team. The university has provided evidence showing that, of the two business intelligence data analysts, the grievant held less continuous state service than the other. The university has properly utilized seniority based on the layoff requirements outlined in DHRM policy.

For the foregoing reasons, EDR has been unable to identify evidence of a sufficient question of a misapplication of the Layoff policy. Accordingly, the grievance does not qualify for a hearing on this basis.

#### *Placement Options*

The grievant also makes the assertion that the university did not properly consider placement options. In support of this assertion, the grievant has provided EDR with several job postings for which she feels she is qualified and should have been offered in lieu of her layoff.

As both the grievant and the university have alluded to, DHRM Policy 1.30 requires that the agency must identify internal placement options for employees and attempt to place them by seniority to positions in their current or a lower Pay Band and for which they are minimally qualified.<sup>28</sup> Here, the university has stated that they considered all placement options within the grievant's pay band and lower, finding that there were no such valid vacancies available. The grievant has countered this assertion with various job postings, including those in other university departments, directorial positions apparently within her Data Analytics team, and those unaffiliated with the university.

As has been stated, the Layoff policy requires agencies to only consider valid vacancies within the organization for placement options. This does not mean that the grievant is ineligible for other positions; she is still able to apply for and accept such positions. Here, the university has asserted that A/P Faculty positions are not valid vacancies for purposes of placement, which is correct. Regarding the job postings the grievant has brought forth to the university and/or to EDR, all are either A/P Faculty positions, positions outside of the university, or positions the university deems the grievant unqualified for – otherwise invalid vacancies.

Although the grievant continues to dispute whether the university properly considered all placement options, EDR has not reviewed any evidence sufficient to support an assertion that there were positions available that were not properly considered, nor any evidence suggesting that the university in their overall handling of reviewing placement options misapplied and/or unfairly applied policy, disregarded the intent of any applicable policy, or that the placement process was conducted in a manner that was otherwise arbitrary or capricious. Accordingly, the grievance does not qualify for a hearing on this basis.

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<sup>27</sup> See DHRM Policy 1.30, *Layoff*, at 3.

<sup>28</sup> *Id.* at 5.

Thus, while EDR finds that the university has illustrated a legitimate basis, the remaining portions of this ruling will consider each of the grievant's claims and whether any call into question the university's stated business need being mere pretext for an improper motive.

#### *Retaliatory Basis for Layoff*

The grievant claims that her layoff is a form of retaliation for her history of filing grievances in the past, but specifically in relation to Grievance 1. A claim of retaliation may qualify for a hearing if the grievant presents evidence raising a sufficient question whether (1) they engaged in a protected activity; (2) they suffered an adverse employment action; and (3) a causal link exists between the protected activity and the adverse action.<sup>29</sup> If the agency presents a nonretaliatory business reason for the adverse employment action, the grievance does not qualify for a hearing, unless the employee presents sufficient evidence that the agency's stated reason was a mere pretext or excuse for retaliation.<sup>30</sup> Ultimately, a successful retaliation claim must demonstrate that, but for the protected activity, the adverse action would not have occurred.<sup>31</sup>

While the grievant engaged in protected activity and suffered an adverse employment action, there is insufficient evidence to suggest that, but for the filing of Grievance 1, she would not have been laid off. As has been discussed, the university has proffered a legitimate business need for the layoff, stating that the restructuring initiative began as early as April 2024, well before the filing of Grievance 1. After a thorough review of the record, EDR is unable to find evidence raising a sufficient question as to whether the layoff would have not occurred but for the filing of Grievance 1. For the foregoing reasons, the grievance does not qualify for a hearing on the basis of retaliation.

#### *Discriminatory Basis for Layoff*

Finally, the grievant further appears to allege disparate treatment in that her layoff was discriminatory. Specifically, the grievant argues that those with VISA/H1B statuses were given preferential treatment by means of promotions, bonuses, and retaining employment, whereas she, an American-born citizen, was targeted on the basis of such citizenship and laid off. She adds that her job performance was satisfactory based upon her positive performance reviews.

DHRM Policy 2.05, *Equal Employment Opportunity*, requires that "all aspects of human resource management be conducted without regard to race . . . ; sex; color; national origin; religion; sexual orientation; gender identity or expression; age; veteran status; political affiliation; disability; genetic information; and pregnancy, childbirth, or related medical conditions."<sup>32</sup> For a claim of discrimination on any of these grounds to qualify for a hearing, the grievance must present facts that raise a sufficient question as to whether the issues describe an adverse employment action that has resulted from prohibited discrimination. However, if the agency provides a legitimate, nondiscriminatory business reason for the acts or omissions grieved, the grievance will not be

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<sup>29</sup> See Netter v. Barnes, 908 F.3d 932, 938 (4th Cir. 2018) (citing Univ. of Tex. S.W. Med. Ctr. v. Nassar, 570 U.S. 338, 360 (2013)); Villa v. CavaMezze Grill, LLC, 858 F.3d 896, 900-901 (4th Cir. 2017).

<sup>30</sup> See, e.g., Felt v. MEI Techs., Inc., 584 Fed. App'x 139, 140 (4th Cir. 2014).

<sup>31</sup> *Id.*

<sup>32</sup> DHRM Policy 2.05, *Equal Employment Opportunity*, at 1.

qualified for hearing absent sufficient evidence that the agency's proffered justification was a pretext for discrimination.<sup>33</sup>

In this case, the university has brought forth a legitimate, non-discriminatory reason for the layoff. Therefore, to qualify this grievance for a hearing there must be sufficient evidence to show that the university's proffered justification was a pretext for discrimination.<sup>34</sup> The grievant has identified a protected status on which the alleged discrimination was based and has submitted numerous emails and statements that she feels support her contention. However, EDR does not find her submissions persuasive as to the matters at issue in her grievance. As has been described above, the university has affirmed that the layoff decisions were based on the assessment that only one business intelligence data analyst was needed for the team and application of the Layoff Policy's order of layoff based on seniority. EDR has not been presented with evidence raising a sufficient question to show the university's stated reasons were pretext for discrimination. Accordingly, the grievance does not qualify for a hearing on these grounds.

### CONCLUSION

EDR has thoroughly reviewed the grievance record and the information provided by the parties. Upon careful consideration of the grievant's allegations about the motivation for her layoff, the decision to select her position for abolition instead of other positions, and the inability of the university to find suitable placement options, we find that this grievance does not present evidence that raises a sufficient question whether the university misapplied or unfairly applied DHRM Policy 1.30. EDR finds insufficient evidence to demonstrate that the university's decision to reorganize its functions in a way that eliminated the grievant's position has violated a specific mandatory policy provision or was outside the scope of the discretion granted to the university by the applicable policies. Indeed, it appears the university thoroughly considered relevant circumstances in reaching a decision to eliminate the grievant's position and has substantiated this decision with evidence in the record. For the reasons described in this ruling, EDR cannot find that these decisions were improper or otherwise arbitrary or capricious.<sup>35</sup>

For the reasons discussed above, EDR finds that the facts presented in the grievance records do not constitute a claim that qualifies for a hearing under the grievance procedure.<sup>36</sup> EDR's qualification rulings are final and nonappealable.<sup>37</sup>

*Christopher M. Grab*  
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<sup>33</sup> See Strothers v. City of Laurel, 895 F.3d 317, 327-28 (4th Cir. 2018); *see, e.g.*, EDR Ruling No. 2020-4956.

<sup>34</sup> See also Washington v. Dominion Energy, Case No. 3:23-cv-00056, 2024 U.S. Dist. LEXIS 183772, at \*9 (W.D. Va. Oct. 8, 2024) (internal quotations omitted).

<sup>35</sup> This ruling only determines that the grieved matters do not qualify for a hearing. It does not address, and has no bearing on, whether other legal or equitable remedies may be available to the grievant in another forum.

<sup>36</sup> *Grievance Procedure Manual* § 4.1.

<sup>37</sup> See Va. Code § 2.2-1202.1(5).