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QUALIFICATION RULING

In the matter of the Virginia Department of Motor Vehicles
Ruling Number 2025-5734
August 9, 2024

The grievant has requested a ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management on whether his March 18, 2024 grievance with the Virginia Department of Motor Vehicles (the “agency”) qualifies for a hearing. For the reasons discussed below, the grievance does not qualify for a hearing.

FACTS

The grievant is employed as a mobile unit compliance agent for the agency in the Northern Virginia region. On or about March 18, 2024, the grievant initiated a grievance alleging that agency supervisors have engaged in discriminatory pay practices by allowing certain individuals to receive a Northern Virginia pay differential, while others, like those in the grievant’s unit, do not receive such a pay differential. As relief, the grievant seeks a 10-percent salary increase and back pay to when he came to his position in July 2018. The grievant seeks back pay because when he was offered his job he states he was told he could not negotiate his salary. The grievance has proceeded through the management resolution steps, with the agency’s Human Resources Director serving as the combined second and third step respondent. Following this review of the grieved matters, the agency head declined to qualify the grievance 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 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 involves an act or omission by the employer that results in “harm” or “injury” to an “identifiable term or condition of employment.”⁵ For purposes of this ruling only, EDR will assume that the grievant has alleged an adverse employment action to the extent the grievant’s pay is impacted by a misapplication of policy.

The grievant first argues that he has not received the benefit of a Northern Virginia pay differential afforded to other employees. The agency states that no such differential exists at the agency. The grievant has presented evidence of email correspondence by and with a former agency human resources employee responsible for compensation matters that suggests the existence of a Northern Virginia pay differential. The agency states that the emails contain inaccurate information, suggesting that the former agency employee may have “thought” such a differential exists, but it does not. EDR has confirmed with the agency that no internal policy or salary administration plan reflects that any such Northern Virginia pay differential exists. Thus, based upon the information available to EDR, the grievant has not raised a sufficient question as to the existence of a pay differential.

The grievant has additionally presented evidence of certain job announcements for positions within and outside Northern Virginia. While the job announcements are not for positions in the grievant’s role, the offered salary ranges do present an indication of the ranges being very close to 10 percent and 15 percent higher for the positions in Northern Virginia than the ranges for those not in Northern Virginia. While this evidence does not raise a sufficient question of the existence of a pay differential, it does suggest that the agency *may* have a practice of paying employees in Northern Virginia at higher salaries. However, proper consideration of comparable salary reference data for positions in Northern Virginia would likely be higher and result in higher salaries for such positions. Accordingly, the pertinent question at issue in this grievance is whether there is any indication that the grievant is improperly compensated in consideration of the relevant pay factors.

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

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

⁴ *See Grievance Procedure Manual* § 4.1(b); *see* Va. Code § 2.2-3004(A).

⁵ *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”).

consistently”⁶ In addition, Policy 3.05 also allows for “flexible” starting-pay guidelines to attract a “highly skilled, competent workforce.”⁷ Like all pay practices, salary questions like those at issue in this grievance 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.⁸ 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.⁹ 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.¹⁰

There appears to be no dispute in this case that the grievant is a competent and valued employee. Having reviewed the information in the grievance record, however, EDR finds insufficient evidence to demonstrate that the agency’s failure to approve the grievant’s request for a salary increase violated a specific mandatory policy provision or was outside the scope of the discretion granted to the agency by the applicable compensation policies. In addition to the considerations above, EDR requested salary information from the agency for employees sharing the same role as the grievant. While there are some employees in the grievant’s role who have higher salaries than the grievant, there is no obvious indication that the grievant is compensated in a manner outside the discretion granted by policy. Furthermore, although there are not many employees in the grievant’s role who appear to be in the Northern Virginia region, when comparing the grievant’s current salary to the most common range of salaries, the grievant’s salary in the Northern Virginia region appears to be nearly 10 percent higher than comparators not in Northern Virginia.

Lastly, we are not persuaded that the agency’s response to the grievant’s request to negotiate his salary in 2018 supports qualification either. The agency’s Human Resources Director correctly points out that employees and applicants are able to negotiate starting pay, but that does not mean that agencies have to agree to an adjustment of the offer on the table. Thus, to the extent the grievant sought to negotiate, he was essentially told by the agency in 2018 that the salary offer was the final offer. The grievant nevertheless chose to accept the salary offer. We can infer no misapplication or unfair application of policy as to these facts, absent evidence of a current improper compensation level, which, as discussed above, EDR has not reviewed.

Although the grievant may reasonably disagree with his salary, EDR can find nothing to indicate that the grievant is so clearly entitled to a pay increase based on the available information that a misapplication of policy may have occurred. Much deference is granted to agencies when

⁶ DHRM Policy 3.05, *Compensation*, at 2.

⁷ *Id.*

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

⁹ See DHRM Policy 3.05, *Compensation*, at 19-24.

¹⁰ 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).

considering salary increases and the enumerated Pay Factors. In cases like this one, where a mandatory entitlement to a pay increase does not exist, agencies have great discretion to weigh the relevant factors. For these reasons, EDR cannot find that the agency's assessment of the grievant's salary overall in this case was improper or otherwise arbitrary or capricious. Accordingly, the grievance does not raise a sufficient question as to whether the agency misapplied and/or unfairly applied policy and does not qualify for a hearing on this basis.

EDR's qualification rulings are final and nonappealable.¹¹

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¹¹ Va. Code § 2.2-1202.1(5).