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QUALIFICATION RULING

In the matter of Radford University
Ruling Number 2020-5024
January 16, 2020

The grievant has requested a ruling from the Office of Employment Dispute Resolution (“EDR”)¹ at the Virginia Department of Human Resource Management (“DHRM”) on whether his October 2, 2019 grievance with Radford University (the “university”) qualifies for a hearing. For the reasons discussed below, this grievance does not qualify for a hearing.

FACTS

The grievant has been employed as a carpenter for the university since May 2019. On or about October 2, 2019, the grievant initiated a grievance seeking “equal pay” to a “person hired after” him and “back pay from the time he was hired.” In support of his claim, the grievant alleges that, when he was hired, the university characterized its salary offer as the best the grievant could get. Yet shortly after the grievant was hired, the university hired another carpenter at a higher salary than the offer the grievant accepted. Acknowledging the other employee’s past supervisory experience, the grievant nevertheless argues that the other employee “gave up the supervisor role and has no more experience as a carpenter than I do.” Thus, he alleges that he and the other employee should receive the same salary. After the grievance proceeded through the management steps, the agency denied relief and declined to qualify the grievance for a hearing. The grievant has appealed the latter determination to EDR.

DISCUSSION

The grievance statutes and procedure reserve to management the exclusive right to manage the affairs and operations of state government.² Thus, by statute and under the grievance procedure, complaints relating solely to the establishment and revision of salaries, wages, and

¹ The Office of Equal Employment and Dispute Resolution has separated into two office areas: the Office of Employment Dispute Resolution and the Office of Equity, Diversity, and Inclusion. While full updates have not yet been made to the *Grievance Procedure Manual* to reflect this change, this Office will be referred to as “EDR” in this ruling. EDR’s role with regard to the grievance procedure remains the same.

² See Va. Code § 2.2-3004(B).

general benefits “shall not proceed to a hearing”³ unless there is sufficient evidence of discrimination, retaliation, unwarranted discipline, or a misapplication or unfair application of policy. Further, the grievance procedure generally limits grievances that qualify for a hearing to those that involve “adverse employment actions.”⁴ Typically, then, a threshold question is whether the grievant has suffered an 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 For purposes of this ruling only, it will be assumed that the grievant has alleged an adverse employment action in that he asserts issues related to his compensation.

Here, the grievant appears to argue, in effect, that management has misapplied and/or unfairly applied policy by offering him a lower salary than it offered to a coworker of similar experience hired shortly after the grievant. For an allegation of misapplication of policy or unfair application of policy to qualify for a hearing, the facts in the grievance record must 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.

Agency pay practices are governed by DHRM Policy 3.05, *Compensation*, and are intended to emphasize merit rather than entitlements, while providing management with great flexibility and a high degree of accountability for justifying their pay decisions.⁷ While Policy 3.05 reflects the intent that similarly situated employees should be comparably compensated, it also reflects the intent to invest agency management with broad discretion for making individual pay decisions – including starting pay⁸ – and corresponding accountability in light of each of 13 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

Having reviewed the information provided by the parties, EDR finds that there is insufficient evidence to demonstrate that the agency’s decision to compensate the grievant’s coworker at a higher rate violated a specific mandatory policy provision or was outside the scope

³ *Id.* §§ 2.2-3004(A), 2.2-3004(C).

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

⁵ *Burlington Indus., Inc. v. Ellerth*, 524 U.S. 742, 761 (1998).

⁶ *Holland v. Wash. Homes, Inc.*, 487 F.3d 208, 219 (4th Cir. 2007) (citation omitted).

⁷ *See DHRM Human Resource Management Manual*, Ch. 8, *Pay Practices*.

⁸ *See DHRM Policy 3.05, Compensation*, at 2-3.

⁹ *Id.* at 22.

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”).

of the discretion granted to the agency by the applicable compensation policies. The grievant has not identified, nor is EDR aware of, any specific policy requirement violated by the agency's existing salary structure. Compensating a later-hired employee at a higher salary than the grievant receives, though understandably viewed by the grievant as unfair, does not amount on its own to a disregard of the intent of the applicable policies, which allow management flexibility in making individual pay decisions in light of its consideration of the 13 Pay Factors.¹¹ While the grievant may point to internal alignment as a factor supporting his position that he and his coworker should earn the same salary, the agency has explained that the other employee's salary was based on considerations implicating multiple Pay Factors articulated by Policy 3.05. EDR has reviewed nothing to suggest that the agency failed to fully consider the applicable factors in reaching a decision to offer the other employee a greater salary upon his hire than it offered the grievant.

Thus, while the grievant may reasonably argue that certain Pay Factors support a decision to award him additional compensation, the agency also has a valid position that its consideration of the Pay Factors does not substantiate the need for a salary increase. Factors such as an employee's duties and responsibilities, work performance, and experience represent only several of many different factors an agency must consider in making the difficult determination of whether, when, and to what extent salary increases should be granted in individual cases and throughout the agency.¹² In cases like this one, where a mandatory entitlement to a pay increase does not exist, the agency is given great discretion to weigh the relevant factors. Therefore, based on the totality of the circumstances, EDR cannot find that the agency's decision here was improper or otherwise arbitrary or capricious. Accordingly, the grievance does not qualify for a hearing on this basis.

EDR's qualification rulings are final and nonappealable.¹³



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¹¹ See DHRM Policy 3.05; DHRM Human Resource Management Manual, Ch. 8, *Pay Practices*.

¹² See DHRM Policy 3.05, *Compensation*.

¹³ See Va. Code § 2.2-1202.1(5).