



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

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COMPLIANCE RULING

In the matter of the Department of Social Services
Ruling Number 2022-5418
June 8, 2022

The grievant has requested a ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management on whether his May 13, 2022 grievance with the Department of Social Services (the “agency”) complies with the grievance procedure.

FACTS

On or about May 13, 2022, the grievant initiated a grievance with the agency, which appears to challenge a selection process for which the grievant was a member of an interview panel. The agency notified the grievant on or about June 3, 2022, that the grievance was being administratively closed due to noncompliance for allegedly violating the provision in Section 2.4 of the *Grievance Procedure Manual* that states a grievance must not be used “to harass or otherwise impede the efficient operations of government.” The grievant has now appealed to EDR for a ruling on whether the grievance may proceed.

DISCUSSION

Section 2.4 of the *Grievance Procedure Manual* provides that a grievance cannot be “used to harass or otherwise impede the efficient operations of government.” This prohibition is primarily intended to allow an agency to challenge issues such as the number, timing, or frivolous nature of grievances, and the related burden to the agency.¹ While neither the number, timing, or frivolous nature of the grievances, nor the related burden to an agency, are controlling factors in themselves, those factors could, in some cases, support an inference of harassment cumulatively or in combination with other factors. Such determinations are made on a case-by-case basis, and because closing a grievance on these grounds is an extreme sanction, the analysis of such a claim carries a commensurately high burden.²

The agency’s contention arises from one of the claims of relief included in the grievance: a halt to the recruitment being challenged until the matter can be reviewed and alleged perceptions

¹ See EDR Ruling No. 2015-4126; EDR Ruling No. 2010-2374.

² See, e.g., EDR Ruling No. 99-138.

of preselection and/or irrelevancy of panel decisions addressed by human resources. The agency also argues that the grievant's intent to harass and impede the operations of government is demonstrated by the grievant's reply to the first-step response to the grievance, in which the grievant altered his request for relief and sought that the hiring manager involved receive formal discipline. These contentions do not meet the agency's burden to demonstrate that the grievance process is being used to harass or impede agency operations, as further explained below.

The grievant has challenged the selection process for a position and requested as relief that the selection process be halted until human resources could review and address his concerns. The grievant does not appear to have had the authority to stop the selection process. Rather, the grievant made what might be considered a sensible request when a management action is challenged: to put the matter on hold so that the situation can be reviewed and addressed before too many more steps occur making the matter more difficult to undo if improprieties were found. That did not occur here, as EDR has been made aware that the selection process did not halt, the individual selected was hired, and they began with the agency on or about May 25. It is certainly within the agency's discretion to determine that a halt was unnecessary if there were no concerns with the selection process. Nevertheless, it is difficult to find that the grievance was impeding agency operations when there is no evidence that its operations were impeded.

Although the grievant has altered his initial request for relief, there is nothing in the grievance procedure that prevents a grievant from doing so. Indeed, EDR favors the parties being flexible with options for relief so as not to limit the potential for resolution of a grievance. Further, given that one of the primary forms of relief the grievant initially sought (a halt to the selection process) could no longer occur, it was reasonable for the grievant to alter his request for relief. When a grievant seeks to have a manager held accountable for conduct challenged in a grievance, it is not unusual to request that the manager be subject to formal discipline. Accordingly, EDR cannot find that the grievant's alteration of his requested relief demonstrates an intent to harass or impede agency operations.

EDR would acknowledge that the posture of this grievance is unusual, in that it involves an interview panel member filing a grievance about the selection process in which they were involved. However, given the nature of the concerns raised, it appears that the grievance could be used as a means for those involved to better understand and educate on the perceptions identified.

CONCLUSION

Based on the foregoing, the grievance is re-opened and shall be permitted to proceed. The agency is directed to return the grievance to the second-step respondent, who must address the merits of its claims following a meeting with the grievant (if that has not yet occurred). EDR's rulings on matters of compliance are final and nonappealable.³

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³ See Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).