

Issue: Compliance – Grievance Procedure (Second Step Meeting); Ruling Date: April 27, 2018; Ruling No. 2018-4704; Agency: Department of Agriculture and Consumer Services; Outcome: Agency in Compliance.



COMMONWEALTH of VIRGINIA
Department of Human Resource Management
Office of Equal Employment and Dispute Resolution

COMPLIANCE RULING

In the matter of the Department of Agriculture and Consumer Services
Ruling Number 2018-4704
April 27, 2018

On behalf of the grievant, the Department of Agriculture and Consumer Services (the “agency”) has requested a compliance ruling regarding his February 14, 2018 grievance. Essentially, the grievant claims that the agency failed to comply with the grievance procedure in handling responses to the grievance at the second management resolution step.

FACTS

On February 14, 2018, the grievant initiated a grievance with the agency, broadly challenging allegedly unfair treatment he receives from his supervisor, as well as concerns with his role classification and special opportunities that he requests be provided to him. On or about March 22, 2018, the first resolution step response was issued to the grievant, indicating that if the grievant chose to advance to the second resolution step, he should send the grievance packet to the Deputy Division Director.¹ Via an attachment to the Grievance Form A, the grievant indicated that he chose to advance his grievance to the second resolution step. However, the grievant points out that the agency has designated two employees as potential second step respondents, and requests to meet with the Division Director rather than the Deputy Division Director.

To this, the agency asserts that it intends the Division Director to serve as a second step-respondent only for the division that does not have a Deputy Division Director. It claims that, in this instance, it is “not efficient and not in accordance with [the Division Director’s] job description” to have the Division Director serve as a step-respondent in the grievance process. The grievant now seeks a compliance ruling from EEDR regarding this issue.

DISCUSSION

The grievant essentially asserts that the agency is out of compliance for refusing to allow him to meet with a second resolution step-respondent who is designated to serve in that capacity,

¹ The issuance of the first step response was delayed because the agency administratively closed the grievance due to alleged initiation noncompliance. In EEDR Ruling Number 2018-3689, issued March 16, 2018, this Office determined that the grievance could proceed.

per the list provided to EEDR.² The *Grievance Procedure Manual* is silent on the subject of handling multiple designated step-respondents in the grievance process. While best practice in this situation would include open discussion and agreement between the parties regarding the appropriate step-respondents for the grievance,³ after reviewing the circumstances of this particular case, EEDR cannot find that the agency is required to allow the grievant to meet with the Division Director, because it has also designated the Deputy Division Director to serve as a second step-respondent.

CONCLUSION

For the reasons discussed above, there is no basis for EEDR to conclude that either the agency or the grievant has failed to comply with the grievance procedure at this time. Thus, **within five workdays of receipt of this ruling**, the agency shall schedule the second resolution step meeting with the grievant and the Deputy Division Director.⁴ EEDR's rulings on matters of compliance are final and nonappealable.⁵



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² See *Grievance Procedure Manual* § 1.4. To the extent the agency argues that serving as a step-respondent in the grievance process is not a part of the Division Director's job description, such an argument is unpersuasive. No such requirement exists within state policy or the *Grievance Procedure Manual*.

³ Indeed, it is the policy of the Commonwealth of Virginia "as an employer, to encourage the resolution of employee problems and complaints. To that end, employees shall be able to discuss freely, and without retaliation, their concerns with their immediate supervisors and management." Va. Code §§ 2.2-3000 (A).

⁴ See *Grievance Procedure Manual* § 3.2.

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