

Issue: Compliance - Grievance Procedure (Other issues); Ruling Date: February 6, 2013; Ruling No. 2013-3464; Agency: Department of Motor Vehicles; Outcome: Grievant in Compliance (in part), Grievant not in Compliance (in part).



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

COMPLIANCE RULING

In the matter of the Department of Motor Vehicles
Ruling Number 2013-3464
February 6, 2013

The grievant has requested a ruling on whether his October 10, 2012 grievance with the Department of Motor Vehicles (the agency) is in compliance with the grievance procedure. The agency asserts that the grievant has not adhered to the initiation requirements of the grievance procedure. For the reasons set forth below, the Office of Employment Dispute Resolution (EDR) determines that the grievance complies with the grievance procedure in part and will be permitted to proceed as discussed below.

FACTS

In the grievant's October 10, 2012 grievance, he has raised claims related to five specific acts by management:

1. Interference with a criminal investigation by members of agency management;
2. The agency's refusal to provide a letter clearing the grievant of wrongdoing and stating he is in good standing with the agency, signed by the agency head;
3. Refusing to allow the grievant to remain in the position he held previously;
4. Requiring the grievant to meet regarding contact with elected officials (and the content of that meeting); and
5. Attempts by management to intimidate a witness (the grievant).

Upon receiving the grievance, the agency closed it for failure to comply with multiple provisions of Section 2.4 of the *Grievance Procedure Manual*. The agency asserts that some claims duplicate those made in another grievance, do not pertain directly and personally to the grievant, and the grievance otherwise has been initiated to harass and/or impede agency operations. The grievant disputes the agency's assertions and now appeals to EDR to have his grievance re-opened.

DISCUSSION

Duplication

The grievance procedure provides that a grievance must not challenge the same management action challenged by another grievance.¹ The agency asserts that the October 10,

¹ *Grievance Procedure Manual* § 2.4.

2012 grievance challenges the agency's restructuring again and the grievant seeks to return to his original position. To the extent the grievance challenges this action and the grievant's transfer, it would duplicate claims made in Grievance 2. However, the grievant may still be able to discuss these issues as background information, if relevant to any other claims that proceed in this grievance.

Pertain Personally and Directly to the Grievant's Employment

Under the grievance procedure, an employee's grievance must "[p]ertain directly and personally to the employee's own employment."² On this point, the agency claims that the grievant's allegation that an agency manager has interfered with a criminal investigation does not pertain personally and directly to the grievant's employment. Although the grievant might have a real concern regarding this issue, we have been unable to find how this allegation pertains personally and directly to his employment with the agency. Consequently, this issue is not a proper subject for this grievance and requires no further response.

Harass or Impede Agency Operations

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."³ 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.⁴ To find that a grievant has failed to comply with this provision of the *Grievance Procedure Manual*, there must be evidence establishing that the grievant knew with substantial certainty that his/her actions would impede the operations of an agency.⁵ It may be inferred that a grievant intends the natural and probable consequences of his/her acts.⁶ While neither the number, timing, or frivolous nature of the grievances, nor 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.⁷

To summarize the agency's claims on this point, the agency argues that the grievant has challenged management actions that were entirely appropriate, the grievant has included "baseless accusations," the grievant has attempted to prevent the agency from conducting management actions, and the resulting impact on the agency's business to respond to the claims is abusive. We have reviewed the extensive documentation submitted by both the agency and the grievant on these points. However, we are not persuaded that the grievant has abused the grievance process or sought to harass at the time the October 10, 2012 grievance was initiated. The grievant has disputed certain agency actions that the agency feels are appropriate. Inevitably, such challenges will create work for an agency. However, we have reviewed nothing in the paperwork that indicates the grievant has raised completely baseless or unreasonable

² *Id.*

³ *Id.*

⁴ See EDR Ruling No. 2002-224.

⁵ See EDR Compliance Ruling No. 99-138, Sept. 21, 1999. Closing a grievance on these grounds is an extreme sanction. As such, the analysis of such a claim carries a commensurately high burden.

⁶ See *id.*

⁷ See *id.*

claims (with one exception noted below) that would substantiate the high burden required to close a grievance completely for harassing or impeding agency operations.

The one claim that requires further discussion on this point is the grievant's challenge to the agency's refusal to provide him a letter clearing him of wrongdoing and stating that he is in good standing with the agency. Responding further to this claim serves only to impede the efficient operations of government. The grievant has requested a letter that the agency is under no duty to provide. Whether it chooses to provide such a letter and whoever signs it is well within management's discretion that need not be debated further in this grievance.

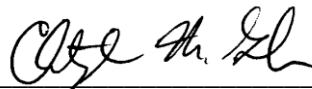
Although the grievant obviously disagrees, the agency may have conducted itself appropriately with regard to every action raised in this grievance. Indeed, based on our review, we see nothing wrong with an agency seeking to meet with an employee or investigate workplace issues. To the extent the grievant is arguing the agency should not be permitted to meet with him, such a claim is unreasonable. In addition, an agency's decision to investigate claims of wrongdoing internally is a good management practice. Nothing in this grievance or use of the grievance procedure generally should prevent an agency from conducting appropriate investigations into wrongdoing and taking actions that would be necessary, appropriate, and warranted by the facts. However, that does not mean that the grievant should not also be able to raise reasonable questions on these allegedly ongoing matters as to a purported claim of retaliation, for example, or other alleged violations of law.

CONCLUSION

Based on the foregoing, the grievant's October 10, 2012 grievance is re-opened and shall be permitted to proceed to the extent allowed in this ruling. Of the five management actions challenged, the following are those that are permitted to proceed:

1. Requiring the grievant to meet regarding contact with elected officials (and the content of that meeting); and
2. Attempts by management to intimidate a witness (the grievant).

The grievance shall be returned to the appropriate step-respondent to be addressed on the merits of these claims. Once received, the appropriate step-respondent must provide a written response to the grievance within five workdays.⁸ EDR's rulings on matters of compliance are final and nonappealable.⁹



Christopher M. Grab
Director
Office of Employment Dispute Resolution

⁸ To address this grievance more expeditiously, the parties should consider handling the grievance under the expedited process. *Grievance Procedure Manual* § 3.4.

⁹ See Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).