

Issue: Compliance – Grievance Procedure (documents); Ruling Date: June 10, 2013; Ruling No. 2013-3626; Agency: Department of Motor Vehicles; Outcome: Agency in Compliance.



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

COMPLIANCE RULING

In the matter of the Department of Motor Vehicles
EDR Ruling No. 2013-3626
June 10, 2013

The grievant has requested a compliance ruling from the Office of Employment Dispute Resolution (“EDR”) regarding alleged noncompliance with the grievance procedure by the Department of Motor Vehicles (the “agency”) in failing to produce requested documents.

FACTS

The grievant currently has three grievances proceeding through the management resolution steps with the agency. On or about March 29, 2013, the grievant submitted a request for documents related to the pending grievances. By mutual consent, the parties agreed that the agency would respond to the grievant’s request by April 24. The agency apparently did not respond, either by producing the documents in question or by stating its reasons for not producing them.

On April 29, 2013 the grievant requested a compliance ruling from EDR related to his pending grievances on an unrelated issue. That request was withdrawn on May 29, 2013, and on May 30, 2013 the agency requested a stay from EDR of all matters related to the two grievances still proceeding through the management resolution steps. On May 17, 2013, while the unrelated compliance ruling was under consideration at EDR, the grievant notified the agency head that it was not in compliance with the grievance procedure. The agency did not respond to the notice of noncompliance and, on May 28, the grievant requested a compliance ruling from EDR.

DISCUSSION

The grievance statutes provide that “[a]bsent just cause, all documents, as defined in the Rules of the Supreme Court of Virginia, relating to the actions grieved shall be made available upon request from a party to the grievance, by the opposing party, in a timely fashion.”¹ EDR’s interpretation of the mandatory language “shall be made available” is that absent just cause, all relevant grievance-related information *must* be provided. Just cause is defined as “[a] reason sufficiently compelling to excuse not taking a required action in the grievance process.”² For purposes of document production, examples of just cause include, but are not limited to, (1) the

¹ Va. Code § 2.2-3003(E); *see Grievance Procedure Manual* § 8.2.

² *Id.* at § 9.

documents do not exist, (2) the production of the documents would be unduly burdensome, or (3) the documents are protected by a legal privilege.³ The statute further states that “[d]ocuments pertaining to nonparties that are relevant to the grievance shall be produced in such a manner as to preserve the privacy of the individuals not personally involved in the grievance.”⁴

EDR has also long held that both parties to a grievance should have access to relevant documents during the management steps and qualification phase, prior to the hearing phase. Early access to information facilitates discussion and allows an opportunity for the parties to resolve a grievance without the need for a hearing. To assist the resolution process, a party has a duty to conduct a reasonable search to determine whether the requested documentation is available and, absent just cause, to provide the information to the other party in a timely manner. All such documents must be provided within five workdays of receipt of the request. If it is not possible to provide the requested documents within the five workday period, the party must, within five workdays of receiving the request, explain in writing why such a response is not possible, and produce the documents no later than ten workdays from the receipt of the document request. If responsive documents are withheld due to a claim of irrelevance and/or just cause, the withholding party must provide the requesting party with a written explanation of each claim, no later than ten workdays from receipt of the document request.⁵

In this case, the grievant has submitted no fewer than twenty-six separate document requests. The agency has withheld many of the documents sought by the grievant, claiming that his requests are overly broad and would include confidential personnel information not relevant to the grievance. In his notice of noncompliance to the agency of May 17, 2013, the grievant provided significant additional information narrowing and/or explaining the scope of the disputed requests. The agency has not responded directly to the notice of noncompliance.

The agency seems to rely on Section 6.1 of the *Grievance Procedure Manual*, which states that a party’s request for a compliance ruling from EDR “will normally stop the grievance process temporarily.”⁶ The agency argues that it has not responded to the grievant’s notice of noncompliance because it was not obligated to do so while the unrelated compliance ruling and request for a stay were under consideration at EDR. Because a pending ruling from EDR ordinarily stays the grievance process until the ruling is issued (or, in this case, the request is withdrawn),⁷ we conclude that the agency acted with belief that the grievance process was subject to a temporary stay while these other matters were under consideration at EDR.

Therefore, to the extent that it has not responded to the grievant’s document requests as refined in the notice of noncompliance, the agency is ordered to respond to those requests **within five workdays of receipt of this ruling**. The agency may make its response either by producing the documents or, if it is not possible to provide the requested documents within that time,

³ See, e.g., EDR Ruling No. 2008-1935, 2008-1936.

⁴ Va. Code § 2.2-3003(E); see *Grievance Procedure Manual* § 8.2.

⁵ *Grievance Procedure Manual* § 8.2.

⁶ *Grievance Procedure Manual* § 6.1.

⁷ See also EDR Ruling No. 2007-1503 n.3.

explaining why production is not possible. If the agency withholds responsive documents due to a claim of irrelevance and/or just cause, then it must provide a written explanation of each claim.

CONCLUSION AND ADDITIONAL MATTERS

While EDR does not find that the agency is not in compliance with the grievance procedure at this time, the parties are cautioned to exercise good faith in dealing with one another. To the point of working together, EDR encourages the parties to consider seeking additional alternative dispute resolution means possibly to resolve all their claims. For example, procuring the services of an experienced and skilled mediator or facilitator⁸ to assist the parties in resolving these cases could result in better outcomes for either party than at a grievance hearing. EDR will allow the necessary time to work out these matters should the parties avail themselves of such alternative resolution methods. It should be noted, however, that, if it is considered an option, now is probably the time to do so. For example, if these or other grievances later proceed to a hearing stage, some hearing officers will not approve a request for a continuance for the purpose of mediation.

EDR's rulings on matters of compliance are final and nonappealable.⁹



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⁸ While EDR administers a statewide mediation program, the instant case is not appropriate for the EDR mediation program. If sought, it would appear that the primary purpose for ADR would be for a negotiated settlement, which is not what EDR's program is intended to address.

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