

Issue: Compliance – Grievance Procedure (other issue); Ruling Date:
February 6, 2014; Ruling No. 2014-3796; Agency: Old Dominion University;
Outcome: Agency in Compliance.



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

COMPLIANCE RULING

In the matter of Old Dominion University
Ruling Number 2014-3796
February 6, 2014

The grievant has requested a ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management on whether his December 12, 2013 grievance with Old Dominion University (the “University”) is in compliance with the grievance procedure. For the reasons set forth below, the grievance will remain closed.

FACTS

The grievant is employed by the University as an Information Technology Specialist II. The grievant’s supervisor requires him to submit a daily email report that details his arrival and departure times and work performed during the day. In a December 12, 2013 email, the grievant notified his supervisor that he would no longer submit the required reports because they are currently the subject of another grievance. He explained that he believes the University has treated him unfairly and has not “acted in good faith” to resolve the issues raised in that grievance. The grievant further “demand[ed] immediate formal, written discipline” from his supervisor so he would “have the opportunity to present [his] case” by using the grievance process to challenge the disciplinary action.

On the same date as his email, December 12, 2013, the grievant filed a grievance challenging the University’s apparent failure to issue formal discipline for his refusal to submit the daily email reports. On or about January 14, 2014, the University administratively closed the grievance for failure to comply with Section 2.4 of the *Grievance Procedure Manual*. The University argues that a decision not to discipline an employee is not properly the subject of a grievance. The grievant disputes the University’s assertion and appeals to EDR for a ruling on whether his grievance may proceed.

DISCUSSION

The grievance in this case challenges the University’s “failure to issue” a Written Notice as part of alleged “attempt to cover-up policy violations.” Although the

University's notice of administrative closure only stated that the grievance had been closed because the subject matter "was not grievable" without explanation, it is clear that the University closed the grievance based on the theory that it did not comply with the grievance procedure. Having reviewed the submissions from the parties, it appears that the grievance procedure's prohibition of grievances that harass or impede agency operations most closely describes the situation presented here.¹

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."² 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.³ 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.⁴

The grievant's claims revolve around his ongoing disputes with the University regarding his supervisor's requirement that the grievant submit daily emails detailing his time spent at work and the work he has performed.⁵ The grievant has apparently found the University's response thus far to be unsatisfactory and, in what he referred to as "an act of 'civil disobedience,'" he refused to submit additional reports to his supervisor. Essentially, the grievant intentionally engaged in potential misconduct by refusing to submit work reports to his supervisor with the express purpose of inciting the University to issue a Written Notice, which he might then challenge using the grievance process. Indeed, the grievant seeks as his relief in the December 12 grievance the issuance of "formal, written discipline" and an administrative hearing.

Having considered the unique factual background of this case, we are led to the inescapable conclusion that the December 12 grievance does not challenge a management action or omission that is appropriate for resolution through the grievance process. An agency's alleged failure to take disciplinary action based on an employee's deliberate misconduct performed with the intent to provoke such a disciplinary action is not an issue that may be appropriately addressed through the grievance procedure. Furthermore, it appears that the grievant is attempting to create a new avenue through which he may pursue the same issues that were raised in his prior grievance(s). Allowing the December 12 grievance to proceed on this basis would serve no purpose other than to permit an abuse of the grievance process and impede the efficient operations of the University.

¹ See *Grievance Procedure Manual* § 2.4.

² *Id.*

³ See EDR Ruling No. 2010-2374; EDR Ruling No. 2002-224.

⁴ See, e.g., EDR Ruling No. 99-138.

⁵ The grievant currently has at least one additional grievance proceeding through the management resolution steps that is closely related to the underlying issues presented in the December 12 grievance.

Accordingly, we find that the December 12, 2013 grievance does not comply with Section 2.4 of the *Grievance Procedure Manual* and will remain closed.

EDR's rulings on matters of compliance are final and nonappealable.⁶



Christopher M. Grab
Director
Office of Employment Dispute Resolution

⁶ See Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).