Issue: Compliance – Grievance Procedure (other issue); Ruling Date: April 8, 2016; Ruling No. 2016-4336; Agency: Department of Conservation and Recreation; Outome: Hearing Officer in Compliance.

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

COMPLIANCE RULING

In the matter of the Department of Conservation and Recreation
Ruling Number 2016-4336
April 8, 2016

The grievant, by counsel, has requested a compliance ruling from the Office of Employment Dispute Resolution ("EDR") at the Department of Human Resource Management in a pending grievance hearing matter (Case Number 10763) against the Department of Conservation and Recreation ("agency"). The hearing officer in Case Number 10763 has notified the parties that they will be limited to 180 minutes for the presentations of their cases, including opening statements, examination of witnesses, cross-examination of witnesses, and closing statements. However, the grievant's attorney has requested that he have a minimum of four to five hours for his side of the case. While the hearing officer has not specifically addressed the grievant's request, it has been effectively denied in maintaining the 180-minute limit. As such, the grievant seeks this ruling.

Under the grievance procedure, a hearing officer has the authority to rule on procedural matters, render written decisions and provide appropriate relief, and take any other actions as necessary or specified in the grievance procedure.[1] The *Grievance Procedure Manual* further states that "[a] hearing is to last no more than one day, unless the hearing officer determines that the time is insufficient for a full and fair presentation of the evidence by both sides."[2] The determination of what time is required for a "full and fair presentation" is within the hearing officer's discretion. A hearing officer's determination in this regard will only be disturbed when it constitutes an abuse of discretion.[3]

While it would be inappropriate for a hearing officer to enforce an arbitrary limitation of time without regard to the particular circumstances of a given case, it is not an abuse of discretion for a hearing officer to make an initial assessment of the time reasonably needed for a hearing and to require the parties to adhere to that time limit absent a showing that additional time is needed for a full and fair presentation of the evidence. Moreover, it is the hearing officer's responsibility to move the hearing in an orderly and timely manner, excluding irrelevant, immaterial, insubstantial, and repetitive evidence.[4]

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[1] *Grievance Procedure Manual* § 5.7; *see also* Va. Code § 2.2-3005.
[2] *Grievance Procedure Manual* § 5.4.
[3] *See, e.g.*, EDR Ruling Nos. 2006-1233, 2006-1234, 2006-1235.
[4] *See Rules for Conducting Grievance Hearings* §§ IV(C), IV(D).

Nevertheless, EDR understands and appreciates the grievant's position in this case. The grievant's counsel has rightly pointed out that this case would appear to involve a multitude of allegations of misconduct covering a year period spread over two Written Notices resulting in termination. It is a reasonable conclusion that both parties could need more than 180 minutes for a full presentation of all of the facts at issue in their respective sides of the case. However, EDR cannot find that at this time the hearing officer's directive is unreasonable or an abuse of discretion warranting intrusion by this Office into the hearing officer's discretion.

In making this determination, EDR is further guided by the fact that the hearing officer's practice is not to utilize this 180-minute limit as a hard cap on the presentation by the parties. The limit is put in place to encourage the parties to focus their respective cases so as not to waste time with irrelevant, immaterial, insubstantial, and/or repetitive evidence. In this regard, the hearing officer's 180-minute limit is an appropriate method of case management.

EDR cannot second-guess the judgment of the hearing officer at this stage in the case without sufficient justification. The time necessary for a full and fair presentation of a party's case can rarely be determined with precision in advance of a hearing. Thus, a hearing officer will always have to make this assessment and constantly adjust the time parameters of a hearing dependent on the particular circumstances of each case as they arise during hearing. However, a party should not abuse the leeway afforded by wasting time on irrelevant, immaterial, insubstantial, and/or repetitive evidence. Ultimately, the hearing officer is responsible for affording the parties sufficient time for a full and fair presentation of their cases. If the hearing officer concludes that the circumstances of this case warrant more than 180 minutes per side, the hearing officer may understandably extend the time as needed and/or continue the case to a second day of hearing.

For all these reasons, EDR concludes that under the circumstances of this case, the hearing officer's imposition of a 180-minute limit on the parties' respective presentations is not an abuse of discretion. This ruling does not preclude the parties from raising the issue of hearing length in a post-hearing request for administrative review if, after the completion of the hearing, either party believes that the hearing officer denied them a full and fair opportunity to present their evidence.

EDR's rulings on matters of compliance are final and nonappealable.[5]

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Office of Employment Dispute Resolution

[5] *See* Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).