

Issue: Compliance – Grievance Procedure (30-Day Rule); Ruling Date: November 7, 2013; Ruling No. 2014-3744; Agency: Norfolk State University; Outcome: Grievant in Compliance.



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

COMPLIANCE RULING

In the matter of Norfolk State University
Ruling Number 2014-3744
November 7, 2013

The grievant has requested a compliance ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management on whether his grievance dated August 28, 2013 with Norfolk State University (the “University”) was timely initiated. For the reasons discussed below, the grievance is timely and must be allowed to proceed.

FACTS

On or about July 12, 2013, the grievant received a Notice of Layoff or Placement form from the University, notifying him that his position as a Program Administration Specialist I was scheduled to be abolished. The form also stated that there were no placement opportunities available and the grievant would be placed on leave without pay-layoff effective July 25, 2013. The University subsequently rescheduled the grievant’s effective date of layoff to July 31, 2013. On that date, the grievant entered leave without pay-layoff status.

The grievant mailed a grievance challenging the abolishment of his former position on August 30, 2013.¹ On or about October 2, 2013, the University notified the grievant that his grievance had been administratively closed due to noncompliance. The University explained that the grievance was not timely filed because the grievant received his Notice of Layoff or Placement on July 12, 2013, but did not file his grievance until August 30, 2013, more than thirty calendar days afterwards. The grievant now appeals that determination to EDR.

DISCUSSION

The grievance procedure provides that an employee must initiate a written grievance within 30 calendar days of the date he knew or should have known of the event or action that is the basis of the grievance.² When an employee initiates a grievance beyond the thirty calendar-day period without just cause, the grievance is not in compliance with the grievance procedure and may be administratively closed.

¹ While the Grievance Form A is dated August 28, 2013, it was not mailed to the University until August 30, 2013. The grievance procedure provides that, “for purposes of establishing when a mailed grievance was initiated, the postmark date is considered the initiation date.” *Grievance Procedure Manual* § 2.2. We will, therefore, treat this grievance as having been initiated on August 30, 2013.

² Va. Code § 2.2-3003(C); *Grievance Procedure Manual* § 2.4.

Here, the event that forms the basis of the grievance is the grievant's layoff. According to the University, the grievant was notified that he would be laid off on July 12, 2013, the day he received the Notice of Layoff or Placement, and thus he should have initiated his grievance within thirty calendar days of that date, or not later than August 11, 2013. We understand the University's reasoning that the grievant "knew or should have known" of the management action on July 12, 2013 for purposes of initiating a grievance.³ However, EDR has long held that the event forming the basis of such a grievance is the actual effective date of layoff, not a grievant's receipt of a Notice of Layoff or Placement indicating that such an action will likely occur in the future.⁴ In challenges to layoffs, EDR considers the effective date of layoff as the date the thirty-day filing clock begins to run because circumstances can change from the time the employee receives his Notice of Layoff or Placement and the time that he is actually laid off. A grievant may initiate a grievance at any point prior to the final effective date of layoff, but EDR permits such a grievance to be filed within thirty calendar days of a grievant's actual separation by layoff.

Thus, although the grievant received notice that his position would be abolished on July 12, 2013, he was not required to initiate a grievance challenging his layoff until that process was complete. Provided that a grievant separated by the layoff process has initiated a grievance within thirty calendar days of the effective date of layoff the grievance will be considered timely to challenge the layoff and all related issues. In this case, the thirty-day time period in which the grievant could initiate a grievance challenging the University's decision to abolish his position did not begin until his layoff became effective on July 31, 2013. Therefore, he was required to initiate a grievance no later than August 30, 2013. Because the grievance was considered filed on August 30, 2013, it was timely initiated.

CONCLUSION

For the reasons set forth above, we conclude that the grievance was timely initiated and is allowed to proceed. This ruling does not address the merits of the grievance and only decides that it was timely filed. The grievance must be returned to the appropriate step-respondent to be addressed at that level and proceed through the grievance process.⁵ EDR's rulings on matters of compliance are final and nonappealable.⁶



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Office of Employment Dispute Resolution

³ *Grievance Procedure Manual* § 2.2.

⁴ See EDR Ruling No. 2013-3627; EDR Ruling No. 2011-2707; EDR Ruling No. 2010-2623; EDR Ruling No. 2004-784.

⁵ Although this grievance was initiated using the regular grievance process, EDR recommends that the parties consider using the expedited grievance process available in this type of case. See *Grievance Procedure Manual* § 3.4.

⁶ See Va. Code §§ 2.2-1001(5); 2.2-3003(G).