

Issues: Compliance – Grievance Procedure (Step Respondents and Second Step Meeting); Ruling Date: August 13, 2015; Ruling No. 2016-4185; Agency: Virginia Department of Transportation; Outcome: Agency in Compliance (step respondents); Agency Not in Compliance (second step meeting).



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

COMPLIANCE RULING

In the matter of the Virginia Department of Transportation
Ruling Number 2016-4185
August 13, 2015

The grievant has requested that the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management (“DHRM”) rule on alleged noncompliance with the grievance procedure in his June 10, 2015 grievance with the Virginia Department of Transportation (the “agency”).

FACTS

The grievant is employed by the agency as a Project Manager. On May 11, 2015, the grievant received a “Letter of Counsel” for alleged performance issues. On or about June 10, 2015, the grievant initiated a grievance challenging the written counseling. The second step meeting took place on or about June 23, 2015. The grievant asserts that the second step-respondent had a conflict of interest that should have precluded her from acting in that role, and that the second step-respondent failed to comply with the grievance procedure in conducting the second step meeting. The grievant has requested a compliance ruling from EDR.¹

DISCUSSION

Conflict of Interest by Second Step-Respondent

In his request for a compliance ruling, the grievant first alleges that the second step-respondent had a conflict of interest because of her husband’s interest in the grievant’s performance of his duties. While there may be exceptional cases in which there are grounds to disqualify a step-respondent, the grievant has not shown that the second step-respondent’s marital relationship creates such an extraordinary circumstance in this case. Although the grievant’s arguments are unclear, in EDR’s review, any alleged conflict of interest arising out of the marital relationship giving an interest in the grievant’s proper performance of his duties would be similar to a general management interest in the completion of those duties for the betterment of the district and agency. For these reasons, EDR concludes that the agency has not

¹ Under the grievance procedure, a party alleging noncompliance must first give the opposing party written notice of noncompliance before seeking a ruling from EDR. *Grievance Procedure Manual* § 6.3. Although it is not clear in this case whether the grievant provided such written notice, the agency has apparently reviewed his claims and determined itself to be in compliance with the grievance process. As the agency has had an opportunity to respond to the grievant’s claims, there would be little benefit, if any, in dismissing the grievant’s ruling request as premature. Accordingly, EDR will respond to the grievant’s claims of noncompliance on their merits.

failed to comply with the grievance procedure by allowing the participation of the designated second step-respondent.

Second Step Meeting

The grievant also argues that the second step-respondent failed to comply with the grievance procedure in the manner in which she conducted the second step meeting. Specifically, he asserts that the second step-respondent began the meeting by giving him a document stating her decision not to grant relief, and that she failed to allow him to present evidence. The agency apparently does not challenge the grievant's assertions regarding the second step meeting.

Section 3.2 of the *Grievance Procedure Manual* provides that, “[t]he purpose of the second step meeting is fact finding and should include open discussion of the grievance issues to promote understanding of the other party’s position and possible resolution of the workplace issues.” Such fact finding does not occur when the second step-respondent merely advises the grievant of his or her conclusions. Further, although the second step-respondent may limit repetitive or cumulative evidence, a grievant at a minimum must be given an opportunity to call witnesses and to present relevant information.² Lastly, a second step response should only be drafted after the second step meeting has occurred, to allow the second step-respondent an opportunity to weigh the evidence and to carefully consider his or her response. As the second step meeting in this case appears not to have been conducted in accordance with these mandates, EDR finds that the agency failed to comply with the grievance procedure. To remedy this noncompliance, the agency is directed to conduct another second step meeting. This meeting must be conducted in a manner consistent with Section 3.2 of the *Grievance Procedure Manual*. The individual designated by the agency as the second step-respondent should again conduct the meeting, unless the parties agree otherwise.

Agency’s Award of Relief

Finally, the grievant appears to request that EDR to render a decision against the agency due to substantial noncompliance the grievance procedure. We do not find that such action is warranted here. While the “failure [of a party] to comply with a substantial procedural requirement of the grievance procedure without just cause may result in a decision against the noncomplying party on any qualified issue,”³ EDR favors having grievances decided on the merits rather than procedural violations. The agency’s actions in this case do not rise to the level that would justify such extreme action.

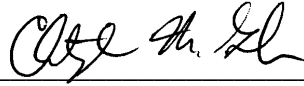
CONCLUSION

Based on the foregoing, EDR finds that the agency has failed to comply with the grievance procedure in regard to the manner in which the second step meeting was conducted.

² *Id.*

³ Va. Code § 2.2-3003(G).

The parties are therefore directed to conduct another second step meeting in accordance with this ruling **within ten workdays of receipt of this ruling**, and the second step-respondent is directed to provide the grievant with his or her response **within five workdays of the second step meeting**. EDR's rulings on matters of compliance are final and nonappealable.⁴



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⁴ See Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).