

Issue: Compliance – Grievance Procedure (Second Step Respondent); Ruling Date: August 11, 2015; Ruling No.2016-4196; Agency: Virginia Department of Transportation; Outcome: Agency in Compliance.



**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 2016-4196  
August 11, 2015

The grievant has requested a compliance ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management in relation to his grievance with the Virginia Department of Transportation (the “agency”). The grievant alleges the agency has failed to comply with the grievance procedure in its designation of step-respondents.

FACTS

The grievant was formerly employed by the agency as a Project Manager. His supervisor was employed in a position that has been designated by the agency as the second step-respondent for employees in the grievant’s chain of management. On or about July 10, 2015, the grievant, his supervisor, and other agency employees were transferred to a different agency. The grievant had filed a grievance with the agency on July 8, while he was still employed by the agency, to challenge the impending transfer. Following some initial communications with his supervisor about the status of his grievance, the grievant sent the agency a notice of noncompliance on July 16, 2015, alleging that the agency had failed to comply with the grievance procedure because it had not properly designated the members of agency management who would respond to his grievance. The agency responded on July 17, stating that the agency’s Chief Financial Officer, who is a designated third step-respondent, would serve as the grievant’s sole management step-respondent in this case. The grievant then requested a compliance ruling from EDR, alleging that “the agency did not seek mutual consent to consolidate the grievance steps . . . .”<sup>1</sup>

DISCUSSION

Under the grievance procedure, each agency must designate individuals to serve as respondents in the resolution steps. A list of these individuals shall be maintained by the agency’s Human Resources Office and is also available on EDR’s website. Each designated step-respondent shall have the authority to provide the grievant with a remedy, subject to the agency

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<sup>1</sup> The grievant also requests clarification as to whether the designated “step respondent . . . has the authority to hear the grievance and grant the relief requested in the grievance.” Section 2.2-3003(D) of the Code of Virginia provides that each designated step-respondent shall have the authority to provide the grievant with a remedy, subject to the agency head’s approval.

head's approval.<sup>2</sup> Pursuant to its statutory responsibilities, EDR has long collected and maintained each agency's designated step-respondents. This assures that each agency's management resolution step-respondents are appropriate, known to employees and to EDR, and that this phase of the grievance process is administered consistently and fairly.

An agency's careful designation of step-respondents, and consistent adherence to those designations, is crucial to an effective grievance process. Step-respondents have an important statutory responsibility to fulfill and should decline to serve only in extenuating circumstances, such as extended illness or serious injury. Further, if a step-respondent cannot serve in that capacity pending a particular grievance, management should seek an agreement with the grievant on a substituted step-respondent and should put any agreement in writing. Absent an agreement between the parties, the agency must adhere to the designated list of step-respondents. When higher level employees file grievances, however, modifications to the standard process are necessary.<sup>3</sup>

In this case, the grievant's immediate supervisor would have normally been the second step-respondent for the agency. In such a situation, the first and second steps of the grievance process collapse into a single step,<sup>4</sup> which would be handled as the second resolution step of a grievance.<sup>5</sup> As such, there would be no independent first step in this grievance and only two management resolution steps. This is a simple and somewhat common result and is consistent with EDR's longstanding practices.<sup>6</sup> However, this case presents a unique situation in that the grievant's supervisor, like the grievant, is no longer employed by the agency. Thus, in this case the grievance will proceed directly to the third step with the Chief Financial Officer, as originally stated by the agency. Because the Chief Financial Officer is one of the agency's designated third step-respondents, the agency is in compliance with the grievance procedure.

EDR's rulings on matters of compliance are final and nonappealable.<sup>7</sup>



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<sup>2</sup> See Va. Code § 2.2-3003(D).

<sup>3</sup> See EDR Ruling No. 2013-3583. In addition, Number 16 of EDR's Grievance FAQs, which are available at <http://www.dhrm.virginia.gov/employmentdisputeresolution/grievancefaqs>, discusses this type of situation.

<sup>4</sup> See *id.*

<sup>5</sup> See *Grievance Procedure Manual* § 3.2.

<sup>6</sup> *E.g.*, EDR Ruling No. 2009-2321 n.1.

<sup>7</sup> See Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).