

Issues: Compliance – Grievance Procedure (Second Step Meeting and Other Issue);  
Ruling Date: September 4, 2015; Ruling No. 2016-4218, 2016-4223; Agency:  
Department of Criminal Justice Services; Outcome: Agency in Compliance.



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

**COMPLIANCE RULING**

In the matter of the Department of Criminal Justice Services  
Ruling Numbers 2016-4218, 2016-4223  
September 4, 2015

The grievant has requested a ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management in relation to alleged noncompliance with the grievance procedure by the Department of Criminal Justice Services (the “agency”).<sup>1</sup>

FACTS

On August 6, 2015, the grievant initiated a grievance with the agency to challenge alleged issues with her compensation and position classification. The second step meeting was held on August 13.<sup>2</sup> After the meeting, the grievant delivered two notices of noncompliance to the agency, on August 14 and August 20, alleging that the second step meeting had not been conducted in accordance with the requirements of the *Grievance Procedure Manual*. In her notices of noncompliance, the grievant argued that the agency had not notified her in advance that the second step meeting would take place on August 13, with the result that that she was unable to “properly prepare, have witnesses available, prepare questions . . . , or exercise other rights . . . .” The grievant further claimed that the second step-respondent asked “improper and inappropriate questions” at the meeting with the intent to “harass and intimidate” her. In its responses to both notices of noncompliance, the agency offered to reconvene the second step meeting to give the grievant additional time to prepare. The grievant apparently declined the agency’s offer to reconvene the second step meeting and instead requested a compliance ruling from EDR to address these issues.

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<sup>1</sup> This ruling responds to the grievant’s first two requests for compliance rulings. EDR has also received a third ruling request from the grievant concerning documents sought from the agency, which is being addressed in a separate ruling.

<sup>2</sup> Due to the size of the agency and the grievant’s position within its management structure, the agency determined that the first and second steps would collapse into a single step, to be handled by her immediate supervisor. This is a simple and somewhat common result and is consistent with EDR’s longstanding practices. *E.g.*, EDR Ruling No. 2013-3583. Based on the agency’s list of designated step-respondents, which is maintained by EDR at <http://www.dhrm.virginia.gov/employmentdisputeresolution/agencystepsrespondentlist>, the agency director would then presumably serve as the third step-respondent.

## DISCUSSION

### *Scheduling of the Second Step Meeting*

Under the grievance procedure, management and employees generally have an equal interest in and entitlement to at least one face-to-face meeting during the management resolution steps. Generally, this meeting must be held at the second resolution step.<sup>3</sup> As a part of this process, both parties are entitled to have an individual present at the meeting as a “supporter and counselor,” to “call witnesses” who can provide relevant information, and generally discuss “the grievance issues to promote understanding of the other party’s position and possible resolution . . . .”<sup>4</sup> Scheduling a second step meeting in a manner that would prevent a party from exercising these rights could constitute noncompliance with the provisions of the grievance procedure, depending on the circumstances.

In this case, the grievant asserts that, on August 11, 2015, the second step-respondent informed her that there would be a meeting “to discuss [her] Grievance” on August 13. The grievant states that she was given “no information . . . as to the type of meeting that would be held” and that she was not aware this would be the second step meeting. During the meeting on August 13, the grievant claims she “noted numerous times . . . that this was not how [she] understood the meeting would be.” In effect, the grievant argues that she was not given an opportunity to gather information, prepare, call witnesses, and/or have a representative present at the meeting. In its response to the grievant’s ruling request, the agency disputes these assertions and argues that the grievant was notified the second step meeting would take place on August 13. However, the agency offered to reconvene the second step meeting to correct these alleged issues and gave the grievant available dates for such a reconvened meeting.

If EDR were to conclude that the agency had not complied with the grievance procedure, the remedy would be for the parties to hold another second step meeting. As the agency has already agreed to do as much, we find that any alleged issues of noncompliance relating to the scheduling of the meeting and the notice provided to the grievant are moot.<sup>5</sup> The agency has offered the grievant another opportunity to prepare for the meeting and present information for the second step-respondent to consider, and thus no further action from EDR is necessary at this time.

### *Questioning of the Grievant at the Meeting*

The grievant further argues that the second step-respondent engaged in “harassment and intimidation” based on the questions posed to her by the second step-respondent at the August 13 meeting. Specifically, she claims “there were few questions asked . . . that sought to find facts in

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<sup>3</sup> See *Grievance Procedure Manual* § 3.2.

<sup>4</sup> *Id.*

<sup>5</sup> The grievant appears to argue that the agency’s offer was unreasonable and requests a “new” second step meeting rather than a “reconvened” one. EDR has not reviewed anything in the grievant’s submissions that adequately explains why the difference between a reconvened or new meeting matter in this case. Ultimately, it appears that a reconvened meeting is the appropriate result in this case.

a balanced manner” and that she “was repeatedly asked the same questions that were clearly answered in the Grievance, or . . . that a reasonable person could not answer.” Both parties to the grievance must participate in the second step meeting in a courteous manner and display appropriate respect for everyone present. While harassing or intimidating behavior from a step-respondent could run afoul of these standards, it is not clear that such was the case here. The grievance raises issues relating to the grievant’s compensation and classification, and thus some discussion of how her salary and job duties compare to other agency employees was to be expected. Likewise, it was not unreasonable for the second step-respondent to ask questions about certain details in the grievance to clarify the issues, even though this may have appeared repetitive to the grievant.

Assuming the grievant’s account of the August 13 meeting is accurate, however, it does appear that some of the questions asked by the second step-respondent, specifically those relating to the job responsibilities, salary, and classification of other agency employees, were not ones that she could reasonably be expected to answer. It is difficult to see how the agency could expect the grievant to have knowledge of all the data that would be relevant to assessing the alleged issues with her compensation. This is especially true because, as the agency noted in its response to the grievant’s ruling request, “the agency does not ask an affected employee to personally review or perform an analysis” in cases involving to compensation disputes. While the grievant’s inability to provide such information upon request would not necessarily be a reasonable conclusion to the issues raised in the grievance, we cannot find that the second step-respondent’s actions at the meeting constituted noncompliance with the grievance procedure in this case.<sup>6</sup>

### CONCLUSION

In accordance with the agency’s offer to correct the noncompliance alleged by the grievant regarding the scheduling of the second step meeting, the parties are directed to schedule another second step meeting **within five workdays of the date of this ruling.**<sup>7</sup> Although we do not find that the agency failed to comply with the grievance procedure based on the grievant’s allegation that the second step-respondent engaged in “harassment and intimidation,” both parties should be mindful when the second step meeting is reconvened that it “should not be adversarial or treated as a hearing,” and that the purpose of the meeting is “fact

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<sup>6</sup> As the grievance is still proceeding through the management resolution steps, it is not the time for EDR to weigh the substantive merits of the issues raised by the grievant. See *Grievance Procedure Manual* § 4.3. However, the agency’s response to the grievant’s ruling request states that “[c]ompensation and classification reviews are management initiated pay practices” that are conducted by the agency’s human resources office. If one has not already occurred, such a review would appear to be an effective method of evaluating the grievant’s claims regarding her compensation and classification, and would likely result in a more accurate assessment of the relevant information than a review of the facts presented by the grievant alone.

<sup>7</sup> Because there remains an additional compliance ruling pending with EDR in this grievance, specifically regarding the grievant’s request for documentation from the agency, the proceedings in this grievance, including the above directive to schedule another second step meeting within five workdays, will be stayed until the completion of the other compliance ruling. *Grievance Procedure Manual* § 6.1. If the parties have any questions, they are free to contact EDR’s AdviceLine at 1-888-232-3842.

finding” with the goal of promoting “open discussion of the grievance issues.”<sup>8</sup> The management resolution phase of the grievance process was designed to allow the parties to the dispute to exchange information and attempt to resolve the issues themselves, without the assistance of a neutral third party. While the resolution step process involves only the parties to a grievance, the hearing process, if a grievance is qualified, allows grievants an opportunity to present claims to a neutral, third-party hearing officer for resolution.

EDR’s rulings on matters of compliance are final and nonappealable.<sup>9</sup>



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Christopher M. Grab  
Director  
Office of Employment Dispute Resolution

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<sup>8</sup> See *Grievance Procedure Manual* § 3.2.

<sup>9</sup> See Va. Code §§ 2.2-1202.1(5); 2.2-3003(G).