Issues: Qualification – Management Actions (recruitment/selection), and Compliance – Grievance Procedure (premature qualification); Ruling Date: October 2, 2015; Ruling No. 2016-4239; Agency: Department of Conservation and Recreation; Outcome: Qualified, Agency in Compliance.

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

QUALIFICATION AND COMPLIANCE RULING

In the matter of the Department of Conservation and Recreation
Ruling Numbers 2016-4239
October 2, 2015

The Department of Conservation and Recreation (the agency) has requested to rescind qualification of the grievant's July 10, 2015 grievance. Although the agency head qualified the grievance for a hearing, the agency now seeks to change that determination. For the reasons discussed below, the agency's request is denied.

FACTS

On September 14, 2015, the agency head qualified the grievant's July 10, 2015 grievance for a hearing. In a September 28, 2015 letter to the Office of Employment Dispute Resolution (EDR) at the Virginia Department of Human Resource Management, the agency asks to rescind its qualification of the grievance. The agency states that the grievance was "prematurely qualified" for hearing by the agency head and alleges that, under the *Grievance Procedure Manual*, EDR lacks jurisdiction to hear the matter.

DISCUSSION

EDR has long recognized that the Grievance Form A is an official grievance document used by the parties to communicate throughout the grievance process and, as such, is of paramount importance during the grievance procedure. Because the grievant, agencies, and EDR rely on the Grievance Form A to ascertain the intent of the parties, it is incumbent on the parties to clearly and accurately express their intentions on the Grievance Form A. However, in past rulings, EDR has considered errors made on the Grievance Form A in different contexts and, in so doing, has recognized that evidence of a party's intent is relevant.[1]

While EDR has permitted parties to correct unintended mistakes on the Grievance Form A, parties will not be allowed to change clearly intended choices (like a grievant's closure of a grievance or an agency's qualification of a grievance for hearing) simply because the party changes its mind later. There must be finality to determinations intentionally made and indicated by parties on the Grievance Form A. Further, the procedural approach to finality must be consistent with respect to both parties. If agencies were allowed to rescind their intentional decisions to qualify a grievance for hearing, should grievants also be allowed to rescind their

[1] *See* EDR Ruling No. 2011-3014; Ruling No. 2011-2970.

intentional decisions to conclude their grievances? If so, by what deadline should the parties be allowed to change their minds? In the interests of procedural order, stability, and finality, rescission of either party's deliberate, intended decision to conclude a grievance (in the case of a grievant) or to qualify a grievance (in the case of an agency) cannot be permitted, and thus, the agency's request in this case must be denied.[2]

Here, the agency does not state, nor does the evidence show, that it mistakenly checked the wrong box on the Grievance Form A, thereby erroneously indicating it wished to qualify the July 10, 2015 grievance. Indeed, the agency completed and submitted to EDR a Form B requesting the appointment of a hearing officer for this matter after the agency head's qualification decision was issued. Now, the agency appears to have simply reassessed its initial decision to qualify this grievance. Because on September 14, 2015 the agency originally intended to qualify the grievance for a hearing, it is not permissible to now change that determination.

The agency also argues that EDR lacks jurisdiction to appoint a hearing officer to hear this matter. EDR finds this argument to be without merit. While Section 4.1(c) of the *Grievance Procedure Manual* provides that a grievance solely about a hiring decision does not qualify for a hearing, that section also provides that such a grievance is not precluded from qualification if the case would otherwise qualify under Section 4.1(b). Because a grievance about a hiring decision can arguably qualify, for example, under theories of misapplication and/or unfair application of policy, discrimination, and/or retaliation,[3] a grievance challenging issues like those in this case can be appropriately qualified for hearing.[4] As this grievance *can* qualify for a hearing under the grievance procedure, EDR has no basis to disagree with the agency head's decision to qualify the grievance for hearing. Thus, jurisdiction is proper for an EDR-appointed grievance hearing as the case has been appropriately qualified by the agency head.

CONCLUSION

As the agency has qualified in full the July 10, 2015 grievance for a hearing, as well as already requested the appointment of a hearing officer using the Grievance Form B, a hearing officer will be appointed in a forthcoming letter. EDR's rulings on matters of compliance and qualification are final and nonappealable.[5]

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Director
Office of Employment Dispute Resolution

[2] This is the same result EDR has reached in similar situations in the past. *See id.*
[3] *See Grievance Procedure Manual* §§ 4.1(b), (c).
[4] *See, e.g.*, EDR Ruling No. 2011-2838.
[5] Va. Code § 2.2-1202.1(5).