

Issue: Compliance/documents; Ruling Date: September 11, 2001; Ruling #2001-170; Agency: Norfolk State University; Outcome: grievant out of compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of Norfolk State University
Ruling Number #2001-170
September 11, 2001

ISSUE:

Should the issue of the agency's alleged noncompliance regarding the production of documents be raised with the Director of EDR?

RULING:

No. The *Grievance Procedure Manual* provides that "[a]fter a hearing officer is appointed, relief [regarding documentation] should be sought from the hearing officer." (See "Documentation Relating to a Grievance;" §8.2, p. 21. See also "Authority of the Hearing Officer," §5.7, p. 14.) This Department's rulings on matters of compliance are final and nonappealable. (See Va. Code § 2.1-116.03(5).)

EXPLANATION:

Facts

On July 1, 2001, the grievant requested the agency to provide certain documents allegedly relevant to his June 22, 2001 grievance, including leave forms, an accident report, tape recordings of meetings and memoranda. The agency did not respond, and the grievant submitted a written notice of noncompliance to the agency head on August 13, 2001. A hearing officer was appointed by this Department on August 21, 2001, to hear this grievance (Grievance Docket #5276). In a general prehearing order dated August 29, 2001 the hearing officer directed each party to produce all documentation requested by the other party relating to the grievance. The hearing is scheduled for September 12, 2001. On September 7, 2001, the grievant requested this Department's Director to rule against the agency on the issue with its compliance with the grievance procedure's document production provisions.

Discussion

By statute and under the grievance procedure, hearing officers may issue orders for the production of documents or the appearance of witnesses. (See Va. Code § 2.1-

September 11, 2001

Ruling #2001-170

Page 3

116.07(B)(3); *Grievance Procedure Manual* § 5.7, page 14.) The hearing officer has the authority to determine the materiality and relevance of the documents to the issue qualified for hearing. Therefore, because a hearing officer has been appointed in this case, all disputes relating to the production of documents should be presented to the hearing officer for his determination. If either party to this grievance later believes that the hearing officer exceeded his authority or failed to comply with the grievance procedure by ordering or failing to order the production of specific documents, that party may then request a compliance ruling from this Department. Accordingly, the parties are advised to contact the hearing officer prior to the scheduled hearing date to request and discuss the production of documents in this matter.

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