

Issue: Compliance-Resolution Steps; Ruling Date: December 13, 2001; Ruling #2001-221; Agency: Department of Corrections; Outcome: Grievant out of compliance.



*COMMONWEALTH of VIRGINIA*  
*Department of Employment Dispute Resolution*

COMPLIANCE RULING OF DIRECTOR

In the matter of Department of Corrections  
Ruling Number 2001-221  
December 13, 2001

**ISSUE:**

Does the grievant's November 9, 2001 grievance comply with the grievance procedure?

**RULING:**

No. This Department finds that the grievant's November 9 grievance is out of compliance with the grievance procedure, and may be administratively closed by the agency. Within 5 workdays from his receipt of this ruling, the grievant must either advance his November 3, 2001 grievance or initiate the process discussed below to challenge the agency's alleged noncompliance in the November 3 grievance. This Department's rulings on matters of compliance are final and nonappealable.<sup>1</sup>

**EXPLANATION:**

A compliance ruling has been requested in the grievant's November 9, 2001 grievance with the Department of Corrections. The agency claims that this grievance is in noncompliance because it merely attempts to challenge the agency's compliance in the grievant's earlier grievance of November 3, 2001. We agree.

The grievant is employed as a Correctional Officer with the Department of Corrections. He filed a grievance with his immediate supervisor on November 3, 2001. He filed a second grievance on November 9, 2001, claiming non-compliance on the part of the first-step respondent in his November 3 grievance.

The grievance procedure requires both parties to address procedural noncompliance through a specific process.<sup>2</sup> That process assures that the parties first communicate with

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<sup>1</sup> Va. Code § 2.2-1001(5).

<sup>2</sup> See *Grievance Procedure Manual* § 6, pages 16-18.

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each other about the noncompliance, and resolve any compliance problems voluntarily without this Department's involvement, and without the filing of a second grievance merely to challenge the alleged noncompliance. Specifically, the party claiming noncompliance must notify the other party in writing and allow five workdays for the opposing party to correct any noncompliance. If the agency is out of compliance, written notice of noncompliance must be made to the agency head.<sup>3</sup> If the agency fails to correct the alleged noncompliance, the grievant may request a ruling from this Department. Should this Department find that the agency violated a substantial procedural requirement and that the grievance presents a qualifiable issue, this Department may resolve the grievance in the grievant's favor unless the agency can establish just cause for its noncompliance.

In this case, grievant incorrectly initiated a second grievance on November 9 to address the Department of Corrections' alleged noncompliance in an earlier grievance.

Sincerely,

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Neil A. G. McPhie, Esquire  
Director

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Chris L. Miller  
Employment Relations Consultant

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<sup>3</sup> See *Grievance Procedure Manual*, § 6.3 (1), page 17.