Issue: Compliance/Other; Ruling Date: January 22, 2003; Ruling #2003-002; Agency: Department of Motor Vehicles; Outcome: grievance prematurely forwarded.

COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of Department of Motor Vehicles
Ruling Number 2003-002
January 22, 2003

ISSUE:

Is the grievant's November 27, 2002 grievance properly before this Department for qualification?

RULING:

No. The agency prematurely forwarded to this Department the grievant's request for the qualification of her grievance. Within 5 workdays from the receipt of this ruling, the agency should advance the grievant's November 27, 2002 grievance to the agency head for a qualification determination. This Department's rulings on matters of compliance are final and nonappealable.[1]

EXPLANATION:

The grievant was employed as an Administrative Office Specialist III. On November 27, 2002, she initiated a grievance with the Department of Motor Vehicles (DMV) challenging the agency's application of the layoff policy and her transfer to another office allegedly targeted for closure. The grievant met with the second resolution step respondent on December 13, 2002.[2] In her written response to the grievant, the step respondent stated that management had acted within established policy and, thus, there was no basis upon which to grant the relief requested by the grievant. The grievant received this response on December 17, 2002, and timely marked the appropriate box on

[1] Va. Code § 2.2-1001(5).
[2] The layoff action involved a loss of pay; therefore, the grievant was entitled to use the expedited grievance process, allowing her to initiate the grievance with the second resolution step respondent. *Grievance Procedure Manual* § 2.4, page 7.

the Form A to request qualification of her grievance. The agency then forwarded the grievance to this Department for a qualification determination.[3]

It appears that this request resulted from a misunderstanding of the grievance procedure by both parties. In an expedited grievance, after the grievant requests that the grievance be qualified for a hearing, the Form A should be submitted to the agency head for a qualification decision.[4] If the agency head does not qualify the grievance for a hearing, then the employee may appeal the determination to the Director of EDR.[5] The agency head therefore must make a determination of whether the grievance qualifies for a hearing prior to a request for qualification to this Department.

Further, when the agency mistakenly forwarded the grievance to EDR, the grievant should have addressed the agency's procedural noncompliance through a specific process.[6] That process assures that the parties first communicate with each other about the noncompliance, and resolve any compliance problems voluntarily without this Department's involvement. Specifically, a 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.[7] If the agency fails to correct the alleged noncompliance, then 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.

Thus, both the agency and the grievant are out of compliance with the grievance process. In order to expedite this matter, as stated above, this Department directs the agency to forward the grievance to the agency head for a qualification determination as requested by the grievant.

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Claudia T. Farr
Director

[3] The agency's cover letter attached to the Form A, dated January 3, 2003, stated that the DMV ruled the grievance "nongrievable" at the first step. During the investigation for this ruling, the agency indicated the cover letter was attached in error. For future reference, however, it should be noted that since a 1995 amendment to the grievance statute virtually any employee complaint is "grievable" – in other words, if a complaint is timely filed by an employee with access to the grievance procedure, the complaint generally may advance through at least the management resolution steps and a qualification determination. *See* Va. Code § 2.2-3003; *see also Grievance Procedure Manual* § 2.4, pages 6-7. Only certain grievances, however, *qualify* for a hearing. *See Grievance Procedure Manual* § 4, pages 10-11.

[4] *See Grievance Procedure Manual* § 3.3, page 10.

[5] *See Grievance Procedure Manual* § 4.3, page 12.

[6] *See Grievance Procedure Manual* § 6, pages 16-18.

[7] *See Grievance Procedure Manual*, § 6.3 (1), page 17.

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