Issue: Compliance-Conduct of Hearing; Ruling Date: January 16, 2002; Ruling #2002-009;
Agency: Department of Transportation; Outcome: Hearing officer in compliance

COMMONWEALTH *of VIRGINIA*
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of the Virginia Department of Transportation
Ruling Number 2002-009
January 16, 2002

ISSUE:

Does the hearing officer's pre-hearing order concerning the location of the hearing comply with the grievance procedure?

RULING:

Yes. This Department finds that the hearing officer neither abused his discretion or exceeded his authority under the grievance procedure in determining the location of the hearing. This Department's rulings on matters of compliance are final and nonappealable.[1]

EXPLANATION:

Under the Code of Virginia, a hearing officer has the power and the duty to "[d]ispose of procedural requests."[2] Moreover, the Code specifies that a grievance hearing "shall be held in the locality in which the employee is employed or in any other locality *agreed to* by the employee, employer, and hearing officer."[3]

In this case, the hearing officer found that the parties were not in agreement regarding the location for the hearing. Accordingly, he ordered the hearing to be held in the locality where the employee is employed, against the agency's wishes. Even assuming, as the agency asserts, that the agency's preferred location would not be a burden to the grievant, the Code expressly states that the parties and the hearing officer must *agree* to any location other than "the locality in which the employee is employed." In this case, that statutory condition has not been met.

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Neil A.G. McPhie, Esquire
Director

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[1] Va. Code § 2.2-1001(5).
[2] Va. Code § 2.2-3005(C)(2).
[3] Va. Code § 2.2-3004(F)(emphasis added). *See also Grievance Procedure Manual* § 5.2, page 13 ("the hearing must be held in the locality where the employee is or has been employed").