

Issue: Compliance; resolution steps; Ruling Date: June 21, 2002; Ruling #2002-105;
Agency: University of Virginia; Outcome: agency in compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of University of Virginia/ No. 2002-105, 2002-112
June 21, 2002

The grievant has requested a compliance ruling in her January 15, 2002 grievance with the University of Virginia (UVA or University). The grievant claims that the agency is out of compliance for failing to provide a third step response that addresses the merits of her grievance. The grievant further claims that the University did not respond to her notice of noncompliance in a timely matter. As relief, she requests a ruling in her favor on the substantive merits of the grievance.

FACTS

The grievant is a Fiscal Technician Senior with UVA Medical Center. She received a Group I written notice on December 17, 2001 for disruptive and rude behavior. The written notice followed an incident on December 11 where the grievant allegedly displayed "a very public show of displeasure" that she was not notified when an administrator was out sick.

The grievant challenged the written notice in a grievance filed on January 15, 2002. The grievance further alleged retaliation and harassment by the grievant's supervisor. According to the Form A, the grievant initiated her grievance with her second step respondent because of the retaliation claim against her immediate supervisor. The second step respondent provided a response on January 24, upholding the written notice. The grievant requested a compliance ruling from this Department, alleging that the response was inadequate and did not address the substance of her claims. This Department ruled that UVA had not violated the grievance procedure.

The grievant now expresses similar concerns about her third step response. Specifically, she is concerned that her step respondents did not interview an employee whose input would support the grievant's position that the notice was unwarranted. She notified UVA on May 2 that her third step response was not in compliance with the grievance procedure.

The grievant further claims that the University failed to comply with the grievance procedure when it did not respond to her May 2 notice of noncompliance in a

timely manner. The President did reply on May 3, but failed to provide the correct postage. The grievant did not feel it was her responsibility to pay the postage due and refused to accept the letter.

DISCUSSION

The grievance procedure requires that 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 fails to correct the alleged noncompliance, the grievant may request a compliance ruling from this Department.¹ The grievant provided notice to the University president on May 2, 2002, alleging that her third step respondent failed to respond substantively to the issues of her grievance.

Failure to Respond to the Notice of Noncompliance

The University has conceded that it should have provided the correct postage on the certified letter. However, failure to do so does not constitute noncompliance with the grievance procedure. In fact, the University was not required to respond to the grievant's notice of noncompliance at all; it was only required to correct any noncompliance, if necessary. In this case, UVA determined that the third step response was adequate and took no further action. Therefore, mailing its response with incorrect postage does not violate a substantial procedural requirement of the grievance procedure.

Failure to Correct the Noncompliance

We reach the same conclusion here, as we did with respect to the grievant's previous objections to her second step response.

The grievance statutes provide that "upon receipt of a timely written complaint, management shall review the grievance and respond to the merits thereof."² Each respondent must provide a written response on the grievance Form A or attachment. The response must address the issues and the relief requested and should notify the employee of her procedural options.³ The grievance procedure does not require that a respondent's written reply specifically address each point or factual assertion advanced by the grievant. The respondent's reply need only address the issues and relief identified by the grievant on the Form A.

In this case, the written response addresses both the issues identified and the relief requested by the grievant on her Form A. While the third step respondent could have provided details explaining why he finds the grievant's claim without merit, his failure to

¹ *Grievance Procedure Manual* § 6.3, page 17.

² Va. Code § 2.2-3003(D).

³ *Grievance Procedure Manual* § 3.1-3.3, pages 8 and 9.

do so, or to interview any particular witness, does not amount to a violation of a substantial procedural requirement of the grievance procedure. The parties are advised that the grievant, within five workdays of receipt of this ruling, has the option to conclude the grievance or advance to the next step. This Department's rulings on matters of compliance are final and nonappealable.⁴

Claudia T. Farr
Director

Leigh A. Brabrand
Employee Relations Consultant

⁴ Va. Code § 2.2-3003(G).