

Issue: Qualification and Compliance/Sexual Harassment, Race Discrimination,  
Consolidation of Grievances for purposes of hearing; Ruling Date: October 18, 2002;  
Ruling #2002-141, 142, 178; Agency: George Mason University; Outcome: Qualified  
and consolidated for hearing.



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

QUALIFICATION AND COMPLIANCE  
RULING OF DIRECTOR

In the matter of George Mason University  
No. 2002-141, 2002-142, 2002-178  
October 18, 2002

The grievant has requested a ruling on whether his grievances initiated with George Mason University (the agency or GMU) on March 6, 2002 (Grievance #1), March 15, 2002 (Grievance #2) and another on March 15, 2002 (Grievance #3) qualify for a hearing.

In Grievance #1 the grievant alleges that the job he was verbally offered in lieu of layoff was not the same as the job described in his new Employee Work Profile (EWP). In Grievance #2, the grievant claims that his supervisor discriminated against him on the basis of race. In Grievance #3 the grievant alleges that he has been retaliated against for reporting his supervisor's alleged theft of state property to the state's Fraud, Waste and Abuse hotline.

For the reasons discussed below, this Department finds that the claims of the three above grievances are so intertwined with two currently consolidated and qualified grievances,<sup>1</sup> that in the interests of a full and fair exploration of the facts, all five grievances should be consolidated and advance together to hearing.

FACTS

The grievant was employed as a General Services Supervisor with GMU.<sup>2</sup> In January 2002, a proposal was made by the agency to contract out a portion of the grievant's duties. As a result, the grievant's position would have been abolished and he would have been laid off. To avoid that, the agency's human resources office offered the grievant a revised position at his current location or an alternative position at the Arlington, Virginia campus. According to the grievant, on January 25, 2002, he was

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<sup>1</sup> Grievances 4 and 5 challenge two Group II Written Notices received by the grievant on April 5, 2002, on many of the same grounds alleged in Grievances 1, 2 and 3. Grievances 4 and 5 challenge formal discipline and thus automatically qualify for hearing.

<sup>2</sup> The grievant's employment with GMU was terminated on April 5, 2002.

offered and accepted the revised position which involved the supervision of contract movers. On February 6, 2002, a meeting was held between the grievant, his new supervisor, and another member of management to discuss the grievant's new EWP. At this meeting, according to the agency, they discussed the grievant's helping out in emergencies, and an example of the overflowing of toilets was given. According to the grievant, he refused to sign the EWP because he had agreed to supervise trained contract movers, not to mop floors, clean toilets or train GMU housekeeping employees in relocating GMU furniture and equipment. Subsequently, the grievant initiated Grievance #1. In his grievance, the grievant states that he believes the events of February 6, 2002 were the result of his refusal to have sex with a member of management.

According to the agency, on February 12, 2002, the grievant refused to follow supervisor's instructions to perform assigned work, and stated that he would not work with his new supervisor because he does not treat him respectfully. On February 18, 2002, the grievant's supervisor, accompanied by campus police, arrived at the grievant's work site and told the grievant to turn in his keys and go home. This action prompted the initiation of Grievance #2 wherein the grievant alleges discrimination based on race. Further, the grievant uses the events of February 18, 2002 as evidence in support of Grievance #3 wherein the grievant alleges he has been retaliated against for reporting to the state's Fraud, Waste and Abuse hotline. The agency contends that the grievant was removed from the work place on February 18<sup>th</sup>, pending a decision about potential disciplinary action for his actions on February 12, 2002. Due to the strained relations between the grievant and his supervisor, campus police were asked to accompany the supervisor to the grievant's workplace.

On April 5, 2002, the grievant was issued a Group II Written Notice for (1) failure to follow supervisor's instructions and perform assigned work and (2) leaving the work site during work hours without permission. This Written Notice was based on the grievant's alleged behavior on February 12, 2002 and was challenged in Grievance #4. On the same date, the grievant was issued a second Group II Written Notice with termination for (1) repeatedly making false statements; (2) undermining the authority of management; (3) disruptive behavior; and (4) abusive language. This discipline resulted from purported behavior exhibited subsequent to the grievant being asked to leave the work place on February 18, 2002 and led to Grievance #5. On April 5, 2002, the grievant initiated separate grievances challenging each of the Written Notices (Grievances #4 and #5). In both Grievances, #4 and #5, the grievant seeks relief from the allegedly harassing behavior of his supervisors. On September 19, 2002, this Department consolidated Grievances #4 and #5 for hearing.<sup>3</sup>

## DISCUSSION

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<sup>3</sup> See Compliance Ruling of Director #2002-137, September 19, 2002.

Grievances #1-5 are based on a series of events that essentially began on January 25, 2002, when the grievant allegedly accepted a new position that he claims was later altered to include work he considered demeaning. This purported action led to Grievance #1. A short time later, on February 12<sup>th</sup>, the University alleges that the grievant failed to follow his supervisor's instructions and left work without proper authorization. The grievant's alleged conduct of February 12<sup>th</sup> led to the Group II Written Notice that is the subject of Grievance #4. Grievance #5 is premised on the events that surrounded the grievant's removal from the work place, six days later, on February 18, 2002. Grievances #2 and #3 merely state the grievant's theories for why management took the action it did on February 18, 2002. As such, the events, circumstances, and theories raised in Grievances #1, #2 and #3 could be material and relevant to Grievances #4 and #5, which are in turn based on the events of February 18<sup>th</sup> and the University's response to those circumstances. Moreover, the Grievances #4 and #5 have been qualified and consolidated for hearing.

This Department has long held that grievances may be consolidated by mutual agreement of the parties, or absent such an agreement, by this Department whenever the grievances challenge the same action or series of actions or arise out of the same material facts.<sup>4</sup> Given the apparent interrelation of all five grievances discussed above, this Department qualifies Grievances #1, #2 and #3 to advance to hearing, consolidated with the previously consolidated Grievances #4 and #5.<sup>5</sup> This consolidation determination in no way has any bearing on the substantive merits of any of these interrelated grievances.

### CONCLUSION

For the reasons discussed above, this Department concludes that Grievances #1, #2 and #3 are qualified and consolidated with previously consolidated Grievances #4 and #5. All five grievances shall be heard at the hearing scheduled for October 31, 2002. This Department's rulings on compliance are final and nonappealable.

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Claudia T. Farr  
Director

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Jennifer S.C. Alger  
Employment Relations Consultant

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<sup>4</sup> *Grievance Procedure Manual* § 8.5, page 22.

<sup>5</sup> *See also* Qualification Ruling of Director #2002-044 (alternative theories and/or ancillary matters to qualified issues may proceed to hearing together.)