

Issue: Compliance/5-day rule; Ruling Date: April 16, 2003; Ruling #2003-049 and 2003-053; Agency: Norfolk State University; Outcome: Agency out of compliance; both grievances qualified for hearing.



COMMONWEALTH of VIRGINIA

Department of Employment Dispute Resolution

COMPLIANCE, QUALIFICATION AND CONSOLIDATION RULING OF DIRECTOR

In the matter of Norfolk State University
Ruling Numbers 2003-049 & 2003-053
April 16, 2003

The grievant has requested compliance and qualification rulings regarding her October 16, 2002¹ and February 10, 2003² grievances with Norfolk State University (NSU), both of which challenge NSU's grounds for her termination. The grievant claims that the agency has violated a substantial requirement of the grievance procedure, without just cause, by failing to provide her with timely responses. As relief, she requests qualification and consolidation of her grievances for hearing. For the reasons discussed below, both grievances are qualified for hearing. In addition, the grievances are consolidated and will proceed to hearing together.

FACTS

October 16, 2002 Grievance

Until her termination, the grievant was employed as an Education Support Specialist II. On October 16, 2002, the grievant initiated a grievance challenging a Group III Written Notice. By mutual agreement, the timeframe for conducting the second step meeting and providing the second step response was extended. However, when the agency failed to provide its response within the extended timeframe, the grievant forwarded a written notification of noncompliance to the agency head on January 13, 2003. The grievant failed to receive a response to her noncompliance notification, and requested a compliance ruling from this Department.³ Pending the

¹ See Grievance Form A signed by grievant on October 16, 2002.

² See Grievance Form A Expedited Process signed by grievant on February 10, 2003.

³ See Department of Employment Dispute Resolution Compliance Ruling of Director No. 2003-026 issued March 6, 2003. This ruling concluded that "the University has remedied any non-compliance." The ruling also noted that "the parties are, however, advised that the time requirements of the grievance procedure are

issuance of the compliance ruling, the grievant received the second step response and advanced her grievance to the third step. When she failed to receive a third step response within the mandated five workday time period,⁴ the grievant forwarded her second written notification of noncompliance to the agency head.⁵ The grievant failed to receive a response to this noncompliance notification, and requested a second compliance ruling from this Department. On February 27, 2003, the grievant was notified by the Director of Human Resources that instead of responding as the third step, the President had determined that the grievance did not qualify for hearing. On March 10, 2003, the grievant withdrew her compliance request and asked for qualification of her October 16, 2002 grievance and consolidation of that grievance for hearing with her February 10, 2003 grievance.⁶

February 10, 2003 Grievance

On February 10, 2003 the grievant initiated a second grievance challenging her termination, and asserting that she was terminated without due process. The grievant and second step respondent met and the second step respondent asserts that her response was sent to the grievant on February 11, 2003 via Express Mail.⁷ However, the grievant did not receive this correspondence⁸ and, believing that the agency had again exceeded the five workday time period mandated by the grievance procedure, forwarded a written notification of noncompliance to the agency head on February 18, 2003.⁹ When the grievant failed to receive a response to her notification on February 25, 2003, she requested a compliance and qualification ruling from this Department based on the agency's noncompliance.¹⁰ When the agency discovered that the February 11 response had not been sent to the grievant's new home address, it resent the response to the new address under a March 18, 2003 cover letter explaining what had happened.

DISCUSSION

Compliance/Qualification

to be followed, and that repeated disregard of procedural rules *could* serve as evidence of bad faith.” Ruling No. 2003-026, footnote 13, (emphasis in original).

⁴ *Grievance Procedure Manual*, § 3.3, page 9.

⁵ See Correspondence to the Agency Head from the grievant dated February 21, 2003.

⁶ See Correspondence to this Department from the grievant emailed March 10, 2003.

⁷ See Correspondence from the Acting Vice President for Academic Affairs to the grievant dated February 11, 2003.

⁸ During this investigation, the grievant asserts that she changed her address after filing her first grievance and that she gave her new address to the Director of Human Resources (DHR). While her grievance was in process the DHR left the agency. The second step respondent sent her reply via Express Mail to the address listed on the Grievance Form A and not to the new address. Management proffered a copy of the returned delivery slip that shows it was unclaimed despite repeated delivery attempts.

⁹ See Correspondence to the Agency Head Subject Non-Compliance dated February 18, 2003.

¹⁰ See Correspondence to this Department from the grievant emailed February 25, 2003.

A review of the grievant's efforts since initiating her first grievance on October 16, 2002 indicate that she has fully complied with the grievance procedure in an attempt to obtain timely due process. This has been hampered, however, by the actions of the agency described above. Agency step responses were either late or mailed to the wrong address, to be corrected weeks later. The October 16, 2002 grievance was improperly denied qualification by the agency head.¹¹ To require the grievant to again proceed through the qualification process on the February 10, 2003 grievance would be redundant and further delay her right to timely due process. Given the agency's delay to date, and the unique facts of this case, this Department concludes that the appropriate course of action is for this Department to qualify both grievances for hearing. This is particularly true given that the issue at the heart of each of these grievances, formal discipline with termination, *automatically* qualifies for hearing.¹²

Consolidation

Written approval by the Director of this Department or her designee in the form of a compliance ruling is required before two or more grievances are permitted to be consolidated in a single hearing. EDR strongly favors consolidation and will grant consolidation when grievances involve the same parties, legal issues, policies, and/or factual background, unless there is a persuasive reason to process the grievances individually.¹³ This Department finds that consolidation of both grievances at hearing in this case is appropriate: each grievance challenges a disciplinary action and termination originating from the same basic factual background, and involving the same parties.

Accordingly, the grievances of October 16, 2002 and February 10, 2003 are now qualified and consolidated to proceed to hearing. The agency is directed to request the appointment of a hearing officer within five workdays of receipt of this ruling unless the grievant notifies them that she does not wish to proceed. This Department's rulings on compliance are final and nonappealable.¹⁴

Claudia T. Farr
Director

Deborah M. Amatulli

¹¹ Because the grievance challenged a formal disciplinary action, a Group III Written Notice, the grievance should have been automatically qualified by the agency head. *See* Grievance Procedure Manual § 4.1 (a) page 10.

¹² *See Grievance Procedure Manual*, § 4.1(a), page 10).

¹³ Grievance Procedure Manual § 8.5, page 22.

¹⁴ Va. Code § 2.2-1001 (5).

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