

Issue: Compliance/Consolidation of grievances for purposes of hearing; Ruling Date: March 31, 2003; Ruling #2003-067; Agency: Department of Military Affairs; Outcome: Consolidated



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

**COMPLIANCE RULING OF DIRECTOR**

In the matter of Department of Military Affairs  
Ruling Number 2003-067  
March 31, 2003

The grievant has requested a compliance ruling regarding seven pending grievances: one initiated on September 9, 2002; three initiated on February 19, 2003; two on February 20, 2003; and one on March 6, 2003 with the Department of Military Affairs (DMA or agency). The grievant seeks consolidation of all seven grievances for one hearing. This Department has already ruled that the September 9, 2002 grievance that proceeded to hearing on February 5, 2003 would be consolidated with the grievant's termination hearing.<sup>1</sup> As such, this ruling addresses a request for consolidation of the remaining six grievances. The agency agrees to consolidation of the six grievances. For the reasons discussed below, all six grievances are consolidated and will proceed to hearing together.

FACTS

Until her March 6, 2003 termination, the grievant has been employed as a Law Enforcement Officer I with DMA. On September 9, 2002, the grievant initiated a grievance (Grievance #1) alleging that the agency retaliated against her after she made complaints regarding a co-worker's behavior, which she claimed was intimidating and physically threatening. The September 9<sup>th</sup> grievance proceeded to hearing on February 5, 2003. On January 24, 2003, the grievant initiated a second grievance (Grievance #2) that was later administratively closed by this Department as duplicative of Grievance #1.<sup>2</sup>

After the February 5<sup>th</sup> hearing, the grievant initiated six additional grievances. Three of those grievances were initiated on February 19, 2003. The first grievance initiated on February 19<sup>th</sup> (Grievance #3) challenges a letter of caution contained in the grievant's personnel file. The second February 19<sup>th</sup> grievance (Grievance #4) challenges a negative annual evaluation. The final grievance initiated on February 19<sup>th</sup> (Grievance #5) challenges a January 21, 2003 memorandum contained in the grievant's personnel file. On February 20, 2003, the grievant initiated two additional grievances. The first grievance (Grievance #6) alleges retaliation, while the second February 20, 2003

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<sup>1</sup> See Compliance Ruling of Director # 2003-050, March 17, 2003.

<sup>2</sup> See Compliance Ruling of Director # 2003-024, March 4, 2003.

grievance (Grievance #7) alleges retaliation and lack of due process with respect to a pre-disciplinary suspension. A final expedited grievance was initiated on March 6, 2003 (Grievance #8) challenging the issuance of two Group III Written Notices with termination. Grievances #3 through #8 were not resolved in the management resolution steps and have been qualified for hearing by the agency.

On March 6, 2003, the grievant requested consolidation of Grievances #3, #4, #5, #6, #7 and #8 and that the February 5<sup>th</sup> hearing in Grievance #1 be reopened and consolidated with the grievant's upcoming termination hearing in Grievance #8. The grievant further requested that evidence described in Grievance #2, which had not yet been heard in support of Grievance #1, be heard at the consolidated hearing. In its March 17, 2003 ruling, this Department denied consolidation of Grievances #3 through #8 as premature.<sup>3</sup> Further, this Department instructed the hearing officer to hold his decision in abeyance in the February 5, 2003 hearing until all other grievances proceeded through the management resolution steps and qualification and consolidation determinations were made.<sup>4</sup> The ruling further instructed that once qualification and consolidation determinations were made, the February 5, 2003 hearing would be reopened and consolidated with the grievant's termination hearing.<sup>5</sup>

On March 25, 2003, Grievances #3, #4, #5, #6, #7, and #8 were all qualified for hearing. Thereafter, on March 26, 2003, the grievant requested consolidation of all grievances for one hearing.<sup>6</sup>

### DISCUSSION

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

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<sup>3</sup> See Compliance Ruling of Director dated March 17, 2003, Ruling # 2003-050.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> It should be noted that the grievant has made multiple compliance ruling requests to this Department. In one of those requests (which was later withdrawn), a facsimile dated March 25, 2003, the grievant describes this Department as "colluding" with the Department of Military Affairs. In support of this allegation, the grievant maintains that she never requested a compliance ruling relating to the training activities of supervisory personnel at DMA and that she had only spoken to the agency about such issues. Based on this, the grievant incorrectly assumed that the only way this Department could have known about her questions regarding training, which was addressed in a March 25, 2003 ruling by this Department, was if it had spoken with the agency regarding "strategy." To the contrary, on March 19, 2003, the Director of this Department received a facsimile from the grievant entitled "[a]dditional information to be considered for my Non-Compliance request of 3/12/03 step 2 from 9/18/02." In that document, the grievant requests that information relating to the agency's training activities of supervisory personnel at DMA be considered in her compliance ruling regarding the agency's inappropriate designation of a second-step respondent in her September 9, 2002 grievance. The grievant's observations about training of supervisory personnel were therefore addressed in the March 25, 2003 ruling. This Department has and will continue to maintain its neutrality in administering the grievance procedure in this and every grievance.

factual background, unless there is a persuasive reason to process the grievances individually.<sup>7</sup>

This Department finds that consolidation of Grievances #3 through #8 at hearing in this case is appropriate: the issues contained in the grievances are interrelated, the grievances involve the same parties, the parties agree to consolidation, and consolidation is not impracticable in this instance. Grievances #3 through #8 will be consolidated with the reopening of the February 5, 2003 hearing. This Department's rulings on compliance are final and nonappealable.<sup>8</sup>

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Director

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<sup>7</sup> See *Grievance Procedure Manual* § 8.5, page 22.

<sup>8</sup> See Va. Code § 2.2-1001 (5).