

Issue: Consolidation for purposes of hearing/ Ruling Date: April 29, 2005; Ruling #'s 2005-1022, 2005-1023; Agency: Department of Juvenile Justice; Outcome: grievances consolidated



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution
COMPLIANCE RULING OF DIRECTOR

In the matter of Department of Juvenile Justice
Ruling Numbers 2005-1022 and 2005-1023
April 28, 2005

The Department of Juvenile Justice (DJJ or the agency) seeks a compliance ruling regarding two grievances filed by two separate DJJ employees (Grievant #1 and Grievant #2). The agency requests that the two grievances be consolidated for a single hearing. Grievant #1 and Grievant #2 agree to the consolidation. For the reasons discussed below, this Department finds that consolidation is appropriate and practicable in this case.

FACTS

The agency contends that on October 26, 2004, each of the grievants joined with other corrections officers in refusing to report to their posts. The agency asserts that this resulted in the night shift having to be held over for more than three hours and interfered with the effective operation of the facility. As a result, on November 18, 2004, Grievant #1 and Grievant #2 were issued a Group III Written Notice for participating in a collective work stoppage. The two grievants challenged their discipline by initiating separate grievances. The two grievances were unresolved during the management resolution steps, and subsequently qualified for hearing by the agency head.

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 factual background, unless there is a persuasive reason to process the grievances individually.¹

Likewise, in the interest of judicial economy, courts generally favor consolidation of actions that pose common questions of law or fact.² However, before granting consolidation, the court must "conduct a careful inquiry in this regard that

¹ *Grievance Procedure Manual*, § 8.5.

² See *Switzenbaum v. Orbital Sciences Corp.*, 187 F.R.D. 246 (E.D. Va. 1999) discussing Rule 42(a) of the Federal Rules of Civil Procedure, which permits the consolidation of actions that pose common questions of law and fact.

balances the prejudice and confusion that consolidation might entail against the waste of resources, the burden on the parties, and the risk of inconsistent judgments that separate proceedings could engender.”³ Similarly, the Virginia rules of criminal procedure favor a joint trial of defendants charged with participating in contemporaneous and related acts or occurrences unless a joint trial would constitute prejudice.⁴

In such cases, the defendant must show actual prejudice, which results only when “there is a serious risk that a joint trial would compromise a specific trial right or prevent the jury from making a reliable judgment about guilt or innocence.”⁵ As such, it appears that in assessing whether a case is appropriate for consolidation or a joint trial, Virginia courts rely heavily upon to what extent prejudice could result if consolidation or a joint trial is granted. While not dispositive for purposes of the grievance procedure, the prejudice standard articulated by the Virginia Courts under the civil and criminal procedural rules is nevertheless instructive in determining whether consolidation is appropriate for purposes of a grievance hearing.

In this case, the agency seeks consolidation of the two grievances for hearing because the two employees were disciplined with Group III Written Notices for allegedly participating in a collective work stoppage, on the same date and time. Likewise, the two employees agree to consolidation because the facts of their case are interrelated and involve the same management officials, issues, and facts.

This Department finds that consolidation of the two grievances is appropriate. The two grievances involve the same parties, potential witnesses, legal issues, policies, and factual background, thus warranting consolidation, and consolidation is not impracticable in this instance. The hearing officer shall independently assess the merits of each grievance and separately address the merits of each grievance.⁶ This Department’s rulings on compliance are final and nonappealable.⁷

Claudia T. Farr
Director

June M. Foy
EDR Consultant, Sr.

³ *Id.* At 247-248 *citing* Arnold v. Eastern Airlines, 681 F.2d 186, 193 (4th Cir. 1982).

⁴ *See* Va. Code § 19.2-262.1.

⁵ Barnes v. Judge Commonwealth of Virginia, 22 Va. App 406, 470 S.E.2d 579 (1996) *citing* Zafiro v. United States, 506 U.S. 534, 539, 113 S. Ct. 933 938, 122 L. Ed. 2d 317 (1993).

⁶ The hearing officer is granted the decision of addressing the merits of the two grievances in a single consolidated decision or two separate decisions.

⁷ Va. Code § 2.2-1001 (5).

April 28, 2005

Ruling #2005-1022, 2005-1023

Page 4