

Issue: Compliance/grievance procedure/ who to file grievance with?; Ruling Date:
October 31, 2005; Ruling #2006-1100; Agency: Virginia Employment Commission;
Outcome: grievance should be with VEC.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of Virginia Employment Commission
Ruling Number 2006-1100
October 31, 2005

The grievant has requested a compliance ruling in his July 27, 2005 grievance initiated with the Virginia Employment Commission (VEC).¹ The agency essentially asserts that the grievant initiated his grievance with the wrong agency. For the reasons discussed below, this Department concludes that the grievance as originally filed with VEC is in compliance with the grievance procedure.

FACTS

The grievant asserts that on April 11, 2005, while he was employed with the VEC as Director of Policy and Planning, his supervisor verbally informed him that he would be laid-off, effective July 1, 2005. On April 13, 2005, the grievant received written confirmation that his position was being abolished effective July 1, 2005.

The grievant claims that VEC did not offer him a placement option, but with the "Interagency Placement Screening Form" (Yellow Form), he was able to secure a position with the Division of Motor Vehicles (DMV), albeit at a lower salary than he had earned at VEC. The start date for the DMV position was July 1, 2005, which was also the effective date of the grievant's layoff from VEC.

The grievant states that prior to his layoff, he discussed with VEC any layoff rights that he might have. He asserts that he was told that because he had accepted another position, he was not entitled to any layoff benefits. The grievant asserts that he should have been granted certain layoff rights under state policy, such as the "Preferential Hiring Card" (Blue Card).

¹ On the Grievance Form A, the grievant identified the "agency name" as the "Division of Motor Vehicles." However, the grievant presented the Form A to VEC management after being instructed to do so by the Division of Motor Vehicles (DMV).

DISCUSSION

The grievance procedure provides that an employee's grievance must arise in the agency in which the employee works.² This Department has long held that this provision requires that an employee must initiate his grievance with his employing agency.³ However, in certain circumstances the employing agency may not be in a position to address the employee's concern or provide any meaningful relief to an employee. For example, in a case such as this, where the issue grieved (misapplication of the layoff policy) involves an alleged act or omission by a former agency, an act or omission which occurred while the employee was employed by that former agency, it simply makes sense to allow the employee to grieve with the former agency --the only party capable of addressing the concern or providing relief. Accordingly, EDR has and will continue to allow employees to initiate grievances with their former agencies *but only* in instances where (1) the grievance arose in the employee's former agency, (2) the former agency is the only agency that can address the employee's concerns or provide relief *and* (3) the grievance meets all other access and compliance rules.⁴ In this case, because the alleged policy misapplication occurred in the employee's former agency the grievant will be permitted to proceed with his grievance with VEC. We note that our determination regarding this compliance issue has no bearing on the merits of the grievance.

In addition, this ruling should not be viewed as a general expansion of the rule requiring an employee to initiate his grievance with his current employing agency. To the contrary, this is a narrow exception. Thus, for instance, the rule articulated in EDR Ruling

² *Grievance Procedure Manual*, § 2.4(2).

³ See EDR Ruling #2003-530.

⁴ For instance, on October 9, 1997, a state employee with access to the grievance procedure began work at a new agency. The new agency requested the former agency to complete and forward a copy of his 1997 performance evaluation. A copy was provided on January 15, 1998. The grievant formally appealed the evaluation to the reviewer at the former agency and when he did not receive a timely response, he grieved the evaluation with the former agency. The former agency objected, in part, on the basis that the grievance had been initiated with the former agency after the grievant had begun work at the new agency. This Department allowed the employee to proceed with his grievance, with the former agency, on the basis that only former management officials could address the grievant's concerns.

More recently, in EDR Ruling #2006-1113, an employee gave his employing agency a two-week advance notice of his intent to resign from his position. The grievant had been offered and accepted a position with another state agency. On the grievant's last day of work with the former agency, he was presented with a Group III Written Notice with termination. The grievant initiated a grievance challenging the Group III and termination with his immediate supervisor at the new agency. His supervisor responded by stating that he could provide no relief and that the grievance was out of compliance with § 2.4 (2) of the *Grievance Procedure Manual* which states that a grievance must "arise in the agency in which the employee works." This Department held that the issue being grieved, a Group III Written Notice with termination, involves discipline issued by the former agency and thus arose entirely within that agency. We noted that if the grievant had not accepted employment with another state agency, he would have been free to challenge the discipline with the former agency anytime during the 30 calendar day period following his June 30th termination. We concluded that denying the grievant the opportunity to challenge the discipline, merely because he decided to continue to work for the Commonwealth, would be an inequitable and untenable result.

#2003-053, which prohibits an employee from initiating a grievance with a prospective agency employer, remains viable.

CONCLUSION

The second-step respondent is directed to arrange for a second-step meeting in accordance with the *Grievance Procedure Manual* within 5-workdays of receipt of this ruling to address the concerns raised in the July 27th grievance. This Department's rulings on matters of compliance are final and nonappealable.⁵

Claudia T. Farr
Director

William G. Anderson, Jr.
EDR Consultant

⁵ Va. Code § 2.2-1001 (5).