

Issue: Consolidation/consolidate grievances for purposes of hearing; Ruling Date: January 30, 2006; Ruling #2006-1230; Agency: Norfolk State University; Outcome: only 2 of the 3 grievances shall be consolidated for purposes of hearing.



COMMONWEALTH of VIRGINIA

Department of Employment Dispute Resolution

CONSOLIDATION RULING OF DIRECTOR

In the matter of Norfolk State University
Ruling Number 2006-1230
January 30, 2006

The grievant seeks a ruling regarding three grievances she initiated with Norfolk State University (NSU or the university) on July 16, 2005, November 26, 2005 and December 11, 2005 respectively. The issue is whether the three grievances should be consolidated for a single hearing. For the reasons discussed below, only the July 16, 2005 and December 11, 2005 grievances are consolidated and will proceed to hearing together.

FACTS

July 16, 2005 Grievance:

Prior to her termination, the grievant was employed as an Administrative Support Manager with NSU. On June 16, 2005, the grievant was issued a Group II Written Notice with suspension for failure to follow her supervisor's instructions and perform assigned work. The grievant subsequently challenged the disciplinary action by initiating a grievance on July 16, 2005. On October 27, 2005, the grievant's July 16th grievance was qualified for hearing by the agency head.

November 26, 2005 Grievance:

Also on October 27, 2005, the grievant was presented with her 2005 performance evaluation which reflected an overall rating of "Below Contributor." The grievant initiated a grievance on November 26, 2005 challenging her 2005 performance evaluation. The university, however, denied the grievant access to the grievance procedure to challenge her performance evaluation because as a result of her November 11th termination, she was no longer an employee of the Commonwealth of Virginia at the time she initiated her November 26th grievance. In a ruling dated January 20, 2006, this Department agreed with the university and determined that

the grievant did not have access to the grievance procedure when she initiated her November 26th grievance.¹

December 11, 2005 Grievance:

On November 11, 2005, the grievant received a Group II Written Notice with termination for failure to follow her supervisor's instructions and perform assigned work. On December 11, 2005, the grievant initiated a grievance challenging the November 11, 2005 Group II Written Notice with termination. The grievant's December 11th grievance was qualified for hearing by the agency head on January 4, 2006.

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.²

Due to this Department's January 20, 2006 access determination that the grievant did not have access to the grievance procedure for purposes of her November 26, 2005 grievance, it is unnecessary to assess whether the grievant's November 26th grievance should be consolidated with the remaining two grievances. However, this Department finds that consolidation of the July 16 and December 11, 2005 grievances is appropriate. The grievances involve the same parties, potential witnesses, share a common factual background, and are essentially inextricably intertwined.³ Furthermore, the parties agree to consolidation of these two grievances and the consolidation is not impracticable in this instance. The hearing officer, in his discretion, may address the two actions separately in one decision, or in two separate decisions. This Department's rulings on compliance are final and nonappealable.⁴

Claudia T. Farr
Director

Jennifer S.C. Alger

¹ See EDR Ruling # 2006-1217.

² *Grievance Procedure Manual*, §8.5.

³ In both disciplinary actions, the grievant is cited for failure to follow supervisor's instructions and perform assigned work. Moreover, the November 11, 2005 Group II Written Notice relies upon the earlier June 16, 2005 Group II Written Notice to terminate the grievant.

⁴ Va. Code § 2.2-1001 (5).

January 30, 2006
Ruling # 2006-1230
Page 4

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