

Issue: Compliance/pre-hearing request for a 12-hour hearing denied by Hearing Officer;  
Ruling Date: January 4, 2006; Ruling #'s 2006-1233, 2006-1234, 2006-1235; Agency:  
Virginia Information Technologies Agency; Outcome: hearing officer in compliance



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

**COMPLIANCE RULING OF THE DIRECTOR**  
In the matter of Virginia Information Technologies Agency  
Ruling Nos. 2006-1233, 2006-1234, 2006-1235  
January 4, 2006

The grievants have requested a compliance ruling regarding the hearing officer's denial of their pre-hearing request for a 12-hour hearing.

FACTS

On September 15, 2005, the Virginia Information Technologies Agency (VITA or the agency) issued each of three grievants a Group II Written Notice for alleged violations of state and agency policies regarding Internet and electronic mail use. The grievants initiated individual grievances challenging the disciplinary actions on October 13, 2005. The three grievances were unresolved during the management resolution steps and subsequently qualified for hearing by the agency head. The grievants asked that their grievances be consolidated for hearing, and the agency agreed. On December 14, 2005, the EDR Director issued Ruling Nos. 2006-1207, 2006-1208, and 2006-1209 consolidating the grievances for hearing.

In his request for consolidation, the grievants' attorney asked, as a "caveat or proviso" to their request for consolidation, that the consolidated hearing last a minimum of 12 hours. This Department declined to grant the grievants the requested time, stating that determinations regarding the appropriate length of hearing are squarely within the hearing officer's discretion.<sup>1</sup>

On December 20, 2005, the hearing officer held a pre-hearing phone conference regarding the consolidated grievances. During that conference, the grievants' attorney reiterated his demand that the hearing last no less than 12 hours. The hearing officer denied this request on the ground that under the grievance procedure, hearings are not expected to last more than one day. On December 22, 2005, the hearing officer issued a pre-hearing order which advised the parties, in relevant part, that he "may elect to limit the parties to presentations of 180 minutes each." By letter dated December 27, 2005, the

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<sup>1</sup> See EDR Ruling Nos. 2006-1207, 2006-1208, 2006-1209, at n. 2.

grievants, through counsel, requested a compliance ruling regarding the hearing officer's denial of their request for a 12-hour hearing.

### DISCUSSION

Under the *Grievance Procedure Manual*, a hearing officer has the authority to rule on procedural matters, render written decisions and provide appropriate relief, and take any other actions as necessary or specified in the grievance procedure.<sup>2</sup> An action taken by a hearing officer in the exercise of his authority to determine procedural matters will only be disturbed where it constitutes an abuse of discretion.<sup>3</sup>

Section 5.4 of the *Grievance Procedure Manual* states that “[a] hearing is to last no more than one day, unless the hearing officer determines that the time is insufficient for a full and fair presentation of the evidence by both sides.” Similarly, § III.B of the *Rules for Conducting Grievance Hearings* provides that a hearing “generally should last no longer than a total of 8 hours,” although a hearing may continue beyond this period “if necessary to a full and fair presentation of the evidence by both sides.” The determination of whether time in excess of 8 hours is required for a “full and fair presentation” is within the hearing officer’s discretion.

During the course of this Department’s investigation, the hearing officer stated that after reviewing the case files, he concluded that the issues presented were “straightforward” and that the grievants should reasonably be able to present their cases within a period of 180 minutes (3 hours). The hearing officer appropriately recognizes, however, that he will be unable to determine if this projection is correct until the hearing itself. He states that if the grievants renew their request for additional time at the conclusion of the case as originally scheduled, he will assess at that point whether additional time is needed. This is consistent with the hearing officer’s December 22<sup>nd</sup> order which states that he “*may* elect to limit the parties to presentations of 180 minutes each.” (emphasis added)

While it would be inappropriate for a hearing officer to enforce an arbitrary limitation of time without regard to the particular circumstances of a given case, it is not an abuse of discretion for a hearing officer to make an initial assessment of the time reasonably needed for a hearing and to require the parties to adhere to that time limit absent a showing that additional time is needed for a full and fair presentation of the evidence. Moreover, it is the hearing officer’s responsibility to move the hearing in an orderly and timely manner, excluding irrelevant, immaterial, insubstantial and repetitive evidence.<sup>4</sup>

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<sup>2</sup> *Grievance Procedure Manual* at § 5.7; see also Va. Code § 2.2-3005.

<sup>3</sup> See, e.g., EDR Ruling No. 2003-123, EDR Ruling No. 2004-742, EDR Ruling No. 2004-934, and EDR Ruling No. 2005-1037.

<sup>4</sup> See *Rules for Conducting Grievance Hearings* at §§ IV.C and IV.D.

The grievants argue that they should be allowed at least 12 hours for hearing because their claims were consolidated. However, consolidation, in and of itself, does not require that a hearing officer allow additional hearing time. Rather, the length of a hearing—both in cases involving a single grievance and in consolidated cases—is dependent on the amount of time reasonably needed for the parties to have the opportunity to make a full and fair presentation of their evidence. A very complex case involving a single grievance may require more than a single day of hearing, while a straightforward case involving multiple grievances may require only a single day. As the hearing officer correctly recognized, it is the complexity and nature of the evidence that determines the length of a hearing, not simply the number of grievances or parties involved.

For all these reasons, this Department concludes that under the circumstances of this case, the hearing officer's decision to deny the grievants' pre-hearing request for a 12-hour hearing was not an abuse of discretion. We note, however, that this ruling does not preclude the grievants from raising the issue of hearing length in a post-hearing request for administrative review if, after the completion of the hearing, the grievants believe that the hearing officer denied them a full and fair opportunity to present their evidence.

This Department's rulings on matters of procedural compliance are final and nonappealable.<sup>5</sup>

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<sup>5</sup> Va. Code § 2.2-1001 (5).