

Issue: Compliance/grievance procedure/information gather; other grievance procedure issue;
Ruling Date: March 16, 2006; Ruling #2006-1292; Agency: Department of Corrections;
Outcome: agency in compliance



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of the Department of Corrections
Ruling No. 2006-1292
March 16, 2006

On February 24, 2006, the grievant requested a compliance ruling in his January 23, 2006 grievance with the Department of Corrections (DOC or the agency). The grievant alleges that the agency has wrongfully barred him from the property of the facility at which he was previously employed, refused him access to witnesses, and refused to set up interviews with supervisors.

FACTS

The grievant was employed by the agency as a Corrections Officer Senior at Facility H. He was apparently terminated from employment on January 11, 2006. The next day, January 12, 2006, the warden wrote to the grievant regarding his separation from state service. In his letter, the warden advised the grievant that he would not be permitted to return to Facility H without the warden's written permission. The warden noted, however, that the grievant would be granted permission to return for business pertaining to his "grievance(s)." On January 23, 2006, the grievant initiated a grievance challenging his termination.

On January 18, 2006, the grievant made a written request for information to the warden. In his request, the grievant asked to review the security tapes for the visitation room for December 20, 2005, to interview officers of B-Break Day Shift prior to or after their shifts, to interview three members of management, and for copies of his evaluations for 2003 and 2004. On January 23, 2006, the warden wrote to the grievant in response to his December 20th request. The warden advised the grievant that he would be allowed to review the security tapes, but needed to schedule the review with Sergeant G; that he would not be allowed to meet with officers of the B-Break Day Shift because it would disrupt facility operations, but that the agency would make arrangements for him to speak with the officers telephonically if they agreed; and that he would be allowed to speak with the three members of management by telephone, but that the conversations should last no longer than 15 minutes so as to avoid conflict with their assigned duties. The warden also apparently provided the requested copies of the grievant's 2003 and 2004 performance evaluations.

On February 1, 2006, a second-step meeting was held on the grievant's January 23, 2006 grievance. The grievant states that at the second-step meeting, the warden agreed to handle scheduling the interviews with the identified members of management, but that he has not done so. The grievant also alleges that he has requested the opportunity to question all employees who were in formation on December 20, 2005 in the facility lobby prior to or after their shift, but

claims that the warden stated at the second-step meeting that he would not let the grievant “stand in the lobby and fish for witnesses.” The grievant admits, however, that the warden has advised him that he would allow telephonic interviews of those individuals identified by name by the grievant. The grievant further admits that although he has the names of the individuals in formation on the specified date, he has never provided specific names to the warden.

By letter dated February 14, 2006, the grievant gave the agency head written notice of noncompliance. In that letter, the grievant asserted that the agency had failed to comply with the grievance procedure by barring him from state property at Facility H, by refusing him access to witnesses, and by refusing to set up communications with supervisors. The agency responded to the grievant’s notice by letter dated February 22, 2006. On February 24, 2006, the grievant requested a compliance ruling from this Department.¹

DISCUSSION

The grievance procedure requires both parties to address procedural noncompliance through a specific process.² That process assures that the parties first communicate with each other about the purported noncompliance, and resolve any compliance problems voluntarily without EDR’s involvement. Specifically, the party claiming noncompliance must notify the other party in writing and allow five workdays for the opposing party to correct any noncompliance. If the party fails to correct the alleged noncompliance, the other party may request a ruling from EDR. Should EDR find that the agency violated a substantial procedural requirement, EDR may render a decision against the noncomplying party on any qualifiable issue, unless the noncomplying party can establish just cause for its noncompliance; rendering such a decision is reserved for the most egregious of circumstances. For instance, if a party ignores a previous compliance order from EDR, a ruling in favor of the opposing party may be granted.

The grievant first asserts that the agency failed to comply with the grievance procedure by refusing to allow him on state property at Facility H, because this action limits his ability to process his grievance. There is no evidence, however, that the agency has refused to allow the grievant to enter the facility for grievance-related purposes. To the contrary, the warden’s January 12, 2006 letter specifically states that permission would be granted for the grievant to enter the facility for business pertaining to his grievances. Moreover, the grievant admits that the only purpose for which he has been denied access to the facility is to interview witnesses, an issue we will address separately.³

¹ Although the grievant’s request for a compliance ruling challenges an alleged failure by the agency to respond to his letter of noncompliance, the grievant admits that he subsequently received the agency response, but continues to object to the agency’s position regarding witnesses and access.

² See *Grievance Procedure Manual* § 6.3.

³ The grievant admits that since his termination, he requested and was granted permission to return to the facility to pick up his paycheck. While the grievant states that the second-step meeting was held off institution grounds, he does not apparently challenge the meeting location as a denial of access. Rather, he admits that the only time he has requested and been refused access to the facility is agency’s refusal to allow him to interview his co-workers prior to or after their shift change.

The grievant argues that the agency has violated the grievance procedure by refusing to allow him access to witnesses and refusing to set up communications with supervisors. It appears, however, that the agency has in fact offered to allow the grievant to interview witnesses and supervisors telephonically. While the grievant would prefer to interview all potential witnesses in person (rather than interviewing specified individuals by telephone) and challenges the warden's alleged failure to schedule the supervisory interviews, this Department has previously held that an agency may, but is not obligated to grant a grievant (or his representative) any access to employees during working hours or admission to the work site for this purpose.⁴ Accordingly, we cannot find that in this case the agency has failed to comply with the grievance procedure. We note, however, that nothing in this ruling should be interpreted to prevent the grievant and/or his representative from interviewing potential witnesses during non-work hours away from the work site.

This Department's rulings on matters of compliance are final and nonappealable.⁵

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⁴ EDR Ruling No. 2001-084.

⁵ Va. Code § 2.2-1001(5).