

Issue: Compliance: Grievance Procedure – Other Grievance Procedure Issue: Ruling Date:
May 10, 2007; Ruling #2007-1652; Agency: University of Virginia; Outcome: Grievant in
compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of the University of Virginia
Ruling Number 2007-1652
May 10, 2007

The grievant has requested a compliance ruling in his April 8, 2007 grievance with the University of Virginia (the University). The grievant challenges the agency's decision to close his grievance as out of compliance with the grievance procedure.

FACTS

The grievant is a manager in the University's Department of Facilities Management. He initiated this grievance to challenge the department's alleged rule that all employees who are hired must be fluent in English.¹ The grievant alleges that this rule limits his ability to fill vacancies in his department. In January 2006, the grievant asked a new department director to rescind the rule. That request was denied. On March 27, 2007, the grievant states that he was approached by "a Honduran immigrant" inquiring about vacancies in the grievant's department for a friend. Though there were openings available, the potential applicant was apparently not fluent in English. The grievant alleges that the department's rule discriminates against non-English-fluent immigrants.

The grievant maintains also that hiring of non-English-fluent applicants should be permitted when the individual can be trained and supervised and otherwise perform the job even though the applicant is not fluent in English. On that basis, the grievant initiated this grievance on April 8, 2007, seeking to have the "fluents-only" rule rescinded. The first step-respondent administratively closed the grievance for noncompliance because the grievant "cited no specific employment activity that has occurred within the last 30 days" and the issue cited "does not pertain directly and personally to [the grievant's] own employment." The grievant has now asked this Department to determine whether the agency's actions were in compliance with the grievance procedure.

¹ For purposes of this ruling, this rule will be referred to as the "fluents-only" rule. It is unclear whether this rule applies to the Department of Facilities Management as a whole, or just to the department in which the grievant works.

DISCUSSION

Under the grievance procedure, an employee's grievance must "[p]ertain directly and personally to the employee's own employment."² Here, the grievant, as a fluent speaker of English, is not directly prejudiced by the department's alleged "fluents-only" rule. However, for the following reasons, the grounds of his grievance do pertain directly and personally to his own employment. The grievant is a manager who has direct or indirect responsibility for the hiring of most employees within his department. He has alleged that the department's "fluents-only" rule affects his ability to fill vacancies. Moreover, under such a rule, there would be a clear and direct impact on his responsibilities as a manager to respond to inquiries by potential applicants who might not be fluent in English. The unsolicited inquiry of March 27, 2007 was such an incident. The "fluents-only" rule as alleged puts the grievant in the position of having to explain why a potential applicant should not apply.

Moreover, in enforcing such a rule during a selection process, the grievant could be placed in a situation involving discrimination against applicants on a protected basis. In its regulations, the Equal Employment Opportunity Commission has "found that the use of ['Fluency-in-English requirements'] may be discriminatory on the basis of national origin."³ Therefore, when presented with a non-English-fluent applicant, the grievant would have the choice of following the rule and possibly violating law and/or state policy, or refusing to enforce the department's "fluents-only" rule and potentially face disciplinary action by his supervisor.

In addition, the University's argument -- that the grievance is noncompliant because it cites no specific employment activity occurring within the last thirty days -- is misplaced. The effect of the department's alleged "fluents-only" rule on the grievant is continuing in nature, as could be shown by the alleged unsolicited inquiry for a job on March 27, 2007, which occurred less than thirty days before the April 8, 2007 grievance. Because of the continuing effect of the "fluents-only" rule, the grievant is not untimely with his challenge. The grievance is in compliance with section 2.4 of the *Grievance Procedure Manual* and must be allowed to proceed through the management steps.

² *Grievance Procedure Manual* § 2.4.

³ 29 C.F.R. § 1606.6(b).

CONCLUSION

For the reasons discussed above, this Department has determined that the agency erred in closing the grievance for noncompliance. Therefore, the agency is directed to reopen the April 8, 2007 grievance. The first step-respondent shall respond to the grievance five workdays from the date the agency receives this ruling. This Department's rulings on matters of compliance are final and nonappealable.⁴

Claudia T. Farr
Director

⁴ Va. Code § 2.2-1001(5).