

Issue: Consolidation: Consolidate two grievances for the purpose of hearing; Ruling Date: May 10, 2007; Ruling #2007-1663, 2007-1664; Agency: Virginia Department of Transportation; Outcome: Consolidated granted



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

CONSOLIDATION RULING OF DIRECTOR

In the matter of the Department of Transportation
Ruling Numbers 2007-1663, 2007-1664
May 10, 2007

The Department of Transportation (VDOT or the agency) has asked that the grievances of Grievants 1 and 2 be consolidated for hearing. For the reasons discussed below, this Department finds that consolidation of these grievances is appropriate and practicable.

FACTS

Grievant 1 is employed by the agency as a Transportation Operations Manager 1; Grievant 2 is employed as a Transportation Operations Manager II. On January 16, 2007, the agency issued a Group II Written Notice to Grievant 1 for unauthorized use or misuse of state property or records. The same day, the agency issued a Group II Written Notice to Grievant 2 for failure to follow a supervisor's instructions, perform assigned work, or otherwise comply with established written policy. According to the agency, both disciplinary actions arise from an allegedly inappropriate use of agency message boards on December 20, 2006.

Grievants 1 and 2 subsequently initiated grievances challenging the Written Notices. After the parties failed to resolve the grievances during the management resolution steps, the agency head qualified the grievances for hearing.

The agency states that the grievants have indicated they want their grievances to be consolidated for hearing, and that the agency does not object to this request. By letter dated May 2, 2007, this Department advised the parties that it had received the request for consolidation and asked for any additional information regarding consolidation. No party has provided any additional information or objected to consolidation of the grievances for hearing.

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.¹

Likewise, in the interest of judicial economy, courts generally favor consolidation of actions that pose common questions of law or fact.² However, before granting consolidation, the court must “conduct a careful inquiry in this regard that balances the prejudice and confusion that consolidation might entail against the waste of resources, the burden on the parties, and risk of inconsistent judgments that separate proceedings could engender”³ Similarly, the Virginia rules of criminal procedure favor a joint trial of defendants charged with participating in contemporaneous and related acts or occurrences unless a joint trial would constitute prejudice.⁴

This Department finds that consolidation of the two grievances in this case is appropriate. The grievances would appear to involve many of the same potential witnesses, and they share a common factual background. More important, the risk of prejudice would appear to be minimal at best, given that all parties agree to consolidation. Finally, consolidation is not impracticable in this instance.

This Department’s rulings on compliance are final and nonappealable.⁵

Claudia T. Farr
Director

¹ *Grievance Procedure Manual*, § 8.5.

² *See Switzenbaum v. Orbital Sciences Corp.*, 187 F.R.D. 246 (E.D. Va. 1999) (discussing Rule 42(a) of the Federal Rules of Civil Procedure, which permits the consolidation of actions that pose common questions of law and fact).

³ *Id.* at 248 (*citing* *Arnold v. Eastern Airlines, Inc.*, 681 F.2d 186, 193 (4th Cir. 1982)).

⁴ *See* Va. Code § 19.2-262.1.

⁵ Va. Code § 2.2-1001 (5).