

Issue: Compliance: Grievance Procedure – Other Issue: Ruling Date: May 21, 2007; Ruling #2007-1665; Agency: Department of Corrections; Outcome: Agency not in compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of the Department of Corrections
Ruling Number 2007-1665
May 21, 2007

The grievant has requested a compliance ruling in his April 10, 2007 grievance with the Department of Corrections (the agency). The grievant challenges the agency's decision to close his grievance as out of compliance with the grievance procedure.

FACTS

The grievant initiated his April 10, 2007 grievance to challenge the events surrounding the submission of a Determining Rate of Pay (DROP) Form. The grievant submitted the DROP Form to agency management on February 20, 2007. The grievant was requesting that one of the employees (Employee) he supervises be given a ten percent promotional pay increase. The grievant alleges that agency policy required that DROP Forms be addressed within ten days. The request was not acted upon until March 23, 2007. In the meantime, the agency issued a new policy on such salary adjustments. The result was that the Employee was given only a 5% permanent salary adjustment and a one-time 5% bonus under the new policy. The grievant then initiated this grievance to challenge the agency's delay in acting on the DROP Form. He additionally alleges that the actions of the agency, and the policy itself, resulted in age discrimination against the Employee. The grievant states that other DROP Forms were approved while the Employee's was held up. As relief, the grievant requests that the Employee receive the full ten percent salary increase. The agency determined that the grievance did not "pertain directly and personally" to the grievant's employment and closed the grievance for noncompliance. The grievant now seeks a compliance ruling from this Department.

DISCUSSION

Under the grievance procedure, an employee's grievance must "[p]ertain directly and personally to the employee's own employment."¹ In this case, certain of the issues challenged relate to the grievant's job personally and directly, but others do not. The grievant is the Employee's supervisor and recommended that she be given a promotional pay increase by

¹ *Grievance Procedure Manual* § 2.4.

preparing a DROP Form for upper management. The grievant's concern with the timeliness and manner in which upper management responds to items he submits relates personally and directly to his job. He submitted the DROP Form and, thus, has a direct interest in grieving the manner his superiors took action on work he performed.

The grievant has also appropriately grieved the general effect and substance of the new agency policy on pay practices. The contents of policy may be grieved if they relate directly and personally to the grievant's job. Here, the grievant asserts that the new policy has a discriminatory effect on agency employees based on their age. Because the grievant, as a supervisor, is responsible for submitting future DROP Forms in conformance with this policy, the policy relates directly and personally to his job. Thus, the grievant's concerns regarding the contents of the new policy and the timeliness and manner in which management responded to his DROP Form recommendation comply with section 2.4 of the *Grievance Procedure Manual* and must be allowed to proceed through the management steps.²

However, the ultimate result of the DROP form (the extent of the raise and bonus given to the Employee) does *not* pertain personally and directly to the grievant's employment. Likewise, to the extent the grievant is claiming that the agency discriminated against the Employee on the basis of her age, the Employee, not the grievant, is directly and personally affected, and is the proper person to bring that grievance. Accordingly, the grievant's claims in this regard do not comply with section 2.4 of the *Grievance Procedure Manual* and may not proceed through the grievance process.

CONCLUSION

For the reasons discussed above, the agency is directed to reopen the April 10, 2007 grievance and allow the grievant's claims regarding the contents of the new policy and the timeliness and manner in which management responded to his DROP Form recommendation to proceed. Any claims by the grievant regarding the extent of the raise and bonus given to the Employee, or alleged discrimination against the Employee may not proceed. 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.³

Claudia T. Farr

² While most complaints may be grieved through the management steps, only certain types of grievances will qualify for a hearing. *Grievance Procedure Manual* § 1.4.

³ Va. Code § 2.2-1001(5).

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