

Issue: Consolidation/consolidation of two grievants' grievances for purposes of hearing;
Ruling Date: November 13, 2006; Ruling #2007-1465, 2007-1466; Agency: Department of
Corrections; Outcome: consolidation granted



COMMONWEALTH of VIRGINIA

Department of Employment Dispute Resolution

CONSOLIDATION RULING OF DIRECTOR

In the matter of Department of Corrections

Ruling Nos. 2007-1465, 2007-1466

November 13, 2006

The Department of Corrections (DOC or the agency) has asked that hearing officers be appointed to hear the September 8, 2006 grievances of Grievants 1 and 2. For the reasons discussed below, this Department finds that consolidation of these grievances is appropriate and practicable.

FACTS

The agency asserts that on August 1, 2006, Grievant 1, a Licensed Practical Nurse, gave Grievant 2, another member of the nursing staff, a tetanus toxoid injection from the agency's supply of vaccine. As a result of this alleged conduct, on August 11, 2006, the agency issued both grievants Group II Written Notices for the "Unauthorized Use or Misuse of State Property or Records." In conjunction with the disciplinary notices, both grievants were suspended for one day.

On September 8, 2006, both grievants initiated expedited grievances challenging the disciplinary actions taken against them. The grievances were not resolved during the management resolution steps. Following qualification of the grievances by the agency head, the agency asked EDR to appoint hearing officers to hear the grievances.

After review, this Department determined that the grievances appeared to be good candidates for consolidation for hearing, as they arose from a single event. By letter dated October 23, 2006, we advised the parties that if they wished to provide any information related to the possible consolidation, they must do so by November 1, 2006. On October 27, 2006, the agency advised this Department that it desired consolidation. The grievants did not submit any information or otherwise object to consolidation.

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, such as actual prejudice to the grievant.¹

Here, the grievances arose from a single incident and will likely involve many of the same witnesses. Additionally, while only the agency has affirmatively stated that it desires consolidation, the grievants have not expressed any objection to consolidation or identified any reason why they would be prejudiced by a consolidated hearing. Finally, consolidation is not impracticable in this instance. This Department therefore finds that consolidation of the Grievants' September 8, 2006 grievances for hearing is appropriate.

This Department's rulings on compliance are final and nonappealable.²

Claudia T. Farr
Director

¹ *Grievance Procedure Manual* § 8.5; see also EDR Ruling Nos. 2006-1346, 1347.

² Va. Code § 2.2-1001 (5).