

Issue: Compliance – Grievance Procedure: 30-Day Rule; Ruling Date: October 16, 2007; Ruling #2008-1814; Agency: Virginia Commonwealth University; Outcome: Grievant Not In Compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of Virginia Commonwealth University
Ruling No. 2008-1814
October 16, 2007

The grievant has requested a ruling in her August 31, 2007 grievance with the Virginia Commonwealth University (VCU or the University). The University administratively closed the grievance, claiming that the grievant failed to initiate her grievance within the required 30 calendar day period.

FACTS

The grievant is employed as a Human Resource Manager. On July 13, 2007, the agency informed the grievant that her position would be abolished, effective January 1, 2008. In lieu of layoff, however, the agency informed the grievant that it had found another position in which it could place her, albeit in a lower pay band position with a reduced salary. The grievant challenged the proposed job abolition and salary reduction in an August 31, 2007 grievance. The University claims that her grievance is not timely because it notified the grievant on July 13, 2007, that her position would be abolished. The University asserts that the grievant should have initiated her grievance within 30 days of July 13th when it informed the grievant of the impending job abolition.

DISCUSSION

The *Grievance Procedure Manual* lists six requirements for the initiation of a grievance by an employee with access to the grievance procedure.¹ The University challenges the grievant's compliance with the first requirement, specifically, that an employee must initiate a written grievance within 30 calendar days of the date she knew or should have known of the event or action that is the basis of the grievance.² When an

¹ See *Grievance Procedure Manual* § 2.4, *Initiating a Grievance*.

² *Grievance Procedure Manual* § 2.4; Va. Code § 2.2-3003(C).

employee initiates a grievance beyond the 30 calendar day period without just cause,³ the grievance may be administratively closed.

Improper Position Abolition and Salary Reduction

While it may be accurate that the grievant was informed on July 13, 2007 of the agency's *intention* to abolish her position, the event forming the basis of the grievance will be the *actual* abolition of the HR manager position and the commensurate salary reduction, not the notice that such an action will occur.⁴ Accordingly, this grievance cannot be viewed as untimely.

Although the grievant's challenge to her job abolition and reduction in pay is not time-barred, it is premature, because the grievant is essentially seeking to use the grievance procedure to dispute an expected future event.⁵ Accordingly, the grievance fails to comply with the grievance procedure and may be administratively closed.⁶ However, because her present grievance is being closed as premature, the grievant may initiate a new grievance challenging the actual abolition of her position and reduction of pay if and when such actions occur.

This Department's rulings on matters of compliance are final and nonappealable.⁷

Claudia T. Farr
Director

³ *Just cause* is defined as a reason sufficiently compelling to excuse not taking a required action in the grievance procedure. *Grievance Procedure Manual* § 9.

⁴ See EDR Ruling 2004-784 (The *event* forming the basis of the grievance is the actual layoff, not the notice that such an action would likely occur.)

⁵ See EDR Ruling 2006-1363. (A challenge to a future denial of benefits does not pertain directly and personally to employee's own employment and is therefore premature.)

⁶ *Grievance Procedure Manual* § 2.4. In the fact section of her grievance, the grievant mentions her restriction from her supervisor's calendar as a retaliatory act. In addition, the grievant asserts that the manner in which the agency informed her of the anticipated job abolition and salary reduction was malicious and deceptive. To the extent that the grievant is attempting to grieve these actions, rather than merely use them as background information, such challenges are untimely because both events occurred more than 30-calendar days prior to the initiation of her grievance.

⁷ See Va. Code § 2.2-1001(5).