

Issue: Compliance – Grievance Procedure (5-Day Rule); Ruling Date:
November 6, 2007; Ruling #2008-1858; Agency: Department of State Police;
Outcome: Grievant in Compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of the Department of State Police
Ruling No. 2008-1858
November 6, 2007

The Department of State Police (the agency) seeks a compliance ruling concerning the grievant's August 7, 2007 grievance. The agency alleges that the grievant has failed to comply with the time limits set forth in the grievance procedure for advancing or concluding his grievance.

FACTS

On August 7, 2007, the grievant initiated his grievance to challenge a disciplinary action. The second step-respondent provided his response to the grievant on August 29, 2007. The agency alleges that the grievant has failed to return the grievance package to the agency to advance or conclude the grievance. However, based on a conversation with a member of the agency's human resources staff during investigation by this Department, it appears the grievant did fax the grievance form back to the agency's human resources office on September 7, 2007. The version of the Form A submitted by the agency with its request for review notes that the grievant appears to have, following the second step response, checked the box indicating, "I advance my grievance to the third step." The grievant did not sign the Form A at this portion of the document. The agency now seeks a compliance ruling.

DISCUSSION

The grievance procedure requires both parties to address procedural noncompliance through a specific process.¹ That process assures that the parties first communicate with each other about the noncompliance, and resolve any compliance problems voluntarily, without this Department's (EDR's) involvement. Specifically, the party claiming noncompliance must notify the other party in writing and allow five

¹ *Grievance Procedure Manual* § 6.3.

workdays for the opposing party to correct any noncompliance.² If the opposing party fails to correct the noncompliance within this five-day period, the party claiming noncompliance may seek a compliance ruling from the EDR Director, who may in turn order the party to correct the noncompliance or, in cases of substantial noncompliance, render a decision against the noncomplying party on any qualifiable issue. When an EDR ruling finds that either party to a grievance is in noncompliance, the ruling will (i) order the noncomplying party to correct its noncompliance within a specified time period, and (ii) provide that if the noncompliance is not timely corrected, a decision in favor of the other party will be rendered on any qualifiable issue, unless the noncomplying party can show just cause for the delay in conforming to EDR's order.³

The agency's asserted basis for its ruling request appears to be inconsistent with the facts of this case. The grievant faxed a copy of the grievance form to the agency's human resources office on September 7, 2007, indicating an intent to appeal the grievance to the third step-respondent. In its notice of noncompliance, the agency had actually requested that the grievant return the grievance to the agency's human resources office, even though the grievant had already done so.⁴ It appears that the grievant has complied with the grievance procedure. He has returned the grievance form to the agency and indicated his intent to appeal to the third step. The lack of a signature is not dispositive in this instance. As such, the agency is ordered to direct the grievance package to the appropriate third step-respondent for further action in accordance with the management steps of the grievance procedure.⁵ However, in the event the grievant wishes to conclude his grievance, he should notify the agency's human resources office in writing as soon as possible.

This Department's rulings on matters of compliance are final and nonappealable.⁶

² *Id.*

³ While in cases of substantial noncompliance with procedural rules the grievance statutes grant the EDR Director the authority to render a decision on a qualifiable issue against a noncompliant party, this Department favors having grievances decided on the merits rather than procedural violations. Thus, the EDR Director will *typically* order noncompliance corrected before rendering a decision against a noncompliant party. However, where a party's noncompliance appears driven by bad faith or a gross disregard of the grievance procedure, this Department will exercise its authority to rule against the party without first ordering the noncompliance to be corrected.

⁴ Although the grievance procedure provides that a grievant should submit the grievance package to the third step-respondent when appealing from the second step, *Grievance Procedure Manual* § 3.2, this Department has long held that initiating a grievance with the wrong management representative will not bar the grievance for noncompliance. *E.g.*, EDR Ruling No. 2007-1512; EDR Ruling No. 2006-1114; EDR Ruling No. 2004-645; EDR Ruling No. 2001-230. Similarly, the grievant will not be deemed noncompliant in this case for submitting the grievance package to the agency's human resources office rather than the proper step-respondent. The appropriate result is for the grievance package to get to the correct member of management and for the process to continue.

⁵ See *Grievance Procedure Manual* §§ 3.2, 3.3.

⁶ See Va. Code § 2.2-1001(5), 2.2-3003(G).

November 6, 2007
Ruling #2008-1858
Page 4

Claudia T. Farr
Director