

Issue: Access to the Grievance Procedure; Ruling Date: March 31, 2008;
Ruling #2008-1994; Agency: Virginia State University; Outcome: Access
Denied.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

ACCESS RULING OF DIRECTOR

In the matter of Virginia State University
Ruling No. 2008-1994
March 31, 2008

The grievant has requested a ruling on whether he had access to the grievance procedure when he initiated his grievance against Virginia State University (VSU or the agency) on February 1, 2008. For the reasons set forth below, this Department concludes that the grievant does not have access to the grievance procedure with respect to his February 1st grievance.

FACTS

The grievant is a former employee of VSU. According to the agency, his employment was terminated on January 4, 2008. On February 1, 2008, the grievant initiated a grievance challenging an initial 15% decrease in his salary, which was subsequently reduced to five percent. This deduction occurred in conjunction with a demotion, which is the subject of another grievance currently pending.

By letter dated February 20, 2008, the agency advised the grievant that he did not have access to the grievance procedure, as the grievance was initiated after his termination and “does not pertain to the act of [his] termination.” The grievant has appealed the agency’s determination to this Department.

DISCUSSION

To have access to the grievance procedure, a state employee must: (1) not be listed as exempt from the Virginia Personnel Act under § 2.2-2905 of the Code of Virginia; (2) be non-probationary at the time the event that formed the basis of the dispute occurred; *and* (3) be employed at the time the grievance was initiated (unless the action grieved is a termination or involuntary separation, in which case the employee may initiate a grievance within 30 days of the termination or separation).¹ These access requirements may not be waived or modified by the parties.

The grievant was not employed by the agency or the Commonwealth at the time the February 1, 2008 grievance was initiated. As a consequence, his access to the grievance procedure is limited to challenges to actions directly resulting in his termination or

¹ *Grievance Procedure Manual* § 2.3 (emphasis added).

involuntary separation.² Because the grievant's challenge to his decrease in pay is not directly related to his termination or involuntary separation, he did not have access to the grievance procedure for purposes of making this challenge.

APPEAL RIGHTS AND OTHER INFORMATION

For more information regarding actions the grievant may take as a result of this ruling, please refer to the enclosed sheet. If the grievant wishes to appeal the determination that he does not have access to the grievance procedure to circuit court, he should notify the Human Resources Office, in writing, within five workdays of receipt of this ruling.

Claudia T. Farr
Director

² See, e.g., EDR Ruling Nos. 2005-961, 2005-962, 2005-963, 2005-964, 2005-965, EDR Ruling No. 2005-1026.