

Issue: Compliance – Grievance Procedure (Resolution Steps); Ruling Date: August 10, 2009; Ruling #2009-2347; Agency: Virginia Department of Agriculture and Consumer Services; Outcome: Agency In Compliance.



*COMMONWEALTH of VIRGINIA*  
*Department of Employment Dispute Resolution*

**COMPLIANCE RULING OF DIRECTOR**

In the matter of Department of Agriculture and Consumer Services  
Ruling No. 2009-2347  
August 10, 2009

The grievant has requested a ruling regarding the Department of Agriculture and Consumer Service's ("agency's") alleged noncompliance with the grievance procedure in not adequately responding to his grievance.

FACTS

In his October 9, 2008 grievance, the grievant asserts that the agency targeted his position for layoff in retaliation for expressing workplace concerns to an elected official and agency management, including immediate supervisors. The grievant further asserts that his layoff did not comport with state policy because: (1) the layoff decision was not based on business need, (2) the agency did not follow the proper layoff sequence, and (3) the agency did not make every effort to place him in any vacant position within the agency for which he was qualified.

DISCUSSION

Under the grievance procedure, at each step, the written response to a grievance must address the issues and relief requested and should notify the employee of his or her procedural options.<sup>1</sup> While a step-respondent is not required to respond to each and every point or factual assertion raised by the employee, the respondent must address each issue raised and the requested relief.<sup>2</sup>

The grievant alleges that the failure of the third step response to address any of the issues presented in the grievance was a "blatant act of noncompliance." This Department cannot conclude that the third step response failed to comply with the grievance procedure. First, the grievant claims that the third step-respondent did not address (1) the agency's failure to pay accrued leave at the time of layoff, and (2) the

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<sup>1</sup> *Grievance Procedure Manual* §§ 3.1, 3.2, 3.3.

<sup>2</sup> EDR Ruling No. 2008-1992.

agency's destruction of layoff process documents. The Grievance Form A does not assert that agency has violated policy in this manner, thus the agency has no obligation under the grievance procedure to respond to these concerns.

As to the remaining "main issues" purportedly not addressed by the third step respondent—failure to follow the layoff policy's selection rules and notification requirements—these issues were expressly addressed in the *second* step response with specificity.<sup>3</sup> The third step respondent in turn incorporated the second step response into his response.<sup>4</sup> While the grievance procedure requires a respondent to "address the issues and relief requested," a respondent is not prohibited from doing so by incorporating a previous response that expressly addressed all issues. The key is that both the review of the issues grieved and subsequent response be sufficient. Here, it cannot be said that the third step response failed to engage in an adequate review of the issues grieved or that he failed to provide a sufficient response following the review. Here, the third step respondent (agency head) met with the grievant. He then addressed the remaining "main issues" either by reference or directly. Under the facts presented here, we cannot conclude that the agency has failed to comply with the grievance process.<sup>5</sup>

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<sup>3</sup> See Attachment Second Step Response. (Due to the comprehensive, detailed nature of this response, which the grievant received, it is not repeated here so as to preserve the grievant's privacy upon publication of this ruling.)

<sup>4</sup> See Attachment Third Step Response. (Due to the comprehensive, detailed nature of this response, which the grievant received, it is not repeated here so as to preserve the grievant's privacy upon publication of this ruling.)

<sup>5</sup> In ruling No. 2009-2200, 2009-2201, involving a case where the first step respondent was required to address a grievance concerning discipline issued by a "high level supervisor," other than himself, this Department held that:

In the absence of having first hand knowledge of the issuance of the Written Notice, the first step respondent was required, under the grievance procedure, to familiarize himself with the basic facts and circumstances surrounding the events giving rise to the grievance, such that he could provide a reasoned response.

The decision went on to explain:

In providing such a response, the grievance procedure requires that a first step respondent address the issues and the relief requested, in light of the facts and circumstances surrounding the Written Notice. While we recognize that it may be difficult for a first-step respondent to respond where he or she has not taken the action being grieved, the burden imposed by the grievance procedure under this particular circumstance is not an onerous one. The grievance procedure does not require the first step respondent to act as a full-fledged investigator before providing a response, and the first-step response need not be in-depth or extensive. What is not permissible, however, is the abdication of the first-step respondent's duty in this case to (i) become familiar with the fundamental facts and circumstances of the case, (ii) provide a reasoned response to the primary issues presented and relief requested by the grievance, and (iii) notify the grievant of his procedural options.

This Department believes that a third step respondent has a commensurate duty to become familiar with the fundamental facts and circumstances of the case. This can often be accomplished through a review of all grievance documentation. Here, the third step respondent had the additional benefit of having actually met with the grievant. In sum, we cannot conclude that this was an inadequate review or response.

CONCLUSION

In summary, this Department cannot conclude that the third step response was inadequate. This Department's rulings on matters of compliance are final and nonappealable.<sup>6</sup>

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Claudia T. Farr  
Director

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<sup>6</sup> See Va. Code §§ 2.2-1001(5), 2.2-3003(G).