

Issue: Compliance – Grievance Procedure (Resolution Steps); Ruling Date: August 7, 2009; Ruling #2010-2377; Agency: Department of Corrections; Outcome: Agency Not In Compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of the Department of Corrections
Ruling No. 2010-2377
August 7, 2009

The grievant has requested a compliance ruling with respect to her June 8, 2009 grievance. The grievant asserts that the first step-respondent failed to respond to her grievance appropriately.

FACTS

The grievant initiated her grievance with the Department of Corrections (the agency) on or about June 8, 2009, to raise issues of workplace harassment. Prior to initiating her grievance, the grievant had submitted a formal complaint concerning similar issues. An investigation was opened by the agency, but it has not yet been completed. The first step-respondent sought an extension of time to respond to the grievance until the agency's investigation was completed. According to the grievant, she was told in mid-July that the investigation would "probably" take another 60 days, plus additional time for "administrative work." The grievant denied the agency's request for an extension. Consequently, the first step-respondent stated in a written response to the grievance that he was unable to provide a response because the agency's investigation was incomplete. The grievant has now requested a compliance ruling regarding the adequacy of the first step-respondent's written response under the grievance procedure.

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 purported noncompliance, and resolve any compliance problems voluntarily without EDR's involvement. Specifically, the party claiming noncompliance must notify the other party in writing and allow five workdays for the opposing party to correct any noncompliance. If the party fails to correct the alleged noncompliance, the other party may request a ruling from EDR. Should EDR find that a party violated a substantial procedural requirement, EDR may render a decision against that noncomplying party on any qualifiable issue, unless the noncomplying party can establish just cause for its noncompliance. Rendering such a decision is reserved for the most egregious of circumstances; for instance, if a party

¹ See *Grievance Procedure Manual* § 6.3.

ignores a previous compliance order from EDR, a ruling in favor of the opposing party may be granted.

The grievant asserts that the first step response did not satisfy the requirements of the grievance procedure. Section 3.1 of the *Grievance Procedure Manual* provides that “[a]fter receiving the written grievance, the first-step respondent should identify the issues, gather information and review the facts.” Section 3.1 further provides that the written first step response “must address the issues and the relief requested and should notify the employee of his procedural options.”

In the written response, the first step-respondent identified generally the issues grieved, but there is no indication that he gathered information or reviewed facts such that he could provide a reasoned response to the grievance, the primary issues and the relief requested. Indeed, the response only states that because the Special Investigation Unit has not completed its investigation, he was unable to respond. If he did not otherwise have first hand knowledge of the grievant’s allegations of harassment, 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.²

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 issues grieved.³ While we recognize that it is impossible for a first step-respondent to respond with knowledge of all that will likely be available to the Special Investigation Unit following a full investigation, 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 her procedural options.⁴ The first step-respondent may not be able to provide the agency’s final determination of the grievant’s allegations in a case such as this, but there can certainly be an initial response, based on the allegations and information available, and, potentially, interim relief, if applicable.

CONCLUSION

For the reasons discussed above, this Department concludes that the agency has failed to comply with the grievance procedure by providing an inadequate first step response. The agency is directed to have the designated first step-respondent provide the grievant with a revised written response to the grievance, consistent with this ruling, within five workdays of receipt of this ruling. This response must address the primary issues raised by the grievance, as well as the

² See EDR Ruling No. 2009-2200, 2009-2201.

³ *Id.*

⁴ *Id.*

relief requested, in light of the first step-respondent's familiarization with at least the basic facts and circumstances of this case.

This Department's rulings on matters of compliance are final and nonappealable and have no bearing on the merits of the grievance.⁵

Claudia T. Farr
Director

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