

Issue: Compliance – Grievance Procedure (Other Issue); Ruling Date: March 26, 2010; Ruling #2010-2429; Agency: Department of Criminal Justice Services; Outcome: Agency In Compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of Department of Criminal Justice Services
Ruling No. 2010-2429
March 26, 2010

The grievant has asked for a compliance ruling from this Department. She alleges that the Department of Criminal Justice Services (DCJS or the agency) has failed to comply with the grievance procedure by intimidating a co-worker and asking another co-worker to report to management on the grievant's grievance-related conversations.

FACTS

The grievant states that on August 7, 2008, she initiated a grievance against her supervisor "on the basis of workplace harassment in the form of intimidation and racial discrimination." The grievant alleges that subsequently, on August 21, 2009, a co-worker (Co-worker Y) advised the grievant that another agency employee (Employee B) had suggested to Co-worker Y that her friendship with the grievant could make her "guilty by association" in the eyes of management and result in her (Co-worker Y's) lay-off. The grievant alleges that Co-worker Y then asked her to stop her grievance because she (Co-worker Y) was afraid.

The grievant also asserts that shortly after she initiated her grievance in 2008, Co-worker Y was brought before senior management and questioned about the grievance, although Co-worker Y was not in any way involved in the grievance. The grievant further alleges that in the fall of 2008, she was told by Co-worker Z that senior management had asked Co-worker Z to share any conversation the grievant had about senior management and her grievance. On September 10, 2009, the grievant asked this Department for a non-compliance ruling on the agency's alleged actions.

DISCUSSION

By statute, each executive branch agency must "[r]ecognize the right of employees to fully participate in the grievance process without retaliation.¹" It is possible that in extreme cases, management actions that intimidate and/or induce fear within employees, as a result of

¹ Va. Code § 2.2-3000(B)(6); *see also* *Grievance Procedure Manual* § 4.1(b)(4).

their co-worker's grievance, could unduly interfere with a grievant's full participation in the process. For example, potential witnesses could be silenced. In this case, however, the evidence is insufficient to find that the management threats alleged by the grievant even occurred. Although the grievant alleges that Co-worker Y told her she was threatened, Co-worker Y denies that any such threat occurred. Moreover, the grievant admits that she is unaware of the identity of Employee B, or of any other employee who may have discussed a threat with Employee B.

With respect to the grievant's remaining allegations, neither the questioning by senior management of Co-worker Y regarding this grievance nor the request that Co-worker Z report to senior management on the grievant's grievance-related conversations rises to the level of non-compliance in this case. To the extent these events in fact occurred, the agency's purported actions are not expressly prohibited by the grievance procedure and are not so egregious as to constitute non-compliance by unduly interfering with the grievant's full participation in the process.

This Department's rulings on matters of compliance are final and nonappealable.²

Claudia T. Farr
Director

² Va. Code §§ 2.2-1001(5), 2.2-3003(G).