

Issue: Access to the Grievance Procedure; Ruling Date: August 13, 2010;
Ruling #2010-2642; Agency: Department of Conservation and Recreation;
Outcome: Access Denied.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

ACCESS RULING OF DIRECTOR

In the matter of Department of Conservation and Recreation
Ruling Number 2010-2642
August 13, 2010

The grievant has requested a ruling on whether he had access to the grievance procedure when he initiated his April 1, 2010 grievance. The Department of Conservation and Recreation (DCR or the agency) claims that the grievant does not have access to the grievance procedure because he was a P-14 status wage employee when he initiated his grievance. For the reasons set forth below, this Department concludes that the grievant did not have access to the grievance process.

FACTS

The grievant was employed by the agency as an Accountant Senior. The grievant was informed on his impending layoff and, on October 5, 2009, the grievant timely initiated a grievance challenging the planned layoff. The October 5th grievance advanced to hearing where the grievant was unsuccessful with his challenge. (The October 5th grievance is currently on appeal.)

In November of 2009, the grievant applied for a General Accounting Manager position with DCR. On January 1, 2010, the grievant retired from the agency. (The grievant contends that he was essentially forced to retire as he had been told that he would be laid-off and that his position was being abolished.) On or about January 29, 2010, another candidate was offered the General Accounting Manager position. On or about February 1, 2010, the grievant was rehired by the agency as P-14 wage employee. On or about February 22, 2010, the successful candidate began work and the agency publically announced and welcomed the successful candidate via an e-mail message on March 2, 2010. On April 1, 2010, the grievant initiated the grievance that is the subject of this ruling, challenging his non-selection.

DISCUSSION

The General Assembly has provided that all non-probationary state employees may utilize the grievance process, unless exempted by law.¹ Pursuant to Virginia Code § 2.2-

¹ Va. Code § 2.2-3001(A) and *Grievance Procedure Manual* § 2.3.

2905 (11), “employees compensated on an hourly or daily basis” are exempted from the Virginia Personnel Act (VPA). Under Va. Code § 2.2-3002(4), employees “in positions designated in § 2.2-2905 as exempt from the Virginia Personnel Act (§ 2.2-2900 et seq.)” do not have access to the grievance procedure. Because the grievant was employed as a wage (hourly) employee at the time he filed his grievance, he was exempt from the VPA and did not have access to the grievance procedure.²

The grievant points to several special circumstances that he believes warrant granting him access. First, the grievant asserts that the agency delayed the recruiting for the General Accounting Manager position and the announcing of the results for recruitment in order to deny him access to the grievance process. The grievant, however, has provided no evidence to support this assertion.

As to grievant’s contention that he would have had access had he not been forced to retire, the voluntariness of his retirement and related layoff are issues in his October 5, 2009 grievance, which he lost at hearing and is currently appealing. There is no basis to grant the grievant access at this time.

APPEAL RIGHTS AND OTHER INFORMATION

For the reasons discussed above, this Department has determined that the grievant does not have access to the grievance procedure. For information regarding the actions the grievant may take as a result of this ruling, please refer to the enclosed sheet. If the grievant wishes to appeal this Department’s access determination to the circuit court, the grievant should notify the human resources office, in writing, within five workdays of receipt of this ruling.

Claudia T. Farr
Director

² See also Department of Human Resources Management (DHRM) Policy 2.20, stating that “[w]age employees are not eligible to use the state grievance procedure.”