

Issue: Compliance – Grievance Procedure (Documents); Ruling Date: May 21, 2010; Ruling #2010-2644; Agency: Virginia Department of Transportation; Outcome: Agency Not In Compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of Department of Transportation
Ruling No. 2010-2644
May 21, 2010

The grievant has requested a compliance ruling regarding his April 7, 2010 grievance with the Department of Transportation (VDOT or the agency). The grievant asserts that he has not been provided with documents requested pursuant to his grievance.

FACTS

On April 7, 2010, the grievant initiated a grievance challenging the agency's application of the layoff policy. On April 19, 2010, the grievant sent the agency a request for documents pursuant to section 8.2 of the *Grievance Procedure Manual*.¹ Because the grievant was not provided a response to his April 19th request within 5 workdays, he sent the agency head a notice of noncompliance on April 29, 2010. According to the grievant, the agency has failed to provide a response to his document request and as such, he now seeks a compliance ruling from this Department.

DISCUSSION

The grievance procedure requires both parties to address procedural noncompliance through a specific process.² That process assures that the parties first communicate with each other about the noncompliance, and resolve any compliance problems voluntarily, without this Department's (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.³ If the opposing party fails to correct the noncompliance within this five-day period, the party claiming noncompliance may seek a compliance ruling from the EDR Director, who may in turn order the party to correct the noncompliance or, in cases of substantial noncompliance, render a decision against the noncomplying party on any qualifiable issue. When an

¹ According to the grievant, he has sent the agency two other document requests as well, but the only request at issue in this ruling for the agency's lack of response is the April 19th request for documents.

² *Grievance Procedure Manual* § 6.3.

³ *See Id.*

EDR ruling finds that either party to a grievance is in noncompliance, the ruling will (i) order the noncomplying party to correct its noncompliance within a specified time period, and (ii) provide that if the noncompliance is not timely corrected, a decision in favor of the other party will be rendered on any qualifiable issue, unless the noncomplying party can show just cause for the delay in conforming to EDR's order.⁴

The grievance statute provides that “[a]bsent just cause, all documents, as defined in the Rules of the Supreme Court of Virginia, relating to the actions grieved shall be made available, upon request from a party to the grievance, by the opposing party.”⁵ This Department's interpretation of the mandatory language “shall be made available” is that absent just cause, all relevant grievance-related information *must* be provided.⁶ In addition,

All such documents must be provided within 5 workdays of receipt of the request. If it is not possible to provide the requested documents within the 5 workday period, the party must, within 5 workdays of receiving the request, explain in writing why such a response is not possible, and produce the documents no later than 10 work days from the receipt of the document request. If responsive documents are withheld due to a claim of irrelevance and/or “just cause,” the withholding party must provide the requesting party with a written explanation of each claim, no later than 10 workdays from the receipt of the document request.⁷

On April 19, 2010, the grievant requested documents he deems relevant to his April 7, 2010 grievance. However, the grievant did not receive a response to his request within 5 workdays of the agency's receipt thereof. Moreover, the agency does not appear to have asked for an extension of time in which to respond to the grievant's April 19th request. Accordingly, this Department concludes that the agency has failed to comply with the grievance process.⁸

⁴ While in cases of substantial noncompliance with procedural rules the grievance statutes grant the EDR Director the authority to render a decision on a qualifiable issue against a noncompliant party, this Department favors having grievances decided on the merits rather than procedural violations. Thus, the EDR Director will *typically* order noncompliance corrected before rendering a decision against a noncompliant party. However, where a party's noncompliance appears driven by bad faith or a gross disregard of the grievance procedure, this Department will exercise its authority to rule against the party without first ordering the noncompliance to be corrected.

⁵ Va. Code § 2.2-3003(E); *Grievance Procedure Manual*, § 8.2.

⁶ This Department has also long held that both parties to a grievance should have access to relevant documents during the management steps and qualification phase, prior to the hearing phase. Early access to information facilitates discussion and allows an opportunity for the parties to resolve a grievance without the need for a hearing.

⁷ *Grievance Procedure Manual*, § 8.2.

⁸ At this stage, this Department makes no assessment as to the relevancy of the documents requested. Accordingly, should the agency withhold documents due to irrelevancy or assert a “just cause” reason for not providing documents, if the grievant still desires the documents withheld, he would need to follow the noncompliance provisions of the grievance process by notifying the agency head of the noncompliance and if the documents are still withheld, requesting a ruling from this Department.

This Department therefore orders the agency to correct its noncompliance **within five work days of the receipt of this ruling** by (1) informing the grievant in writing that no such documents exist or are being withheld due to a claim of irrelevancy or some other “just cause” reason,⁹ or (2) providing any such documents to the grievant. If it is not possible to provide the requested documents within the 5 workday period, the agency must, within 5 workdays of receiving this ruling, explain in writing why such a response is not possible, and produce the documents no later than 10 work days from the receipt of this ruling.¹⁰

This Department’s rulings on matters of compliance are final and nonappealable.¹¹

Claudia T. Farr
Director

⁹ If responsive documents are withheld due to a claim of irrelevance and/or “just cause,” the agency must provide the grievant with a written explanation of each claim.

¹⁰ *Grievance Procedure Manual* § 8.2

¹¹ See Va. Code § 2.2-1001(5), 2.2-3003(G).