

Issue: Compliance – Grievance Procedure (Other Issue); Ruling Date: July 26, 2010;
Ruling #2010-2669; Agency: Virginia Department of Transportation; Outcome:
Grievant In Compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of Department of Transportation
Ruling No. 2010-2669
July 26, 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 challenges the agency's decision to close his grievance as out of compliance with the grievance procedure on the ground that the grievance does not pertain directly and personally to the grievant's own employment and because he has failed to include his requested relief on the Form A.

FACTS

On April 7, 2010, the grievant initiated a grievance challenging the agency's alleged "inconsistent, improper and negligent" application of the state layoff policy as well as the agency's alleged violation of the its own Equal Employment Opportunity Policy in administering the layoff policy. The agency has administratively closed the April 7th grievance for the grievant's alleged failure to state the issues of his grievance and how those issues pertain directly and personally to the grievant's employment. In addition, the agency challenges the grievant's failure to include his requested relief in his grievance. The grievant appeals the agency's determination.

DISCUSSION

Pertain Directly and Personally

Under the grievance procedure, an employee's grievance must "[p]ertain directly and personally to the employee's own employment."¹ If the grievance does not pertain directly and personally to the grievant's employment, the agency may administratively close the grievance due to noncompliance with Section 2.4 of the *Grievance Procedure Manual*. As was done here, the grievant may challenge the closure of his grievance by requesting a ruling from this Department.

In this case, the grievant contends that many of those affected by layoffs at the agency were wrongly placed in newly created positions, rather than existing vacant positions. Although the grievant himself was not subject to layoff, his primary allegation is that the agency improperly deprived him of the right to compete for newly created positions within VDOT by

¹ *Grievance Procedure Manual* § 2.4.

misapplying the layoff policy to others. Such an allegation clearly pertains directly and personally to the grievant's employment, specifically, to his ability to compete for newly created positions, and must be allowed to proceed through the management resolution steps of the grievance process.²

We do note the following. In support of his contention that the agency has wrongly and inconsistently applied the layoff policy, the grievant cites specific examples of individuals affected by layoff. For example, the grievant states that Employee A was issued a layoff notice and a substitute was determined to be the best placement option. Employee A, however, allegedly never assumed the position of the substitute and remains in her original position. It is not evident how the application of the layoff policy to specific individuals, such as Employee A, applies personally and directly to the grievant's own employment. For instance, this does not appear to be an example of a placement that would deprive the grievant of the ability to apply for a newly created position. Thus, the grievant must demonstrate that the agency's application of the layoff policy to Employee A had some nexus to his own employment and not simply that the agency possibly misapplied the layoff policy with regard to Employee A or others. To the extent the grievant is challenging the application of the layoff policy to specific individuals, such a claim may not be pursued through the grievance process unless the application of the layoff policy to that particular individual resulted in the grievant's inability to compete for a position with the agency or the grievant can otherwise demonstrate that the agency's actions with regard to these particular individuals had some direct and personal impact on his employment.

Failure to Include Requested Relief on Form A

The agency also contends that the grievant has failed to comply with the grievance process because he has failed to include his requested relief on the Form A. In the relief section of his Form A, the grievant states that the relief sought is "[t]o be [d]etermined at the appropriate time." During the management resolution steps, the agency asked the grievant to provide a statement of the relief sought. The grievant has indicated that he will supply his requested relief "[w]hen the agency has provided the documents and information requested in accordance with Section 8.2 of the Grievance Procedures, then an informed and appropriate decision can be made concerning relief."

According to Section 2.4 of the *Grievance Procedure Manual*, "[t]he 'Form A' must state the claim, the facts in support of the claim, and the relief requested." Because the grievant has failed to include any kind of relief on the Form A, he has failed to comply with the grievance procedure.³

² This Department makes no assessment as to the ultimate merits of the grievant's allegation. Rather, this ruling merely determines that the April 7, 2010 grievance and in particular, the claim that the agency's alleged misapplication of the layoff policy has deprived the grievant of the right to compete for newly created positions, does pertain directly and personally to the grievant's own employment and as such, must be allowed to proceed.

³ In contrast to a situation where a grievant has failed to comply with one of the six initiation requirements of Section 2.4 of the *Grievance Procedure Manual*, a grievant must be notified in writing of his procedural noncompliance before the grievance can be administratively closed for failure to include a statement of relief on his Form A. See *Grievance Procedure Manual* § 6.2 and § 6.3. In this case, while the agency did not specifically provide a notice of noncompliance as required by the grievance procedure, the agency has apparently attempted to address the situation by pointing out the absence of any relief on the Form A and asking the grievant to provide a statement of what relief he is seeking. As such, because of the agency's clear attempt to address the grievant's

As such, the grievant must provide the agency with a written statement of his requested relief within **10 workdays of his receipt of this ruling**. However, as explained below, the grievant's requested relief may be further modified or changed during the course of the grievance process.

The grievance process is intended to be a mechanism for the resolution of workplace issues and disputes and to provide employees with remedies as appropriate.⁴ To this end, a hearing officer would not be bound to award only that relief requested on the Form A.⁵ Similarly, this Department deems it appropriate to allow modifications to requested relief during the course of the management resolution steps of the grievance process. Allowing a grievant to add to or otherwise modify his requested relief could be instrumental in adequately and fairly resolving the disputed workplace issue. This Department will allow such modifications to requested relief during the course of the grievance process so long as the actions grieved remain unchanged. That is, while this ruling determines that a grievant is permitted to add to or modify his requested relief after the grievance is initiated, a grievant may not add new *claims* (challenges to management actions) to the grievance once initiated.⁶ In other words, if new management action is taken, the grievant would be required to initiate a separate grievance on this new action and would not be permitted to add the new action to his existing grievance. Accordingly, while this Department orders the grievant to provide the agency with a statement of relief within 10 workdays of his receipt of this ruling, nothing would preclude the grievant from modifying this requested relief at a later time.

CONCLUSION

For the reasons discussed above, this Department has determined that the agency erred in closing the grievance for noncompliance. Therefore, the agency is directed to reopen the April 7, 2010 grievance. Moreover, the grievant is directed to provide the agency with a statement of relief requested in writing within **10 workdays of his receipt of this ruling**. The third step-respondent shall respond to the grievance in accordance with this ruling within five workdays from the date the agency receives grievant's statement of requested relief. This Department's rulings on matters of compliance are final and nonappealable.⁷

Claudia T. Farr
Director

noncompliance and in the interest of efficiency, this Department will address the agency's claim of noncompliance on the part of the grievant by failing to include his requested relief on the Form A.

⁴ See Va. Code § 2.2-3000(A); *Grievance Procedure Manual* §§ 1.4 and 5.9; *Rules for Conducting Grievance Hearings*, § VI (A).

⁵ See *Ruling for Conducting Grievance Hearings*, § VI (A).

⁶ See *Grievance Procedure Manual*, § 2.4 ("Once the grievance is initiated, additional claims may not be added.")

⁷ See Va. Code §§ 2.2-1001(5), 2.2-3003(G).