

Issue: Compliance – Grievance Procedure (Second Step Meeting); Ruling Date: August 27, 2010; Ruling #2011-2723; Agency: George Mason University; Outcome: Agency Not in Compliance.



*COMMONWEALTH of VIRGINIA*  
*Department of Employment Dispute Resolution*

**COMPLIANCE RULING OF DIRECTOR**

In the matter of George Mason University  
Ruling Number 2011-2723  
August 27, 2010

The grievant has requested a compliance ruling in his grievance with George Mason University (the University) due to the University's alleged failure to comply with the grievance procedure during the second management step.

FACTS

During the second step of this grievance, the second step-respondent initially met with the grievant for approximately two hours. During that meeting, the grievant had the opportunity to present evidence and offer the testimony of multiple witnesses. The meeting was not completed, however, and the second step-respondent agreed to meet with the grievant again. A second session of the second step meeting was held for approximately one hour. The grievant states he attempted to present additional written information to the second step-respondent, but either because of the nature of the information or the length of the meeting, the additional material was not accepted. In addition, prior to the second session of the second step meeting, the grievant submitted an "amendment" to his grievance. The University has refused to accept this "amendment" stating it was "beyond the scope of the second step process" and "does not provide any meaningful factual information that helps to inform the second step evaluation process." The grievant has requested this ruling to address these matters.

DISCUSSION

During the second step meeting, a grievant has the right to present written information in support of his/her grievance.<sup>1</sup> Unless that information is irrelevant or repetitive, the documents must be accepted and considered.<sup>2</sup> Assuming, for purposes of this ruling only, that the material the grievant attempted to offer was both relevant and not repetitive of information already presented at the meeting, the grievant should be permitted to present this additional documentation. As such, the additional information must be considered, if relevant and nonrepetitive, by the second step-respondent.

---

<sup>1</sup> See *Grievance Procedure Manual* § 3.2.

<sup>2</sup> See *id.* ("...while the second step respondent could limit the introduction of repetitive information, he should not prohibit an employee from disclosing relevant information not previously provided").

The grievant also argues that the “amendment” he submitted was improperly refused. A grievant may not add claims to a grievance once it is initiated.<sup>3</sup> Therefore, to the extent the “amendment” includes additional claims, such claims are invalid. Importantly, however, this Department defines “claims” raised by a grievance based on the management actions being challenged, not on the various supporting arguments or background evidence proffered by a grievant as to why those management actions are allegedly improper.<sup>4</sup> As such, a grievant may not challenge new management acts or omissions in a grievance after that grievance has been initiated. However, the grievant may submit additional background information, arguments or theories about the management acts or omissions challenged in the grievance as filed.<sup>5</sup> Importantly, however, while the grievant is certainly permitted to proffer such information in an attempt to support his/her challenge to the management acts or omissions originally grieved, the grievant would not be able to receive relief for these new management acts or omissions.<sup>6</sup>

In this case, it appears that most of the grievant’s “amendment” provides additional explanation and arguments about the underlying management acts or omissions originally grieved, i.e., the reorganization/selection with respect to the Director position for which the grievant feels he was and is qualified. For instance, the first page and first two full paragraphs on page two provide corrections and elaborations to the log of events originally included with his grievance. The last paragraph on page two and first three paragraphs on page three appear to provide information about the grievant’s qualifications in support of his arguments that he was qualified for the Director’s position at issue in his grievance. This additional information in the “amendment” must be accepted and considered by the University as background evidence. However, the amendment also appears to include challenges to additional management acts or omissions concerning another position the grievant allegedly attempted to apply for, threatened disciplinary action, and alleged attempts to “get rid” of him. To the extent the grievant is presenting this as background information only, the University must accept and consider it; but to the extent this information is presented as additional claims for which relief is requested, the University need not consider it nor respond.

The “amendment” also contains requests for additional remedies for the underlying management actions/omissions originally grieved. While it is not clear that the University’s granting of the requested relief would be appropriate, permissible under law and/or policy, or even possible, there is nothing in the grievance procedure that prevents a grievant from altering his or her proposed relief during a grievance. Therefore, the grievant here may include these requests for relief in his grievance. Obviously, however, there is no requirement that the University grant such relief or explain in detail why the relief will not be granted.

Because there are additional matters to be considered at the second step, this Department is ordering that the grievance be referred back to the second step-respondent. However, there is no requirement for any additional meetings at this step. The grievant has already met with the second step-respondent on two occasions for a total of approximately three hours. As such,

---

<sup>3</sup> *Grievance Procedure Manual* § 2.4.

<sup>4</sup> *See, e.g.*, EDR Ruling No. 2010-2506; EDR Ruling No. 2007-1561 & 2007-1587.

<sup>5</sup> *See, e.g.*, EDR Ruling No. 2009-2107; EDR Ruling No. 2008-1984.

<sup>6</sup> *See, e.g.*, EDR Ruling No. 2008-1984; EDR Ruling No. 2003-098 & 2003-112.

under the particular facts of this case, the grievance procedure's face-to-face meeting requirement has been met here. The grievant's additional information, including the "amendment," can be presented in writing and addressed in writing by the second step respondent.

The grievant is ordered to submit to the second step-respondent any additional information that he previously attempted to present during the second step **within five workdays of receipt of this ruling**. Anything submitted after this deadline need not be considered by the second step-respondent. Thereafter, the second step-respondent must issue an updated response to the grievance, taking into consideration any additional information submitted, including the information and arguments contained in the "amendment" that relate to the underlying management acts or omissions originally grieved. That updated response must be issued **within five workdays of receipt** of the grievant's additional information (or of the grievant's failure to submit anything additional within the five workdays given for him to submit the information).

Although this grievance has had a complex and protracted history, requiring the second step-respondent to consider the "amendment" and any additional information submitted is not a heavy burden. The grievance procedure requires that a written response address the issues and relief requested.<sup>7</sup> A step-respondent is not required to respond to each and every point or factual assertion raised by the grievant. The respondent must simply address the issues, the requested relief, and should notify the employee of his procedural options.<sup>8</sup> Therefore in this case, in providing an updated response, the second step-respondent need not provide detailed answers to all the factual details the grievant might provide in the supplemented information. Rather, the second step-respondent must merely accept the additional information, consider it, and provide a written response to the management acts and/or omissions challenged similar in scope to the response already given.

This Department's rulings on matters of compliance are final and nonappealable.<sup>9</sup>

---

Claudia T. Farr  
Director

---

<sup>7</sup> *E.g.*, *Grievance Procedure Manual* §§ 3.1 and 3.2.

<sup>8</sup> *Id.*

<sup>9</sup> *See* Va. Code §§ 2.2-1001(5), 2.2-3003(G).