

Issue: Access to the Grievance Procedure; Ruling Date: October 4, 2010;
Ruling #2011-2745; Agency: Virginia Commonwealth University; Outcome:
Access Denied; **Appealed to Circuit Court in City of Richmond; Final Order
issued November 17, 2010; Outcome: EDR Ruling Affirmed.**



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

ACCESS RULING OF DIRECTOR

In the matter of Virginia Commonwealth University
Ruling Number 2011-2745
October 4, 2010

The grievant has requested a ruling on whether she had access to the grievance procedure when she initiated a grievance in June, 2010. The Virginia Commonwealth University (VCU or the University) claims that the grievant does not have access to the grievance procedure because she was a VCU faculty member when she initiated her grievance. For the reasons set forth below, this Department concludes that the grievant does not have access to the grievance process.

FACTS

By letter dated April 19, 2010, the grievant was notified that she was being laid off from her faculty position as a Benefit Programs Curriculum Specialist effective June 30, 2010. Sometime prior to her effective date of layoff, the grievant initiated a grievance challenging her impending layoff and the University's refusal to allow her access to the state grievance process. The grievant now seeks access to the grievance process from this Department.

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 § 2.2-2905 (8), "teaching and research staffs of state educational institutions" 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 faculty member with the University at the time she filed this grievance, she was exempt from the VPA and did not have access to the grievance procedure.² The result here is also entirely consistent with the fact that the grievant's employment with

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

² Va. Code § 2.2-2905(8) exempts teaching staff at state educational institutions. *See also* Department of Human Resources Management (DHRM) Policy 2.20.

VCU was governed by an employment contract. Moreover, according to the agency, as a faculty member, the grievant has access to the VCU faculty grievance process. As such, she cannot also have access to the state grievance process.

APPEAL RIGHTS AND OTHER INFORMATION

For all the above reasons, this Department concludes that the grievant in this case does not have access to the Commonwealth's employee grievance procedure established under Title 2.2, Chapter 30 of the Code of Virginia. 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

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EDR

Virginia:

In the Circuit Court of the City of Richmond, John Marshall Courts Building

Grievant

PLAINTIFF

v.

CL10-4687

COMMONWEALTH OF VIRGINIA

DEFENDANT

O R D E R

On November 16, 2010, came Grievant, in person, pro se, on an appeal of a ruling denying employee grievability in the matter of Virginia Commonwealth University Ruling Number 2011-2745, dated October 4, 2010. Virginia Commonwealth University, or a representative thereof, though noticed, did not appear.

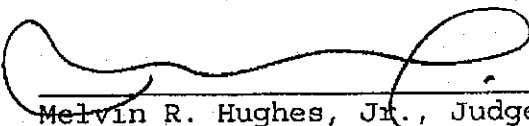
Upon Consideration Whereof, the court determines, consistent with the referenced ruling, that the said Grievant

though not entitled to grieve under the state grievance process, is so entitled under the faculty grievance process and procedure. Accordingly, Grievant

shall be afforded rights under the faculty grievance process according to law.

It is so Ordered.

Enter: 11/17/10


Melvin R. Hughes, Jr., Judge

A Copy,
Teste BEVILL M. DEAN, CLERK

BY:  D.C.