

Issue: Compliance – Grievance Procedure (Resolution Steps); Ruling Date: December 13, 2011; Ruling No. 2012-3187; Agency: Virginia Department of Transportation; Outcome: Agency in Compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of the Virginia Department of Transportation
Ruling Number 2012-3187
December 13, 2011

The grievant has requested a compliance ruling in his grievance with the Virginia Department of Transportation (the agency) due to the agency's alleged failure to comply with the grievance procedure in its designation of step-respondents.

FACTS

Because of the grievant's high level within the agency, there were determined to be fewer management steps in his grievance path. The Chief of Administration served as the second step-respondent in this grievance, met with the grievant face-to-face, and issued a written response. The first resolution step was essentially skipped. The Chief of Administration informed the grievant that following her second step response, he could appeal to the third resolution step by submitting the grievance package to the agency head. The grievant understood this and previous communications to mean that the agency head would serve as the third step-respondent. However, the third step response was issued by the Chief Deputy, not the agency head. The grievant raised this as an issue of noncompliance and requests that the agency head should serve as the third step-respondent in his grievance.

DISCUSSION

Under the grievance procedure, each agency must designate individuals to serve as respondents in the resolution steps. A list of these individuals shall be maintained by the agency's Human Resources Office and is also available on EDR's website. Each designated step respondent shall have the authority to provide the grievant with a remedy, subject to the agency head's approval.¹ Pursuant to its statutory responsibilities, EDR has long collected and maintained each agency's designated step respondents. This assures that each agency's management resolution step respondents are appropriate, are known to employees and to EDR, and that this phase of the grievance process is administered consistently and fairly.

An agency's careful designation of step respondents, and consistent adherence to those designations, is crucial to an effective grievance process. Step respondents have an important

¹ See Va. Code § 2.2-3003(D).

statutory responsibility to fulfill and should decline to serve only in extenuating circumstances, such as extended illness or serious injury. Further, if a step respondent cannot serve in that capacity pending a particular grievance, management should seek an agreement with the grievant on a substituted step respondent and should put any agreement in writing. Absent an agreement between the parties, the agency must adhere to the designated list of step-respondents. However when higher level employees file grievances, modifications to the standard process are necessary.²

There are potentially two ways to look at the question raised in this case. First, in response to the grievant's notice of noncompliance, the agency has noted that in following its designated step-respondent list on file with EDR, the Chief of Administration should have served as the third step-respondent (with a face-to-face meeting), making the grievant's resolution steps a single step only. We agree with this position. In the alternative, the grievant and the agency entered into an agreement to modify the resolution steps in this case such that the Chief of Administration was the second step-respondent and the agency head was to serve as the third step-respondent. While it appears this was the grievant's assumption, we have not reviewed any documentation that indicates such an agreement was clearly made. However, even if it was, the agency head has the statutory authority to delegate tasks required to be performed by him.³ Consequently, asking the Chief Deputy to respond to the grievance in his place is appropriate. Moreover, we cannot find that having such a high level agency employee as the Chief Deputy serve as the third step-respondent would be noncompliant with the grievance procedure.

We need not determine which approach was appropriate in this case. The next step in either path is for the grievant to now request qualification for a hearing from the agency head or conclude his grievance. The agency has substantially complied with the grievance procedure and there is no reason to return the grievance package for an additional third step review. This Department therefore orders the grievant to submit the grievance paperwork to the agency head to request qualification for hearing **within five workdays of receipt of this ruling** or notify the agency's human resources office in writing that he wishes to conclude his grievance.

This Department's rulings on matters of compliance are final and nonappealable.⁴

Claudia T. Farr
Director

² See, e.g., Grievance FAQ #12, at http://www.edr.virginia.gov/faqs_a.htm.

³ Va. Code § 2.2-604.

⁴ See Va. Code §§ 2.2-1001(5), 2.2-3003(G).