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ACCESS RULING

In the matter of the University of Virginia Medical Center
Ruling Number 2024-5644
January 16, 2024

On or about November 20, 2023, the Office of Employment Dispute Resolution (EDR) at the Department of Human Resource Management (DHRM) received a state employee grievance form, indicating the grievant's separation from the University of Virginia Medical Center (the "university" or "agency"). In response, the university asserted that the grievant was not its employee and was instead employed with a subsidiary private corporation. Accordingly, EDR opened this administrative ruling to determine whether the grievant has access to the state employee grievance procedure.

FACTS

According to the information provided by the parties, the grievant worked for an entity doing business as "UVA Health Culpeper Medical Center" or "UVA Community Health." On November 3, 2023, the grievant received a notice of discharge from his employment with that entity. The grievant argues that he was employed by the University of Virginia and, as such, was a state employee with access to the state employee grievance procedure. The university argues that the grievant was employed by a private university-owned corporation and, thus, was not a state employee.¹

DISCUSSION

The General Assembly has provided that all non-probationary state employees may utilize the state employee grievance process, unless exempted by law.² Although "[e]mployees of the University of Virginia Medical Center" are among those exempted from the provisions of the Virginia Personnel Act, "[s]uch employees shall remain subject to the provisions of the State Grievance Procedure."³ The issue presented for resolution here is whether the grievant was effectively an employee of the university by virtue of his employment with its wholly-owned private subsidiary.

¹ For purposes of this ruling, EDR assumes that the university's position is reflected by a brief submitted by counsel for UVA Community Health, Inc., a wholly owned subsidiary of the university.

² Va. Code § 2.2-3001(A); *Grievance Procedure Manual* § 2.3.

³ Va. Code § 2.2-2905(19).

The legislature has authorized the university to “create, own in whole or in part, or otherwise control corporations . . . or other entities whose activities promote the operations of the Medical Center and its mission”⁴ By statute, “no such creation, ownership, or control shall create any responsibility of the University, the Commonwealth, or any agency of the Commonwealth for the operations or obligations of any such entity”⁵ More generally, Virginia courts have held as an “elementary” principle that “a corporation is a legal entity entirely separate and distinct from the shareholders or members who compose it.”⁶ A distinct corporate entity “cannot be disregarded unless it is proved that the corporation is the *alter ego*, alias, stooge, or dummy of the individuals sought to be held personally accountable and that the corporation was a device or sham used to disguise wrongs, obscure fraud, or conceal crime.”⁷

It appears that the grievant was hired to work for “Culpeper Regional Hospital,” one of many operating names listed in State Corporation Commission (SCC) records for a non-profit private business entity first formed in 1956. Until 2021, its legal name was “Culpeper Memorial Hospital, Inc.” In 2021, Culpeper Memorial Hospital, Inc. restated its articles of incorporation to list UVA Community Health, Inc. as its owner and sole member, and changed its legal name to “UVA Culpeper Medical Center.” Since 2022, the institution has represented itself as “UVA Health Culpeper Medical Center.”

According to counsel for UVA Community Health, Inc., the university has ownership interests in “a variety” of entities that are part of a health system branded as “UVA Health.” UVA Community Health, Inc., is one such entity, as reflected in its articles of incorporation on file with the State Corporation Commission. As it relates to the grievant’s former employment, then, it appears that he worked for UVA Culpeper Medical Center, which is owned by UVA Community Health, Inc. (a private corporate entity), which is owned by UVA Medical Center (a public entity).

The grievant argues that, contrary to the above, “[t]here is no private corporation employing the UVA Culpeper workers,” as that medical facility is owned by the university’s health system, and its “personnel office hires for all of the facilities including in Culpeper.” The grievant further contends that “Culpeper Hospital employees were accreted into the state workforce in 2021.”⁸ However, the grievant’s most recent pay slip (for pay date November 24, 2023) identifies his employer as UVA Culpeper Medical Center, and his most recent federal W-2 Wage and Tax Statement (for tax year 2022) reflects his employer as “Culpeper Memorial Hospital, Inc.” Based on SCC records, these entities appear to be incorporated and distinct from the university as owner.

Moreover, EDR has been given no indication that the corporation is a sham entity used by the university to disguise wrongdoing. Although the relationship between the hospital and university may not have always been obvious to the grievant during his employment with the hospital, we are not aware of anything – other than UVA legal ownership and branding – that reasonably suggests that the university acquired responsibility for hospital employees when it took ownership of that distinct entity, as it appears expressly authorized by law to do. As such, for

⁴ Va. Code § 23.1-2212(C).

⁵ *Id.*

⁶ *Cheatle v. Rudd’s Swimming Pool Supply Co.*, 234 Va. 207, 212, 360 S.E.2d 828, 831 (1987).

⁷ *Transparent GMU v. George Mason Univ.*, 298 Va. 222, 241, 835 S.E.2d 544, 553 (2019) (quoting *RF&P Corp. v. Little*, 247 Va. 309, 316, 440 S.E. 2d 908, 913 (1994)).

⁸ EDR has not been presented with any documentation that may have been given to the grievant that would suggest he was converted to a state employee upon the university’s ownership of the Culpeper Hospital.

purposes of the state employee grievance procedure, EDR finds no grounds on which UVA Community Health, Inc.'s corporate veil should be pierced to extend state executive-branch grievance rights to its employees.

In sum, the evidence provided by the parties demonstrates that the grievant was employed by a private corporation. Although that corporation is wholly owned by a state entity subject to the state employee grievance procedure, we cannot conclude without more that the state entity's legal ownership of a private entity would convert the private entity's employees to state employees. Accordingly, we conclude that the grievant does not have access to the state employee grievance procedure, and thus the grievance cannot proceed.⁹ EDR will close its file, and the parties are advised that no further action is required.

EDR's rulings on access are final and nonappealable.¹⁰

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⁹ This ruling only determines that the grievant lacks access to the state employee grievance procedure. It does not address, and has no bearing on, whether other legal or equitable remedies may be available to the grievant in another forum.

¹⁰ Va. Code § 2.2-1202.1(5).