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ACCESS RULING

In the matter of the Library of Virginia
Ruling Number 2025-5846
May 21, 2025

On or about February 26, 2025, the Office of Employment Dispute Resolution (EDR) at the Department of Human Resource Management (DHRM) received a dismissal grievance initiated by the grievant to challenge her separation from employment at the Library of Virginia (the “agency”). In response, the agency has challenged the grievance on grounds that the grievant lacks access to the state employee grievance procedure.

It appears that the grievant was hired effective October 25, 2017. In a letter dated February 10, 2025, the grievant was notified that her employment with the agency was being terminated effective February 11, 2025 for unsatisfactory performance in relation to occurrences on January 22, 2025, with reference to past written reprimands of unsatisfactory performance in 2024. The grievant submitted a dismissal grievance to DHRM on or about February 26, 2025 to challenge her termination. The agency argues that the grievant does not have access to the grievance procedure.

The General Assembly has provided that all non-probationary state employees may utilize the state employee grievance process, unless exempted by law.¹ Generally speaking, employees who are employed in positions designated as exempt from the Virginia Personnel Act (the “Personnel Act”) do not have access to the grievance procedure.² The Code of Virginia permits the Board of the Library of Virginia to identify positions “as requiring specialized and professional training” with the approval of the Director of DHRM.³ Positions so identified are stated to be exempt from the Personnel Act, and, accordingly, the grievance procedure.⁴ The grievant was in a position that appears to have been identified by the agency in this regard. The agency has produced a copy of a letter from the DHRM Director in 1997 that approved the agency to identify the same position later held by the grievant, among others, as requiring specialized and professional training. Although the grievant was employed in 2017, it appears that her former position is effectively the same when it was identified as exempt from the Personnel Act in 1997 (at least in relation to the

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

² Va. Code §§ 2.2-2905, 2.2-3002.

³ Va. Code § 2.2-2905(15).

⁴ *Id.*

reasons for which the exemption exists). Accordingly, it appears that the grievant was in an exempt position lacking access to the grievance procedure.

When the grievant was hired, she received notice that her position was exempt from the Personnel Act, which is reflected in the ungraded classification of the grievant's position. The grievant signed a Memorandum of Understanding (MOU) to this effect. EDR will acknowledge that the language of the MOU is rather confusing. Indeed, in one reading, the language of the MOU could suggest that the grievant was only partially exempt from the Personnel Act and that other, unspecified, provisions would still apply. However, we are unable to discern support for an argument that the Code provides for such a partial exemption,⁵ much less that there was authority to create one through an agreement of the parties. Accordingly, we do not consider the language of the MOU to generate access to the grievance procedure that otherwise would not be available to an employee in a position that has been approved to be exempt from the Personnel Act.

Thus, EDR finds that the grievant lacks access to the state employee grievance procedure. Accordingly, the dismissal grievance submitted by the grievant to EDR cannot proceed, and our file will be closed.⁶

EDR's access rulings are final and nonappealable.⁷

Christopher M. Grab
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⁵ See Va. Code § 2.2-2905(15).

⁶ This ruling determines only that the grievant is ineligible to pursue her claims through the state employee grievance procedure. Nothing herein should be read to address whether any legal or other remedy may be available to the grievant through another process for the issues raised in her grievance.

⁷ Va. Code § 2.2-1202.1(5).