

1979 WL 43155 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

November 6, 1979

***1 RE: State Employees' Grievances**

Dr. Jack S. Mullins
Director
State Budget and Control Board
Personnel Division
1205 Pendleton Street
Post Office Box 12547
Columbia, South Carolina 29211

Dear Dr. Mullins:

You have recently asked this Office for its opinion on several matters concerning state employees' grievances. These questions will be answered in the order in which they were presented in your letter.

I. Can an agency and a grievant jointly agree to waive the forty-five day time period in which the agency should reach a resolution of a grievance?

The response to this question is negative. The State Employee Grievance Procedure Act, 1976, South Carolina Code of Laws, as amended, § 8-17-10, et seq., provides that an intra-agency grievance procedure . . . shall provide that the department or agency shall act on a grievance within forty-five days. Failure to act positively within such period shall be considered an adverse decision which the employee may appeal. § 8-17-20 of the Code.

Inasmuch as the quoted statute plainly states in mandatory language that an agency 'shall act on a grievance within forty-five days' that is the length of time an agency has to consider the grievance. 'Where the language of the statute is plain and unambiguous and conveys a clear and definite meaning, as here, there is no occasion for resorting to the rules of statutory interpretation and the court has no right to look for or impose another meaning.' [Wynn v. Doe, 255 S.C. 509, 512, 180 S.E.2d 95 \(1971\)](#).

II. Can an employer and a grievant waive the time periods between the individual steps of the internal grievance procedure as long as the entire intra-agency procedure does not surpass forty-five days?

The answer to this question is negative. The State Employee Grievance Procedure Act requires that Each agency and department of state government shall establish an employee grievance procedure within such agency or department which shall be reduced in writing and be approved by the State Personnel Director. § 8-17-20, of the Code.

If the intra-agency grievance rules provide that each grievance step must be accomplished within a certain number of days, such time limitations must be met. One commentator has stated that, as a general rule, Rules and regulations of an administrative agency governing proceedings before it, duly adopted and within the authority of the agency, are as binding as if they were statutes enacted by the legislature. Procedural rules are binding upon the agency which enacts them as well as upon the public of the agency, and the agency does not, as a general rule, have the

discretion to waive, suspend, or disregard in a particular case a validly adopted rule so long as such rule remains in force. 2 Am.Jur.2d, Administrative Law § 350, p. 162.

The expressed intent of the General Assembly concerning the waiver of agency rules lies in Section 8-17-40 of the 1976 Code of Laws of South Carolina, wherein the State Personnel Director is mandatorily directed to determine that the intra-agency grievance procedure has been complied with prior to the grievance's being forwarded to the State Employee Grievance Committee. Section 8-17-40 provides in part,

***2** The State Personnel Director shall assemble all records, reports and documentation of the earlier hearings on the grievance and review the case to ascertain that there has been full compliance with the established grievance policies, procedures and regulations within the agency or department involved and determine whether the action is grievable to the State Committee. (Emphasis added).

An employee and a state agency or department cannot waive the time periods between the individual steps of the internal grievance procedure.

III. May an employee grieve a coerced or involuntary resignation?

The answer to this question is affirmative. Section 8-17-20, 1976 Code of Laws of South Carolina, provides:

[G]rievances may include, but are not necessarily limited to, dismissals, suspensions, involuntary transfers, lay-offs, reductions in pay and demotions. (Emphasis added).

If an employee is forced to resign, or resigns involuntarily, that employee may have been constructively discharged and such constructive discharge is tantamount to a dismissal which the Grievance Act expressly makes a proper subject of a grievance before the State Employee Grievance Committee. The enclosed copy of an October 22, 1979 opinion of this Office elaborates upon the constructive discharge doctrine.

While Section 7.09A of the State Employees Personnel Manual,^a provides, inter alia, 'any employee who submits a written resignation shall not have the right to appeal to the State Employee Grievance Committee,' such section must be construed with Section 6.03 A.3 of the Manual.^{aa} The latter provision states that the right to grieve a resignation is waived if a statement to the effect that the resignation is voluntary has been tendered to the employer. Thus, it can be concluded after reading both sections of the Manual together that the drafters of the personnel rule concerning resignation, intended that section to apply to voluntary resignations.

Moreover, under the specific circumstance referred to in your letter wherein an employee resigned 'due to pressure revolving around [her] grievance,' it is the opinion of this Office that the resignation is grievable. Section 8-17-20, 1976 Code of Laws of South Carolina, provides in part:

No employee shall be disciplined or otherwise prejudiced in employment for exercising rights under the plan, and department and agency heads shall encourage the use of the plan in the resolution of grievances arising in the course of public employment.

Thus, if an employee is forced to terminate her employment by a state agency because she has been prejudiced in employment for exercising grievance rights, such employee may present a grievance to the State Committee.

IV. What significance, if any, is attributed to a written or oral resignation with regard to grievance rights?

Whether a resignation is oral or written is of significance when a voluntary resignation is at issue. A written voluntary resignation voids an employee's right to present a grievance to the State Committee. Section 7.09A, State Employees Personnel Manual.

*3 If a resignation is coerced or involuntarily given, an employee may institute a grievance whether the involuntary resignation be written or oral.

Sincerely,

Barbara J. Hamilton
State Attorney

Footnotes

- a The State Employees Personnel Manual has been promulgated by the State Budget and Control Board pursuant to its responsibilities arising under [§ 8-11-230 of the Code](#). Section 7.09A provides 'Resignations—An employee who resigns should submit the resignation in writing with reasons therefore. Resignations should be submitted so as to provide a minimum of two weeks notice. A resignation to accept employment in another State agency does not constitute a break in service unless the employee received a lump sum payment for accrued annual leave or unless 15 calendar days without pay expires before the employee reports to the new agency. An employee who resigns may not rescind a resignation unless the agency head agrees to the rescission. Any employee who submits a written resignation shall not have the right of appeal to the State Employee Grievance Committee.
- aa Section 6.03A.3 provides 'An employee who accepts a reduction in pay, a demotion, a transfer, or resigns shall waive all rights to appeal such action if the employee has signed a written statement that the action is voluntary. These written actions can only be rescinded if the agency head agrees.

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