**BETSY E. SNIDER, .**

**Grievant, .**

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**.**

**v. .Docket Number: 95-DEP-306**

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**WEST VIRGINIA BUREAU OF ENVIRONMENT, .**

**DIVISION OF ENVIRONMENTAL PROTECTION .**

**/ WEST VIRGINIA DEPARTMENT OF .**

**ADMINISTRATION, DIVISION OF PERSONNEL, .**

**Respondents. .**

## D E C I S I O N

Betsy Snider (hereinafter Grievant) is employed by the Bureau of Environment within the Office of Water Resources of the Environmental Protection Division. She filed this grievance on June 14, 1995, pursuant to the provisions of West Virginia Code §§29-6A-1, et seq., challenging her position's civil service classification assigned by the West Virginia Division of Personnel (hereinafter Personnel). Grievant is currently classified as a Programmer Analyst II but contends that the classification of Data Processing Manager II is the best fit for her position's duties and responsibilities.

A level one decision was issued by Grievant's immediate supervisor, Leona Francisco, Assistant Administrator within the Office of Water Resources, on or about August 3, 1995. Ms. Francisco agreed with Grievant that she was misclassified; however, she declared that she did not have the

authority to issue the relief requested. Grievant appealed to level two and Mark Scott, Chief of Water Resources, concurred with the level one decision. Appeal was made to level three and a hearing was held on March 7, 1995. As of July 6, 1995, a level three decision had not been issued and Grievant appealed the case to level four. Pursuant to W. Va. Code §29-6A-3(a), this case was accepted by the Grievance Board and an evidentiary hearing was held on September 7, 1995. The case became mature at the end of the level four hearing.

As stated, Grievant contends that she should be classified as a Data Processing Manager II because the classification specification prepared for that classification is a better fit for her position's duties and responsibilities than is the classification she currently holds. She avers that she "manages" the data processing operations within the Office of Water Resources, and in doing so, supervises two subordinate employees. She maintains that her position has an administrative role attached to it as opposed to being merely technical in nature. She further opines that her position requires as much managerial activity as do other positions within the Bureau that are classified as managers over various programs not related to data processing.

The Bureau of Environment is content upon relying on the arguments and position presented by Personnel in this case. Personnel, through the argument and testimony of Lowell D. Basford, Assistant Director, Classification and Compensation, maintains that Grievant is correctly classified. Personnel disagrees that Grievant functions in the role as a manager. It asserts that she does not have a sufficient number of subordinates beneath her to whom she may delegate the responsibility of carrying out the unit's functions. It avers that Grievant's position is technical in nature and not managerial because she spends much time engaged in the hands-on work required of her area of expertise, as opposed to delegating that work. Finally, Personnel places great emphasis on a comparison of the duties and responsibilities of Grievant's position to other positions throughout the classified service and within the Bureau, concluding that Grievant's classification and salary are comparable to other similarly situated employees who likewise are not classified as managers. It avers that other employees who manage programs or personnel have dramatically more complex, administrative duties and responsibilities than does Grievant.

The West Virginia State Personnel Board, a part of Personnel, was created in 1989 to replace the former Civil Service Commission. W. Va. Code §29-6-6 (1989). The duties and responsibilities of the former Director of the Civil Service System were also transferred to the Director of Personnel. Code

§29-6-9 (1989). Pursuant to Code §29-6-10(1), the State Personnel Board has been delegated thediscretionary authority to promulgate, amend or appeal legislative rules governing the

> preparation, maintenance and review of a position classification plan for all positions within the classified service . . . based upon a similarity of duties performed and responsibilities assumed, so that the same qualifications may reasonably be required for and the same schedule of pay may be equitably applied to all positions in the same class.

The Personnel Board has the same authority and responsibility to establish a pay plan for all positions within the classified service, guided by the principle of equal pay for equal work. Code §29-6-10(2).

The Personnel Board has wide discretion in performing its duties although it cannot exercise its discretion in an arbitrary or capricious manner. Also, the rules promulgated by the Personnel Board are given the force and effect of law and are presumed valid unless shown to be unreasonable or not to conform with the authorizing legislation. See, Callaghan v. West Virginia Civil Service Comm'n, 273 S.E.2d 72 (W.Va. 1980). Finally, and in general, a governmental agency's determination of matters within its expertise is entitled to substantial weight. Princeton Community Hospital v. State Health Planning, 328 S.E.2d 164 (W.Va. 1985). This standard applies when one attempts to review Personnel's interpretation of its own regulations and classification specifications, if ambiguous as written, in order to determine if the administrative decision at issue was the product of an exercise of abuse of discretion.

More specifically, in order for Grievant to prevail upon a claim of misclassification, she must prove by a preponderance of the evidence that her duties for the relevant period more closely matched another cited Personnel classification specification than that under which she is currently assigned. See generally, Hayes v. W. Va. Dept. of Natural Resources, Docket No. NR-88-038 (Mar. 28, 1989). Personnel specifications are to be read in "pyramid fashion," i.e., from top to bottom, with the different sections to be considered as going from the more general/more critical to the more specific/less critical, Captain v. W. Va. Div. of Health, Docket No. 90-H-471 (Apr. 4, 1991); for these purposes, the "Nature of Work" section of a classification specification is its most critical section. See generally, Dollison v. W. Va. Dept. of Employment Security, Docket No. 89-ES-101 (Nov. 3, 1989). The key to the analysis is to ascertain whether Grievant's current classification constitutes the "best fit" for her required duties. Simmons v. W. Va. Dept. of HHR/Div. of Personnel, Docket No. 90-H-433

(Mar. 28, 1991). The predominant duties of the position in question are class-controlling. Broaddus v. W. Va. Div. of Human Services, Docket Nos. 89-DHS-606, 607, 609 (Aug. 31, 1990). Finally, Personnel's interpretation and explanation of the classification specifications at issue, if said language is determined to be ambiguous, should be given great weight unless clearly erroneous. See, W. Va. Dept. of Health v. Blankenship, 431 S.E.2d 681, 687 (1993).

The ultimate issue in this case is whether Personnel properly assigned Grievant's position to the classification of Programmer Analyst II or whether it abused its discretion in taking said action. The answer to this question must be derived from a review of the testimony and the language of the classification specifications at issue, in connection with the administrative regulations promulgated by Personnel. The relevant sections of the specifications' text are reproduced herein as follows:

**PROGRAMMER ANALYST II**

**Nature of Work**

**Under general supervision, at the full-performance level, performs a full range of computer programming work as a project leader or in high-level technical work such as on-line programming or determining hardware appropriate to meet user's needs. Troubleshoots hardware and/or software problems by identifying the problem and devising a solution. Work requires a general understanding of computers and interrelations of all aspects of the system. Reviews logic and makes decisions regarding major modifications. Codes complex programs. An irregular work schedule may be required of this position. Performs related work as required.**

**Distinguishing Characteristics**

**Programmer Analyst II's work independently or as project leaders on a large project. This level designs simple software systems and may be responsible for all programming/analysis functions for those data processing systems. Programmer Analyst II's write complex programs with basic instruction and analyze programs of moderate complexity.**

**Examples of Work**

**Works independently or leads a group of programmer analysts in the evaluation of user requests; writes detailed specifications and assigns tasks to subordinate programmers and support staff in a small work group; assists other programmer analysts in the resolution of logic problems.**

**Provides technical guidance and training in complex programming to users or programming personnel; updates manual procedures as necessary to accommodate changes in the system.**

**Consults with users to determine specific program requirements and the data necessary for production; prepares detailed specifications including block diagrams, input specifications, output requirements, and logic specifications necessary for programming and systems documentation; attends user meetings without supervision.**

**Develops new or modifies existing systems programs involving multiple programs or complex on-line systems; writes program modules for more complex systems.**

**Prepares new programs or modifies existing programs, prepares flow charts and reviews logic, codes logic flow into appropriate language, prepares JCL statements, conducts test run, debugs program from test results and prepares documentation.**

**Prepares a detailed statement of system requirements and determines the cost of implementation.**

**Participates in self-study and vendor-supplied courses to improve skills in more complex programming areas.**

**Performs routine duties such as keying programs, creating or changing job control language, maintaining program documentation, updating data processing manuals and cleaning work area.**

**Creates test files and conducts test runs for multiple program systems.**

**May monitor work progress and evaluate job performance of programmers and support staff.**

**Established:**

**9/19/90**

**Revised:**

**10/7/91, 11/21/91**

**Effective: 12/1/91**

**DATA PROCESSING MANAGER II**

**Nature of Work**

**Under limited supervision, performs advanced level administrative and supervisory duties directing the data processing operations of a medium size or larger agency with a comprehensive, full-range data processing function. Class may also include specialty administrators in the state's central facility departments with multi-faceted and well-developed data processing functions. Activities supervised include: applications programming, computer operations, and system development in addition to distribution, coordination, and/or data entry. Directly, or through lower level supervisors, schedules work and sets unit priorities for the most efficient utilization of equipment and personnel. Resolves equipment problems, and coordinates system usage by agency personnel. Provides advice andassistance to higher level management. Performs related work as required.**

**Distinguishing Characteristics**

**Data Processing Manager II is distinguished by the broad base of unit activities supervised in the state's central data facility; work is in an area of computer service with a large scope of duties which impact on the planning,**

**purchasing, and implementation of user agency systems. In a state agency, Data Processing Manager II is responsible for overseeing a staff involved in programming and operations; the staff encompasses several units involved in separate agency program functions. The incumbent may also supervise data entry, clerical support and job coordination.**

**Examples of Work**

**Organizes, assigns, directs and reviews the work of a group of professional or technical personnel in the operation of an agency data processing function; supervises programming or computer operations; may also supervise job coordination, clerical and/or data entry activities.**

**Plans work schedules and sets priorities to make the most efficient use of available personnel and equipment.**

**Analyzes agency operations and determines feasibility and/or costs of conversion from manual to electronic records management and data analysis; may assist management in special studies requiring computer data collection or analysis.**

**Analyzes and establishes data processing unit procedures and work standards; sets standards for equipment maintenance and troubleshooting; advises staff and coordinates the resolution of hardware and software problems.**

**Directs the design, development and implementation of new systems and new applications; reviews system expansion proposals and recommends approval and disapproval; recommends the purchase of new equipment; may develop equipment specification proposals or new system evaluation standards; may coordinate the installation of new equipment.**

**Confers with vendors and repair personnel on system features, new technology and on equipment usage problems; confers with software experts and system programmers on new applications and the correction of software problems.**

**Instructs staff in system operation; may instruct staff in programming or program execution; may direct start-up and system recovery operations.**

**Provides technical assistance to agency operating personnel on a broad range of data management problems; may write computer programs or prepare JCL job streamcode, and operate a wide variety of electronic data processing equipment; may instruct agency personnel outside unit in system operation, program execution and problem resolution.**

**Prepares a variety of management reports on equipment utilization, production, down-time, and problems; may order supplies and direct the maintenance of equipment and supply inventory records.**

**May prepare and/or review documentation and procedures manuals for data entry, program execution, or long-range data processing plans.**

**Established:**

**9/19/90**

**Revised:**

**11/21/91**

**Effective:**

**12/1/91**

**Further, Section 4.04 of Personnel's Administrative Regulations, 143 CSR 1, describing how class specifications are to be interpreted, contains the following relevant subsections:**

> **(a) Class specifications are descriptive only and are not restrictive. The use of a particular expression of duties, qualifications, requirements, or other attributes shall not be held to exclude others not mentioned.**

> **(b) In determining the class to which any position shall be allocated, the specifications for each class shall be considered as a whole. Consideration shall be given to the general duties, specific tasks, responsibilities required, qualifications and relationships to other classes as affording together a picture of the positions that the class intended to include.**
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> **(c) A class specification shall be construed as a general description of the kinds of work characteristics of positions properly allocated to that class and not as prescribing what the duties of any position are nor as limiting the expressed or implied power of the appointing authority now or hereafter vested with the right to prescribe or alter the duties of any position.**
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> **(d) The fact that all of the actual tasks performed by the incumbent of a position do not appear in the specifications of a class towhich the position has been allocated does not mean that the position is necessarily excluded from the class, nor shall any one example of a typical task taken without relation to the other parts of the specification be construed as determining that a position should be allocated to the class.**

**These legislative rules are both helpful and instructive as to how classification specifications should be interpreted in order to determine the nature of the position in question.**

**The issue of whether a classified employee has met his/her burden of proof to establish that he/she is misclassified must be made on a case-by-case basis, given the facts therein. A determination is made as to the nature of the duties of the grievant's position from an evaluation of the facts presented which describe said position's duties and responsibilities. The focus is upon the position and not the skills and abilities of the incumbent.**

**The Office of Water Resources has recently become computer automated. Grievant was hired on or around March 1992, to head the Office's System's Support Unit, and she is recognized as the Data Processing Manager for this Office. In general, she and her staff of two, Dawna Nibert, Programmer Analyst I and Tammy Howsare, Office Automation Coordinator I, have been primarily responsible for the oversight of all installation and application of the hardware and software for the new network computer system (AS 400), and**

**also the training of the system's users. Grievant works independently with little or no direct supervision or assistance with regard to the technical aspect of her position; she receivesonly administrative and financial review from her superior, Ms. Francisco. Grievant is responsible for establishing and monitoring her work unit's goals, objectives, assignments, priorities, purchasing needs, user policies, efficiency and effectiveness. She regularly attends user group meetings, training sessions and computer vendor authorized education courses in order to better design and implement the network system. It readily appears from the record that both Grievant and Dawna Nibert, along with Ms. Howsare are the Respondent's link to its computerized information.**

**From an initial review of the two classification specifications at issue, it is apparent that Grievant performs most, if not all, of the examples of work listed for both specs. From a review of the nature of work and distinguishing characteristics sections, the difference between the functions of these two positions relates to the amount of programming and technical, hands-on work required of the incumbent, in relation to the amount of administrative work performed.**

**It is readily identifiable from the class specifications themselves that a Programmer Analyst II is required to "perform a full range of computer programming work," programming, troubleshooting hardware or software problems and making system programming modifications. Clearly, even though a Programmer Analyst may be responsible for a large, computer-based project, the majority of his/her duties either revolve around the technical area of actual computer programming and analysis or around leading agroup of programmer analysts who are responsible for "all programming/analysis functions."**

**In contrast, according to the classification specification, a Data Processing Manager II is expected to perform administrative and supervisory duties directing or managing the computer operations of a medium or larger agency. This is not to say that a Data Processing Manager II may not perform actual programming when needed, but the major responsibilities of this position are to "oversee," supervise" and "schedule" the work of a staff or group who work within a data processing unit. The language of the specification does not define how large this staff or group must be, although Mr. Basford testified that Personnel generally requires a manager to supervise at least three subordinates in order to justify that title. He**

**went further to state that exceptions to this general rule are made for employees who "manage" a large "program" as opposed to a staff.**

**As noted, the classification of a position must be based upon the position's predominant duties. According to the record, Grievant spends the majority of her time developing and administering the data management plan of the Office of Water Resources. She is responsible for the system's disaster recovery plan, the software policy, administration of a security plan and the AS400's backup and cleanup schedule. Grievant is responsible for the system's hardware and software requests, specifications and purchasing. According to Grievant and her supervisor, she spends approximately fifteen percent of her time analyzing system needs,designing its plan and providing recommendations for networking throughout the Office and with the State's mainframe system, coordinating and overseeing the purchase and installation of telecommunications peripherals for the AS400, RS/6000 and personnel computers.**

**Grievant testified that a large part of what she does is supervise Ms. Nibert in helping determine the system's design and the users' requirements. She also opined that she spends approximately ten percent of her time training data processing personnel and acting as a technical resource for the system's administrator. Her position description form indicates that Grievant spends approximately twelve percent of her time providing technical assistance to the data processing personnel and end users. The evidence establishes that Ms. Howsare and Ms. Nibert are recognized, respectively, as the first and second sources for providing technical assistance to the system's users, and that Grievant is the last person to work directly with these problems. With regard to opinion testimony, Grievant introduced the testimony of Susan Steele, an Administrative Services Assistant III for the Division of Environmental Protection, who has years of experience in civil service position classification and personnel matters, both within and outside of the State. In particular, Ms. Steele is a former employee of Mr. Basford's work section within Personnel and actively took part in classifying positions within the State's civil service system for approximately two years. Ms. Steele opined that she agreed with the findings made in the levelone and two decisions with regard to Grievant's proper classification.**

**Grievant's supervisor, Ms. Francisco, and the author of the level one decision, is an**

**Administrative Service Manager II within the Division of Environmental Protection. As a part of Ms. Francisco's administrative experience of approximately twenty-two years, she has received training from Personnel in matters of classification, prepared classification specifications and proposals for the State Personnel Board, and participated in classification review projects and teams for both the Division of Environmental Protection and Personnel. In Ms. Francisco's opinion, Grievant should be classified as a Data Processing Manager II.**

**The evidence of record properly establishes that not only does Grievant's position involve the application of technical skills and duties, but also administrative and supervisory responsibility over the two employees within her unit. Grievant does not spend a majority of her time "performing a full range of computer programming work as a project leader or in high-level technical work such as on-line programming or determining hardware appropriate to meet a user's needs." Grievant's position is not the one delegated the responsibility of providing the Office of Water Resources with all hands-on "programming/analysis functions" or writing "complex programs with basic instruction and analyz[ing] programs of moderate complexity."**

**It is determined that Grievant does function as a Data Processing Manager II, supervising activities such as "applications programming, computer operations and system development in addition to distribution, coordination and/or data entry." Grievant does not work through lower level supervisors but the classification specification does not require her to, as it states that work schedule and unit priorities may be set directly. Finally, Grievant is responsible for overseeing a staff involved in the data processing programming and operations of the system. It is recognized that this staff is small in number; however, based upon the language of the Data Processing Manager II classification specification, this aspect of Grievant's position should not be class-controlling.**

**With regard to the argument raised by Personnel that Grievant cannot be classified as a Data Processing Manager because of a comparison and contrast of the nature and set paygrade of her position to the nature and paygrade of other positions that are classified as "managers," this argument is not supported by sufficient and competent evidence. Grievant's position was only generally contrasted to numerous other positions classified as managers, without sufficient evidence to support the opinions given. These opinions cannot outweigh**

**the fact that her duties squarely fit within the major classification at issue, Data Processing Manager II. It is recognized that Grievant's position may not be substantially the same as all other Data ProcessingManger II positions; however, this is not required pursuant to Personnel's own regulation on point, Section 4.04(c).**

**The foregoing discussion of the case is hereby supplemented by the following appropriately made conclusion of law.**

**Conclusion of Law**

**Grievant has established by a preponderance of the evidence that the Division of Personnel has abused it discretion in classifying her position as a Programmer Analyst II. The classification of Data Processing Manager II is a better fit for the nature of the predominant duties and responsibilities of her position. To the extent that Personnel has interpreted the classification specification of Data Processing Manager II otherwise, it is clearly wrong. See, Broaddus; Hayes; Blankenship; supra.**

**Therefore, this grievance is hereby GRANTED. It is hereby ORDERED that Grievant be immediately classified as a Data Processing Manager II. Grievant is to be awarded any and all lost wages that she may have suffered as a result of being classified as a Programmer Analyst II, from October 16, 1993, to the date of this Decision, less any appropriate deductions and set-offs. Grievant's current salary is to be adjusted to that which it would have been had she been assigned the classification of Data Processing Manager II on that date. Any party or the West Virginia Division of Personnel may appeal this decision to the "circuit court of the county in which the grievance occurred," and such appeal must be filed within thirty (30) days of receipt of this decision. W. Va. Code §29-6A-7. Neither the West Virginia Education and State Employees Grievance Board nor any of its Administrative Law Judges is a party to such appeal and should not be so named. Any appealing party must advise this office of the intent to appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate court.**

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**ALBERT C. DUNN, JR.**

**Administrative Law Judge**

**September 29, 1995**