TAMARA A. DAVIS,

Grievant,

v. **Docket No. 97-BOT-421**

BOARD OF TRUSTEES/WEST VIRGINIA UNIVERSITY,

Respondent.

D E C I S I O N

Grievant, Tamara A. Davis, employed by the Board of Trustees at West Virginia University (WVU), filed a level one grievance on June 13, 1997, in which she alleged that she is misclassified as an Accounting Assistant II, pay grade 14. Grievant seeks classification as an Accountant, pay grade 16, and backpay. Grievant's immediate supervisor, Sandi Sypolt supported her claim, but lacked authority to grant the remedy at level one. Following an evidentiary hearing at level two, the grievance evaluator recommended that Grievant retain a salary of paygrade 16; however, Scott C. Kelley, Vice President for Administration, Finance and Human Resources, declined to accept the recommendation. Mr. Kelley denied the grievance, finding that "[p]rior to assuming the interim position of Accountant (PG 16) in June of 1996, Ms. Davis was an Accounting Assistant I (PG 12). Upon returning to her original assignment of Accounting Assistant I (PG12) that position was subsequently upgraded to Accounting Assistant II (PG 14)."

Grievant advanced her claim to level four on September 23, 1997, and an evidentiary hearing was conducted on January 28, 1998. The grievance became mature for decision with the submission of proposed findings of fact and conclusions of law by both parties on or before April 24, 1998.

The following facts are made upon a review of the record in its entirety.

Findings of Fact

1. Grievant has been employed at WVU since 1990. She was first assigned to theDepartment of Housing and Residence Life, and transferred to the Physical Plant as an Accounting Assistant I, in February 1995.

2. In June 1996, Grievant assumed the interim position of Accountant, pay grade 16. The position of Accountant had been previously held by Sandi Sypolt, and was vacant as the result of Ms.

Sypolt being assigned as interim Assistant Director of the Physical Plant.

3. In April 1997, Grievant was returned to her official assignment of Accounting Assistant I, and her position was submitted to Human Resources for review.

4. As a result of the review, Grievant's position was upgraded to Accounting Assistant II, pay grade 14.

5. A comparison of Grievant's Position Information Questionnaire (PIQ) with those of Ms. Sypolt and Ms. Sypolt's predecessor Muriel Hixenbaugh, when they were classified as Accountant, reveals their duties to be nearly identical.

6. Grievant's PIQ dated March 1997, states the primary purpose of her position as, "[u]nder the guidance of the supervisor, this position will provide leadership for other associated positions within the Business Operations unit. Monitors, modifies, and controls systems necessary to provide data required to comply with Federal, State, University and NACUBO guidelines." (See footnote 1)

7. The essential functions of Grievant's position, and the percentage of time required to perform them, are stated on the March 1997 PIQ as follows:

1. 50% of her time

Responsible for the preparation, maintenance and funding of the Physical Plant budget to include centrally allocated monies, minor repair monies, minor alteration monies, billback monies, capital monies and guidance to associated positions within the BusinessOperations unit.

Analyzes previous year expenditures for preparation of budgets of approximately $15 million.

Acts in an advisory capacity on matters pertaining to purchasing, budgeting and payroll.

Prepares statistical and narrative reports regarding capital projects which are forwarded to the Assistant VP for Facilities and Services and Controller's office for State Auditor reporting as well as in-house needs. Also prepares statistical reporting as needed for Controller's office, Budget Planning and other departments.

Trains unit personnel on budget and purchasing responsibilities.

Budget signature authority.

Responsible for the coordination of information for all receivables, payable, budget transfers, and

allocations for all funds within Physical Plant. This is to ensure accurate and timely balance information to include necessary computer applications. This will include:

A. Receivables

Responsibilities include processing for payment & subsequent back billing for intra-university departments, WVNET, Foundation, Health & Sciences, Research Cooperation, Alumni Center, Barnes & Noble, Grant monies, General Maintenance requests for some agencies, and other agencies outside the University.

Responsible for monitoring the resulting AR journal for delinquent accounts.

Responsible for knowledge of Physical Plant contracts with outside agencies to determine the extent of billback procedures.

Responsible for establishing contact with office of Finance & Administration, Procurement Services, Accounts Payable, and Facilities Planning and Management in regards to funding and invoice problems.

Responsible for preparation of various summary and graphic reports for external and internal requirements. These include Accountsreceivable Journal, Accounts Receivable Delinquent Report, General Ledger, Minor/Major Alteration reports.

B. Payable

In compliance with departmental and University regulations, audits purchasing requests in regard to accuracy, information, bid requirements, contract information, expedition, etc.; appropriates funding; signs by this position or manager, and forwards to Procurement Services.

Responsible for payment of vendor invoices.

C. Budget Transfers and Allocations

Responsible for tracking all transfers designed for specific purposes to ensure compliance with University regulations in regards to expenditures.

Responsible for ensuring proper notification of receipt of transfers to designated parties within the Physical Plant.

D. Payroll/Work Control

Responsible for the accounting function in regards to payroll, warehouse/inventory, and work control as it applies to budgetary purposes. Responsible for the accounting function in regards to work control as it applies to billing requirements and functions.

Oversees three internal databases calculating the following:
(1) Benefits to include longevity, pension, insurance (PEA), social security, etc. This spreadsheet also contains name, assignment number, title, social security number, building, FTE status, base salary, total salary, monthly salary, and overtime wage. It not only is a payroll, personnel tool, but also a budgetary tool. (2) Information on salary to include regular straight time and overtime wage rates. (3) Information on part-time employees and overtime on all full-time employees.

II. 25 percent of her time

Coordinates the development of accounting systems to ensure accurate and timely processing of all expenditures and revenues. This requires a good working knowledge of the overall flow of information within the receivable/payable cycle; relationships of purchasing, receiving and accounting functions; and an understanding of generally accepted accounting principles and University policies andprocedures including the ability to work with, Excel, Access, dbase3[plus] and Lotus applications. Responsible for recognizing and reporting potential and present problems to immediate supervisor to ensure proper action in the development of procedures and establishment of unit goals.

III. 20 percent of her time

Responsible for supervising and instructing various work-study personnel. this requires ensuring effective work methods and providing subsequent work reviews with the intent of improving each individual[']s abilities and strengthening overall effectiveness of the unit.

Prepares all cash deposits/transactions.

In the absence of the Manager, acts as interim with little or no supervision

8. The position of Accounting Assistant II received 1982 total points from the following degree levels in each of the thirteen point factors: 5.0 in Knowledge; 4.0 in Experience; 3.0 in Complexity and Problem Solving; 3.0 in Freedom of Action; 3.0 in Scope and Effect, Impact of Actions; 2.0 in

Scope and Effect, Nature of Actions; 1.0 in Breadth of Responsibility; 2.0 in Intrasystems Contacts, Nature of Contact;3.0 in Intrasystems Contacts, Level of Contact; 2.0 in External Contacts, Nature of Contact; 2.0 in External Contacts, Level of Contact; 3.0 in Direct Supervision Exercised, Number; 3.0 in Direct Supervision Exercised, Level; 1.0 in Indirect Supervision Exercised, Number; 1.0 in Indirect Supervision Exercised, Level; 2.0 in Physical Coordination; 2.0 in Working Conditions; and 1.0 in Physical Demands.

9. The position of Accountant received 2116 total points from the following degree levels in each of the thirteen point factors: 6.0 in Knowledge; 3.0 in Experience; 3.5 in Complexity and Problem Solving; 3.5 in Freedom of Action; 5.0 in Scope and Effect, Impact of Actions; 3.0 inScope and Effect, Nature of Actions; 1.0 in Breadth of Responsibility; 2.0 in Intrasystems Contacts, Nature of Contact;3.0 in Intrasystems Contacts, Level of Contact; 2.0 in External Contacts, Nature of Contact; 2.0 in External Contacts, Level of Contact; 1.0 in Direct Supervision Exercised, Number; 1.0 in Direct Supervision Exercised, Level; 1.0 in Indirect Supervision Exercised, Number; 1.0 in Indirect Supervision Exercised, Level; 2.0 in Physical Coordination; 2.0 in Working Conditions; and 1.0 in Physical Demands.

Discussion

The burden of proof in misclassification grievances is on the Grievant to prove by a preponderance of the evidence that she is not properly classified. 156 C.S.R. 1 §4.19; W. Va. Code §18-29-6. Burke, et al. v. Bd. of Directors, Fairmont State College, Docket No. 94-MBOD-349 (Aug. 8, 1995). The grievant asserting misclassification must identify the job she feels she is performing. Otherwise the complaint becomes so vague as to defy an adequate rebuttal or analysis. Elkins v. Southern W. Va. Community College, Docket No. 90-BOD-124 (Mar. 4, 1991). A higher education grievant is not likely to meet her burden of proof merely by showing that her job duties better fit one job description than another, because the Mercer classification system does not use “whole job comparison”. The Mercer classification system is largely a “quantitative” system, in which the components of each job are evaluated using the point factor methodology. Therefore, the focus in classification is upon the point factors the grievant is challenging. A grievant may challenge any combination of point factor degree levels, so long as she clearly identifies the point factor degree levels she is challenging, and this challenge is consistent with the relief sought. See Jessen, et al, v. Bd. of Trustees, W. Va. Univ., Docket No. 94-MBOT-1059 (Oct. 26, 1995); and Zara, et al. v. Bd.of

Trustees, W. Va. Univ., Docket No. 94-MBOT-817 (Dec. 12, 1995).

While some “best fit” analysis of the definitions of the degree levels is involved in determining which degree level of a point factor should be assigned, where the position fits in the higher education classified employee hierarchy must also be evaluated. In addition, this system must by statute be uniform across all higher education institutions; therefore, the point factor degree levels are not assigned to the individual, but to the Job Title. W. Va. Code §18B-9-4; Burke, supra.

Finally, whether a grievant is properly classified is almost entirely a factual determination. As such, the JEC's interpretation and explanation of the point factors and Generic Job Descriptions or PIQ's at issue will be given great weight unless clearly erroneous. See Tennant v. Marion Health Care Found., 194 W. Va. 97, 459 S.E.2d 374 (1995). However, no interpretation or construction of a term used in the Job Evaluation Plan (which provides the definitions of point factors and degree levels) is necessary where the language is clear and unambiguous. Watts v. Dept. of Health and Human Resources, 195 W. Va. 430, 465 S.E.2d 887 (1995). The higher education employee challenging her classification thus will have to overcome a substantial obstacle to establish that she is misclassified.

Grievant argues that the duties she currently performs as an Accounting Assistant II, are the same duties she performed while classified as an Accountant on an interim basis; are the same duties performed by Ms. Sypolt when she was classified as an Accountant; and by Ms. Hixenbaugh when the JEC classified the position as an Accountant I during the Mercer reclassification. Grievant asserts that Ms. Sypolt performed all of the duties previously completed by Ms. Hixenbaugh, and had been assigned additional duties with respect to payroll and inventory control. When Grievant assumed the role of Accountant, she became responsible for all the duties of Ms. Sypolt, includingthe supervision of four other employees. Grievant asserts that during the time she was classified as an Accountant, the position changed, requiring that she perform more monitoring of accounts, financial projections, and complex budget work than had previously been required of the position.

Grievant asserts that while classified as an Accountant, she and Ms. Sypolt developed and changed allocated budgets, and she became responsible for working with the new budgets. Also with Ms. Sypolt's assistance, they set up individual accounts for each shop within the Physical Plant and put together individual budget figures for each shop. She was also given more responsibility for preparing projections, and analyzing collections, revenues, and expenditures to be used in budget projections and planning. As an Accountant, Grievant performed audits and worked only with

accounts payable for capital accounts, leaving the Accounting Assistants to perform duties relating to accounts payable from general revenue for repairs and maintenance. Grievant asserts that when a permanent Director of the Physical Plant was appointed, Mr. Walden returned to his position of Assistant Director, Ms. Sypolt became Business Manager II, and she was returned to the position of Accounting Assistant I, because she did not have a four year degree. Grievant claims that upon her reassignment to Accounting Assistant II she retained all the duties and responsibilities she had as an Accountant.

Respondent argues that Grievant is properly classified, and that she does not possess the necessary skills, experience and education to properly perform the duties and responsibilities of an Accountant. Specifically, Grievant does not possess a baccalaureate degree or the requisite experience in Accounting. Addressing the essential functions listed on Grievant's PIQ, Teresa Crawford, member of the JEC and Supervisor of Classification and Compensation at WVU, stated that the ultimate responsibility for the coordination of information for all receivables, payables,budget transfers, and allocations for funds within the Physical Plant lies with Ms. Sypolt. Ms. Crawford found that Grievant processes and monitors accounts and directs information into already- existing reports, while the Business Manager, Ms. Sypolt, is responsible for developing and preparing the reports. Ms. Crawford noted that the coordination and development of accounting systems to insure accurate and timely processing of all expenditures and revenues was the primary reason the position of Accountant was established, but that Grievant is not responsible for this area. Finally, Ms. Crawford stated that while Grievant's position was upgraded to Accounting Assistant II primarily for the lead responsibilities, it is ultimately the Business Manager's duty to supervise and instruct other personnel. Ms. Crawford concluded that Grievant is properly classified because she is not responsible for the development of new accounting systems or analytical work associated with accounting projections.

Grievant's reliance upon the fact that she performs the duties of two employees who were previously classified as Accountants, is misplaced. As noted previously, the Mercer classification system evaluates positions, not individuals. Basing her argument on the classification of others is not dispositive because it is possible that they were misclassified. It is more likely in this instance that a reorganization has taken place at the Physical Plant. Evidence indicates that the position of Business Manager II, currently held by Ms. Sypolt, was not in place prior to the interim assignments. The addition of this position may have eliminated the need for an Accountant. Respondent did not

elaborate on this possibility.

In any event, Grievant does not meet the point factor criteria for classification as Accountant. Relevant point factors will be discussed individually.

1. Knowledge The Job Evaluation Plan (the Plan) defines Knowledge as “the minimum level of education equivalency and/or training typically required for an incumbent to reach acceptable occupational competence on the job. The factor considers the technical, theoretical, and/or mechanical skills required, and the complexity and diversity of the required skills.”

Accounting Assistant II was awarded 5.0 points which requires the employee have a “broad trade knowledge or specific technical or business knowledge received from a formal registered apprentice or vocational training program or obtained through an associate's degree of over 18 months and up to 3 years beyond high school.” Accountant was awarded 6.0 points, requiring “a thorough knowledge of a professional discipline or technical specialty as would normally be acquired through a relevant baccalaureate education program. . . .”

Grievant has an Associates Degree in Applied Sciences and has taken Beginning Accounting 51. It is also accepted that she has gained considerable knowledge from her work experience; however, the evidence does not support a finding that she has a level of expertise provided by the completion of a baccalaureate program.

2. Experience

The Plan defines Experience as “the amount of prior directly related experience required before entering the job. Previous experience or training should not be credited under this factor if credited under Knowledge.”

Accounting Assistant II was awarded a degree level of 4.0, defined by the Plan as “[o]ver two years and up to three years of experience”. Accountant was awarded a degree level of 3.0, defined by the Plan as “[o]ver one year and up to two years of experience”. Grievant testified that her prior work experience consisted of approximately three months in a physician's office, where shedid bookkeeping and worked as a medical technologist. Next, for a period of one or two years, she was employed at the regional office of Lance, Inc., where she balanced accounts, posted receivables, audited accounts, and completed other general business accounting. Working another year or two as a cashier at Fed One [bank], Grievant balanced the cash drawer, opened accounts, and completed a variety of tasks. For the next year or two, Grievant worked at Mountaineer Market, doing inventory

and bookkeeping.

Perhaps Grievant's most relevant experience was gained at Alpha Associates, an architectural firm, where she was employed for seven years. During this period, Grievant worked under the supervision of a Certified Public Accountant preparing budgets and monitoring costs for each project. She also learned how to project cash flows, to determine when a vendor would pay an account, what receivables could be paid, and whether payroll could be covered. Based upon her work, her employers would borrow money as needed. Although Grievant apparently learned a great deal during this time, by her own admission she worked under the supervision of an accountant. On the basis of the information available, it cannot be determined that Grievant has acquired over one year and up to two years of experience as an accountant.

3. Complexity and Problem Solving

The Plan defines Complexity and Problem Solving as “the degree of problem-solving required, types of problems encountered, the difficulty involved in identifying problems and determining an appropriate course of action. Also considered is the extent to which guidelines, standards, and precedents assist or limit the position's ability to solve problems.”

Accounting Assistant II was awarded a degree level of 3.0, defined as:

Problems encountered can be somewhat complex and findingsolutions to problems may require some resourcefulness and originality, but guides, methods and precedents are usually available. Diversified guidelines and procedures must be applied to some work assignments. Employee must exercise judgment to locate and select the most appropriate guidelines, references, and procedures for application, and adapt standard methods to fit variations in existing conditions.

Accountant was awarded a degree level of 3.5. The Plan does not define half-

levels; however, the JEC assigned a degree level of 3.5 when the position duties partially

fell within the 3.0 degree level, and partially fell within the 4.0 degree level.

A degree level of 4.0 was defined as:

Problems encountered are complex and varied due to incomplete and/or conflicting data. General policies, procedures, principles, and theories of specific professional disciplines are available as

guidelines; however, these guides may have gaps in specificity or lack complete applicability to work assignments. Employee must utilize analytical skills in order to interpret policies and procedures, research relevant information, and compare alternative solutions.

The testimony of Grievant and Ms. Sypolt indicates that Grievant may at times engage in assignments which are somewhat complex, requiring that she exercise resourcefulness and originality; however, when the guides are not completely controlling, Grievant relies on Ms. Sypolt. Although the margin is narrow in this instance, it cannot be determined that Grievant is entitled to a degree level of 3.5 in this point factor.

4. Freedom of Action

The Plan defines Freedom of Action as:

the degree to which the position is structured as is determined by the types of control placed on work assignments. Controls are exercised in the was assignments are made, how instructions are given to the employee, how work assignments are checked, and how priorities, deadlines and objectives are set. Controls are exercised throughestablished precedents, policies, procedures, laws and regulations which tend to limit the employee's freedom of action.

Accounting Assistant II was awarded a degree level of 3.0, defined by the Plan as:

Tasks are moderately structured with incumbent working from objectives set by the supervisor. At this level, the employee organizes and carries out most of the work assignments in accordance with standard practices, policies, instructions or previous training. The employee deals with some unusual situations independently.

Accountant was awarded a degree level of 3.5. A degree level of 4.0 was defined

by the Plan as:

Tasks are minimally structured with incumbent working from broad goals set by the supervisor and established institutional policies. The employee and supervisor work together to establish objective, deadlines and projects. The employee, having developed expertise in the line of work, is responsible for planning and carrying out the assignment; resolving most of the conflicts which arise; and coordinating the work with others. The employee keeps the supervisor informed of progress and potentially controversial matters. Completed work is checked only to determine feasibility,

compatibility with other work, or effectiveness in meeting the objectives of the unit.

The essential functions listed on Grievant's PIQ appear to fall squarely within the 3.0 degree level. She organizes and carries out most of her assignments using standard practices, based upon objectives set by her supervisor. Again, while the difference between the degree levels of 3.0 and 3.5 is narrow, the evidence does not establish the lower level to be erroneous.

5. Scope and Effect

The Plan defines Scope and Effect as:

responsibility of the position with regard to the overall mission of the institution, and/or the West Virginia higher education systems as well as the magnitude of any potential erroneous decisions regarding the nature of action should consider the levels within the systems thatcould be affected, as well as impact on the following points of institutional mission: instruction, instructional support, research, public relations, administration, support services, revenue generation, financial and/or asset control, and student advisement and development. In making these judgments, consider how far-reaching is the impact and of what importance to the institution and/or the higher educations systems is the work product, service or assignment. Decisions regarding the impact of actions should taken into account institutional scope and size as reflected by operating budget, student enrollment and institutional classification. Also, consideration should be given for the possibility that a unit, program or department within a large institution may be equivalent in size to multiple units, programs or departments within a smaller institution. In making these interpretations, assume that the incumbent would have normal knowledge, experience and judgment, and that errors are not due to sabotage, mischief or lack of reasonable attention and care.

Scope and Effect consists of two factors, Nature of Action and Impact of Action.

Under Scope and Effect/Nature of Action, Administrative Assistant II was awarded a degree level of 3.0, defined as: “work provides guidance to an operation, program, function or service that affects many employees, students or individuals. Decisions and recommendations made involve non-routine situations within established protocol, guidelines, and/or policies. Errors could easily result in moderate costs and inconveniences within the affected area.”

Accountant was awarded a degree level of 5.0, defined by the Plan as;

Work involves planning, developing, and operation a major program or service having a broad impact

within the institution by solving critical operational problems or developing and/or implementing new procedures and concepts. Work also involves extensive and consequential support, development, or recommendation of major objective, policies, programs or practices. Errors could easily result in major costs, problems and disruptions within the affected area.

In “Scope and Effect/Impact of Actions”, Accounting Assistant II was awarded a degree level of 2.0, defined as “[w]ork affects either an entire work unit or several major activities within adepartment.”

Accountant was awarded a degree level of 3.0, defined as:
Work affects the operations of more than one school or division of a specialized school, branch campus, community college or baccalaureate-level institution with an operating budget of <$13M; a school or division of a graduate or baccalaureate-level institution with an operating budget of $13-$18M; several departments within a graduate or baccalaureate-level institution with an operating budget of more than $50M; or a moderate-size department within a doctoral- level institution with an operating budget of more than $200M.

Grievant has been placed in appropriate degree levels for both Nature and Impact of Action because her work provides guidance to the Physical Plant, but does not involve planning, developing, and operating a major program or service having a broad impact within the institution. The evidence of record does not support a finding that Grievant's duties are more closely defined by the higher degree levels. (See footnote 2)

In addition to the foregoing findings of fact and discussion it is appropriate to make the following conclusions of law.

Conclusions of Law

1. The governing boards are required by W. Va. Code §18B-9-4 to establish and maintain an equitable system of job classifications for all classified employees in higher education.

2. The burden of proof in a misclassification grievance is on the grievant to prove by a preponderance of the evidence that she is not properly classified. 156 C.S.R. 1 §4.17. The grievant asserting misclassification must identify the job she feels she is performing. Otherwise, thecomplaint becomes to vague as to defy an adequate rebuttal or analysis. Elkins v. Southern W. Va. Community College, Docket No. 90-BOD-124 (Mar. 4, 1991). A higher education grievant should also identify the

point factors she is challenging; otherwise, her challenge will be limited to those point factors where the degree level assigned to the Job Title sought differs from the degree level assigned to grievant's Job Title. Campbell-Turner, et al., v. Bd. of Trustees, Marshall Univ., Docket No. 94-MBOT-1035 (Jan. 31, 1996).

3. The Job Evaluation Committee's interpretation and explanation of point factors will be given great weight unless clearly wrong, where the proper classification of a grievant is almost entirely a factual determination. See Tennant v. Marion Health Care Found., 194 W. Va. 97, 459 S.E.2d 374 (1995); Burke, et al., v. Bd. of Directors, Fairmont State College, Docket No. 94-MBOD- 349 (Aug. 8, 1995).

4. A higher education employee must demonstrate that her duties have changed in a meaningful, identifiable manner in order to pursue a grievance over her classification. Rush v. Bd. of Directors, Fairmont State College, Docket No. 97-BOD-369 (Apr. 3, 1998).

5. Respondent's decision that Grievant is an Accounting Assistant II, pay grade 14, is not clearly wrong or arbitrary and capricious.

Accordingly, the grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Monongalia County and such appeal must be filed within thirty (30) days of receipt of this decision. W.Va. Code §18-29-7. 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 thecivil action number so that the record can be prepared and transmitted to the appropriate Court.

Date: June 17, 1998 _____

SUE KELLER

SENIOR ADMINISTRATIVE LAW JUDGE

Footnote: 1

NACUBO is not further identified in the record.

Footnote: 2

Accounting Assistant II was awarded degree levels of 3.0 in Direct Supervision Exercised/Level of Supervision and Number of Direct Subordinates. Because Accountant was awarded degree levels of 1.0 in both factors, further discussion

of this point factor is unnecessary.