

Issue: Qualification/misapplication or unfair application of policy/classification; Ruling Date: August 14, 2006; Ruling #2006-1325; Agency: University of Virginia; Outcome: not qualified. **Appealed to Ablemarle County Circuit Court**



*COMMONWEALTH of VIRGINIA*  
*Department of Employment Dispute Resolution*

QUALIFICATION RULING OF DIRECTOR

In the matter of the University of Virginia  
No. 2006-1325  
August 14, 2006

The grievant has requested a ruling on whether her January 5, 2006 grievance with the University of Virginia (UVA or the university) qualifies for a hearing. The grievant claims that the university has misapplied or unfairly applied state policy by failing to reclassify her position from pay band 3 to 4. She contends that she should be classified and paid at a rate comparable to other deans' assistants. For the reasons discussed below, this grievance does not qualify for a hearing.

FACTS

The grievant was hired by UVA's Law School in August of 2001 into a pay band 3 position, currently described on the Law School's Organization Chart as the "Dean's Secretarial Assistant." The working title of the grievant's position as listed on the grievant's Employee Work Profile (EWP) is "Dean's Confidential Assistant," and the role title is "Admin & Office Spec III." According to the grievant's EWP, the purpose of her position is to "Maintain the Dean's schedule, provide administration assistance, provide reception services, act as faculty information coordinator and as confidential assistant." The Education, Experience, Licensure, and/or Certification requirements for the grievant's position lists: "High School Education/Prefer bachelor's degree." The grievant has received two In-Band Pay Adjustments since her hire.

The grievant asserts that "other deans' assistants are all pay band 4," and questions "Why is the assistant to the dean at the Law School not consistent with the other positions?"<sup>1</sup> She states that her responsibilities "compare favorably to the jobs of other deans' assistants."<sup>2</sup> In particular, she points to an individual who serves as the "Assistant to the Dean"<sup>3</sup> to the Dean of the Business School. She asserts that this individual holds a job description that is comparable to hers but is paid more than the grievant.<sup>4</sup>

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<sup>1</sup> March 22, 2006 correspondence to EDR Human Resources.

<sup>2</sup> January 17, 2006 memo captioned: "Re: Grievance dated January 5, 2006."

<sup>3</sup> Working title description from employee's EWP. The role title for this position is "General Administration Supervisor I/Coordinator I."

<sup>4</sup> March 22, 2006 correspondence to "EDR Human Resources."

The grievant also implies that her work load and job responsibilities are generally comparable to two other pay band 4 employees who also report to the Law School Dean.<sup>5</sup> Finally, the grievant also notes that she has received an “extraordinary contributor” rating on her annual performance evaluations two years in a row.<sup>6</sup>

The university, on the other hand, asserts that the grievant’s position is not comparable to her coworkers or the top positions in other deans’ offices at UVA.<sup>7</sup> The grievant’s supervisor, the Dean, states that:

[the grievant’s] job as secretarial assistant to the dean is not the top classified position in this office. On the contrary, [grievant] holds a position that is, and always has been, defined as secondary. She is not responsible for the most sensitive issues that arise in this office, nor does she handle significant issues independently.<sup>8</sup>

The university’s human resource office examined the grievant’s pay disparity claim and concluded that she was properly classified.

## DISCUSSION

### *Classification*

By statute and under the grievance procedure, complaints relating solely to the establishment and revision of salaries and position classifications “shall not proceed to hearing”<sup>9</sup> unless there is sufficient evidence of discrimination, retaliation, unwarranted discipline, or a misapplication or unfair application of policy. In this case, the grievant claims that her classification in a pay band 3 position is a misapplication or unfair application of policy because, she asserts, she performs the work of a pay band 4 employee.

For the grievant’s claim to qualify for a hearing, there must be evidence raising a sufficient question as to whether management violated a mandatory policy or whether the challenged action, in its totality, is so unfair as to amount to a disregard of the intent of the applicable policy. The General Assembly has recognized that the Commonwealth’s system of personnel administration should be “based on merit principles and objective methods” of decision-making.<sup>10</sup> In addition, the Commonwealth’s classification plan “shall provide for the grouping of all positions in classes based upon the respective

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<sup>5</sup> January 17, 2006 memo captioned: “Re: Grievance dated January 5, 2006.”

<sup>6</sup> March 22, 2006 correspondence to “EDR Human Resources.” *See also* March 7, 2006, correspondence to UVA President.

<sup>7</sup> *See* January 10, 2006 response to grievance from immediate supervisor, Dean of Law School ; *See also* February 15, 2006 response to grievance from Vice President and Provost.

<sup>8</sup> January 10, 2006 response to grievance from immediate supervisor.

<sup>9</sup> Va. Code § 2.2-3004(C).

<sup>10</sup> Va. Code § 2.2-2900.

duties, authority, and responsibilities,” with each position “allocated to the appropriate class title.”<sup>11</sup>

The above statutes evince a policy that would require state agencies and institutions to allocate positions having substantially the same duties and responsibilities to the same role. Importantly, the grievance procedure accords much deference to management’s exercise of judgment, including management’s assessment of the degree of change, if any, in the job duties of a position. Accordingly, this Department has long held that a hearing officer may not substitute his or her judgment for that of management regarding the correct classification of a position.<sup>12</sup> Thus, a grievance that challenges the substance of a university’s assessment of a position’s job duties does not qualify for a hearing, unless there is sufficient evidence that the resulting determination was plainly inconsistent with other similar decisions within the university or that the assessment was otherwise arbitrary or capricious.<sup>13</sup>

### *I. The Grievant’s Coworkers as Comparators*

As noted above, the grievant asserts that her position should be classified as a pay band 4 position, as are the positions held by her coworkers in the Dean’s office.

#### *A. The Officer Manager*

The university explains that the grievant’s position is not comparable to her coworkers. The Dean explains that the level of work performed by the grievant is not the same as that carried out by the Officer Manager. He explains:

The Law School Dean’s Office functions with two support positions. The senior position is the Office Manager (currently Pay Band 4, position C1914, incumbent [ ]), and the junior position is the receptionist and secretarial assistant (Administrative and Office Specialist III, Pay Band 3, position C0253, incumbent [the grievant]). The duties and responsibilities of these positions are not comparable. The Office Manager (Position C1914) discharges the high level duties recognized in the University’s 1995 designation of one such primary position in each Deans’ Office . . . It is [C1914], not [the grievant], who is the Law School’s administrative support for faculty recruitment, tenure reviews, promotions, sensitive personnel matters, highly confidential documentation, and the like. It is [C1914], not [the grievant], who works independently with faculty to coordinate appointments and tenure deliberations. [The grievant’s] position is and always has been a support position requiring lesser skill

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<sup>11</sup> Va. Code § 2.2-103(B)(1).

<sup>12</sup> See EDR Ruling No. 2001-062 (July 18, 2001).

<sup>13</sup> See *Grievance Procedure Manual* § 9. Arbitrary or capricious is defined as a decision made “[i]n disregard of the facts or without a reasoned basis.”

and having lesser responsibility. She is the primary receptionist in the Dean's office and handles the Dean's correspondence.<sup>14</sup>

In response, the grievant appears to challenge the Dean's conclusions regarding the level of the work she performs. She states that the "assertion that I make 'no independent' decisions is a far cry from reality."<sup>15</sup> She also adds that she believes part of the problem is that the Dean is not aware of what she does or the "many issues that arise and that are taken care of by me independently."<sup>16</sup>

First, we note that in his January 10, 2006 response to the grievance, the Dean did not state that the grievant makes "no independent" decisions. Rather, he stated "nor does she handle *significant* issues independently."<sup>17</sup> Thus, he appears to recognize that while the grievant may indeed exercise independent judgment regarding certain tasks, those tasks are not at the same level of significance as the Office Manager's. Generally speaking, immediate supervisors are well positioned to know the nature and level of work performed by their subordinates. While the grievant appears to disagree with the Dean's assessment, there is insufficient evidence that his characterization of the level of the duties performed independently by the grievant was arbitrary or capricious or clearly erroneous.

As to the grievant's contention that her supervisor is not aware of much of the work that she does, this Department cannot conclude that he or the university lacks this understanding. As noted above, immediate supervisors are typically aware of the work done by subordinates. In response to her grievance, the Dean reviewed her responsibilities and provided a reasonable assessment, one that was consistent with the classification review conducted by the university's Assistant Director of Classification and Compensation. Again, this Department cannot substitute its judgment for that of management absent evidence that the classification was arbitrary or plainly erroneous.

#### B. Special Events Coordinator

The grievant compares herself to an individual hired to independently arrange special events, and work individually with new and visiting faculty as well as special guests. The Dean notes that position is an entirely different position from that held by the grievant. The Dean describes the Events Coordinator's position as follows:

[The] position was created in 1998 with a high level of duties and responsibilities involving services and for new and visiting faculty, planning and management of special events, and program support functions for both academic and administrative activities. [The Special Events Coordinator] works independently with faculty, is directly

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<sup>14</sup> January 10, 2006 response to grievance from immediate supervisor.

<sup>15</sup> January 17, 2006 memo captioned: "Re: Grievance dated January 5, 2006."

<sup>16</sup> *Id.*

<sup>17</sup> Emphasis added.

responsible for multiple events every year, handles related financial issues, and coordinates complex and growing programs involving international and other visitors and special guests.<sup>18</sup>

The Dean concludes that the “[Special Events Coordinator’s] duties are in no way comparable to those of [the grievant.]”<sup>19</sup>

We cannot conclude that the Dean’s determination that the grievant’s duties are in no way comparable to the Special Events Coordinator is arbitrary or erroneous. While work performed by both is undoubtedly viewed as important and valued by the Dean and university, the positions are quite different: the grievant’s position is essentially that of a secretary and the Special Events Coordinator is exactly that: a special events coordinator. Because the duties of these positions are so different, they cannot be viewed as comparable positions.<sup>20</sup>

## *II. Other Deans’ Assistants as Comparators*

The grievant asserts that the level of work she performs compares favorably to the work carried out by deans’ assistants at other schools within the university. In particular, she cites to the dean’s assistant at the Business School. When the EWP for this position is compared to the grievant’s, some common features emerge.<sup>21</sup> However, as noted above, the Law School Dean distinguishes the grievant’s position from that of the other dean’s assistant positions, noting that the grievant’s “job as secretarial assistant to the dean is not the top classified position in th[e] office.”<sup>22</sup> He states that “[o]n the contrary, [the grievant] holds a position that is, and always has been, defined as secondary.”<sup>23</sup> The grievant has provided no evidence to refute the Dean’s characterization of her position as a secondary support position, and although the two EWPs are similar in some regards, the fact that the grievant’s position is the ‘junior’ position in the office supports the classification distinction drawn by the university.

The grievant provided this Department with copy of the role description for a “General Administration Supervisor I/Coordinator I,” a pay band 4, which describes the role as follows: “this track is for administrative specialists who provide administrative support for program areas or an administrator.”<sup>24</sup> While the grievant clearly provides administrative support for an administrator, the role description for Administrative and

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<sup>18</sup> January 10, 2006 response to grievance from immediate supervisor.

<sup>19</sup> *Id.*

<sup>20</sup> *Compare* above description of Special Events Coordinator with duties from grievant’s EWP: “Maintain Dean’s schedule, provide administration assistance, provide reception services, act as faculty information coordinator and as confidential assistant.”

<sup>21</sup> For example, both require the ability to work independently and both list as duties maintaining the respective deans’ schedules.

<sup>22</sup> January 10, 2006 response to grievance from immediate supervisor.

<sup>23</sup> *Id.*

<sup>24</sup> General Administration Supervisor I/Coordinator I role description.

Office Specialist III, (the grievant's role), seems to be equally if not more apt in this case. It states that this

role provides career tracks for operational and administrative support specialists, such as . . . executive secretaries, administrative assistants, [whose] [d]uties range from journey-level to supervisory level and may include compliance assurance, report writing, reconciliation of information or financial data, records management, scheduling, claims review and processing, data collection and analysis, research, inventory, budget management, personnel administration, and funds collections or expenditures.<sup>25</sup>

The role of General Administration Supervisor I/Coordinator I shares some similarities with the role of Administrative and Office Specialist III.<sup>26</sup> However, we find it significant that the working title of "executive secretar[y]," the previous classification of the grievant's position, falls under the Administrative and Office Specialist III role, the grievant's current role. In addition, the university's Assistant Director of Classification

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<sup>25</sup> Administrative and Office Specialist III role description, (emphasis added).

<sup>26</sup> Compare, for example, the complexity of the role of Administrative and Office Specialist III with General Administration Supervisor I/Coordinator I:

*Administrative and Office Specialist III:*

- Acts as a specialist in assigned program area, performing the most complex technical duties, such as reviewing and processing claims from vendors, contractors, medical providers and others for reimbursement or other actions under various programs.
- Performs, leads, or supervises a wide variety of moderate to complex program and operational support duties.
- Applies knowledge of programmatic and administrative requirements.
- Applies knowledge of applicable computer software/programs.
- Frequent contacts include internal and external customers to gather information or provide information.
- May serve as a subject matter expert.
- Certification in program area may be preferred.

*General Administration Supervisor I/Coordinator I:*

- Plans and coordinates business management or administrative and support services.
- May supervise administrative activities related to fiscal management, human resources, procurement and other administrative activities.
- May serve as a specialist responsible for gathering facts, analyzing findings, reaching logical conclusions, recommending solutions and coordinating confidential or highly sensitive projects.
- Applies knowledge of programs, operations, and administrative policies and procedures.
- Frequent contacts with management and staff, general public, boards, and government officials to plan and/or coordinate activities and to serve as a resource person on administrative policies and procedures.

and Compensation reviewed the grievant's EWP and determined that the grievant's position, as written, was classified appropriately, likewise noting that the grievant's position "was analogous to the prior classification of "executive secretary," a pay band 3 position.

Finally, we note that grievant does not assert that she has been the victim of any sort of improper motive such as retaliation or discrimination. To the contrary, as the grievant has repeatedly observed, she has received "Extraordinary Contributor" annual performance ratings for the past two years from the Dean, who last year noted that the grievant "performs well in all aspects of her job."<sup>27</sup> In addition, the grievant's position was upgraded under the prior classification system in recognition of the addition of scheduling and document maintenance responsibilities, and she has been provided with two in band pay increases. Thus, the grievant has presented no evidence that any sort of animus has tainted the classification process. In sum, the grievant has not provided sufficient evidence to warrant further development of the classification issue at hearing.

#### APPEAL RIGHTS AND OTHER INFORMATION

For information regarding the actions the grievant may take as a result of this ruling, please refer to the enclosed sheet. If the grievant wishes to appeal the qualification determination to the circuit court, the grievant should notify the human resources office, in writing, within five workdays of receipt of this ruling. If the court should qualify this grievance, within five workdays of receipt of the court's decision, the university will request the appointment of a hearing officer unless the grievant wishes to conclude the grievance and notifies the university of that desire.

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Claudia T. Farr  
Director

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<sup>27</sup> Grievant's Annual Performance Evaluation, signed by immediate supervisor on September 20, 2005.