

DEPARTMENTAL GRANT APPEALS BOARD

The Department of Health, Education, and Welfare

SUBJECT: Adelphi University
Docket No. 75-20
Decision No. 39

DATE: SEP 27 1977

DECISION

Adelphi University, Grantee, appeals from a determination by the Director, Grant and Procurement Management Division, Office of Education, Department of Health, Education, and Welfare, (the "Director") disallowing a salary expenditure and demanding a refund.

On March 20, 1972, Grantee was awarded a grant to conduct a National Training Center under authority of P.L. 91-257. On the same date it detailed an employee (who desires that her identity not be disclosed in these proceedings) then earning a salary of \$7,276 per annum as secretary to the head of one of the University departments, to a full time position as administrative assistant to the grant Project Director, at an annual salary of \$13,500.

Upon audit, the HEW Audit Agency recommended a "financial adjustment" to the extent that the employee's new salary exceeded her salary in her last previous position (\$6,224.00) on the ground that the new salary was unreasonable and not in conformity with the consistently applied policies of Adelphi University. This sum was reduced by Department officials to \$5,149.00 by the addition to the amount recommended for disallowance of 9% (\$425.00) for allocable indirect costs and its reduction by \$1,500.00, the amount considered a permissible salary increase in accordance with University practices. Grantee appeals from the determination disallowing this expenditure of \$5,149.

Under "Principles for Determining Costs Applicable to Grants and Contracts with Educational Institutions," Federal Management Circular (FMC) No. 73-8 (formerly OMB Circular A-21), paragraph J.7.a, relating to compensation for personal services, provides:

"...The costs of such remuneration are allowable to the extent that the total compensation to individual employees is reasonable for the services rendered and conforms to the established policies of the institution, consistently applied..." (emphasis supplied).

This provision does not appear to have been published in the Federal Register prior to the date of the transaction which gave rise to these proceedings, but the Grant Notification Award makes applicable to the grantee herein Grant Terms and Conditions, OE Form 5241. That Form, in turn, declares that allowability of costs pursuant thereto shall be determined under Exhibit X-2-65-1 of the Department of Health, Education, and Welfare Grants Administration Manual which incorporates practically the entire content of OMB Circular A-21. Thus, we have here a sufficient showing of actual notice to the grantee of the pertinent limitations upon allowability of costs. Whether such actual notice would constitute an adequate substitute for the publication requirement under the Pucinski Amendment, 20 U.S.C. §1232(b) (1) (Supp. V, 1975), would require our careful consideration. But in light of the view we take of the matter before us on its merits, we do not reach this question.

It is the position of the Director that the increase in the employee's salary from \$7,276 to \$13,500 upon promotion from her secretarial position under a departmental chairman in the University to that of administrative assistant to the grant Project Director represents an increase of 85%. This, together with the fact that the increase coincided with the effective date of the grant establishes, in the view of the Government, the unreasonableness of the new compensation, especially since in the Government's view, the employee's duties upon promotion were not significantly different from those in her previous, secretarial position.

As far as the requirement of conformity with the University's established practices is concerned the Director points out that prior to the effective date of the grant and the promotion of the employee, annual increases for change in an employee's duties or responsibilities were limited to \$1,500, and that the maximum annual increases subsequent to that date to secretarial, clerical and technical employees were in the amount of \$1,000.00. Consequently, he contends that the much greater increase involved herein must clearly be deemed to be in non-conformity with the University's consistently applied standards.

The prima facie impressiveness of these arguments notwithstanding, we do not think that they are determinative upon the ultimate issue. Whether the Regulation relied upon by the Director supports the disallowance herein must in the final analysis depend on the answer to the question whether the employee's duties in her new position are shown to be significantly broader and more demanding than those performed by her while in the employ of the University. The Regulation itself explicitly recognizes the link between compensation and "services rendered" in weighing reasonableness or, by necessary inference, in testing the conformity of such compensation to "consistently applied" University standards. There are no obstacles in the way of reaching this issue since both parties to this proceeding agree, perhaps with some reluctance, that the formal change in the title of the employee's position from secretary to administrative assistant upon her transfer to the grant project is not conclusive upon the ultimate issue - "Titles do not determine level of responsibility" - and that the mere fact that the employee had been receiving a considerably lesser remuneration while secretary to a chairman of a University department is not dispositive upon the question of reasonableness of the increased salary in her new position.

Little if anything would be gained by examining the evidence bearing on the decisive issue in the framework of rules governing burden of proof, i.e., whether the language in the Regulation declaring costs of remuneration allowable "to the extent" that the compensation is reasonable, etc., renders reasonableness a condition precedent for entitlement, with a burden upon the grantee to carry the burden of proof concerning this fact as upon any issuable fact that must be affirmatively shown, or whether the burden be deemed that of the Government to show the unreasonableness of the compensation charges to the grant. As we perceive the facts, the Director has made no showing that the employee's higher salary was unreasonable or not in conformity with established University practice in relation to the services rendered by her.

Affirmatively, the record contains uncontradicted and unchallenged evidence that in her position with the grant project the employee performed numerous duties not expected of a secretary. These included acting for the project director and responsibility for conducting and implementing all matters of the Institute (i.e. the National Training Center), acting as spokesperson for the program, maintaining liaison

with the grant authorities and Adelphi University and meeting with their representatives, accounting and bookkeeping, data gathering and report writing, scheduling for training teams, distributing and coordinating assignments, determining priorities and supervising work assignments, resolving problems and grievances, scheduling vacations and compensatory time, designing and maintaining records including records of financial transactions (overall budget, travel and transportation advances, payment of invoices, quarterly reports, consultation payments) and coordination of fiscal affairs. While the record contains no direct evidence as to what the employee did in her former capacity as secretary, her job description for her secretarial position bears no resemblance to the variety or scope of the manifold activities she is said to have routinely carried out since her transfer to the National Training Center Project under the grant. Since her promotion was what professional personnel experts refer to as vertical rather than horizontal, - See, O. Glenn Stahl, Public Personnel Administration, (6th ed.) p. 152, - the University standards, invoked by the director, for increases in compensation upon promotion to a higher grade or a position on the same level, are without relevance.

The foregoing facts are attested to by the Vice President for Administration and Planning and Treasurer of Adelphi University responsible for various functions, including personnel and budget, who represents himself as familiar with such matters not only at Adelphi University, but at other educational institutions as well, and by the project director who obviously possesses direct and frequent opportunity to observe and evaluate the employee. The qualifications possessed by these individuals render the record evidence concerning the employee's duties credible as well as persuasive. On the other hand, the record does not recite the qualifications of HEW Audit personnel in the area of personnel administration, and their statements on this issue are confined to unsupported, general opinions. We add that the specific evidence concerning the employee's duties and responsibilities lends support to the grantee's assertion that, while titled an administrative assistant, the employee's actual duties more properly are those of Director of Administration, Assistant Program Director for Administration or Assistant to the Director for Management which, when analogized to cited positions at Adelphi University, would merit salaries in the range of \$16,605 to \$18,200.

A comparison of the range of the employee's position requirements and activities with U.S. Position Classification Standards strongly indicates a resemblance to the position of Administrative Officer for whom the compensation spread is GS-9 - 15 (\$14,097 - 43,923). Such officer is described as a "Generalist." He is said to aid "the operating manager and subordinate operating officials in getting things done through his knowledge of and skills in dealing with organization, methods, funds, equipment and other tools and resources of management. Ordinarily he has a responsible role in the management of both financial and human resources because of his immediate relationship to the operating manager." See, U. S. Civil Service Commission, Administrative Officer Series GS-341, TS 63, August 1966.

There is additional material in the file which seems to be inconsistent with the Director's position. It appears that prior to the award of the grant herein, and at the request of the grant officials, grantee submitted a Grant Proposal and Table of Organization together with a statement of approximate cost for personnel. The Table of Organization provided for two Administrative Assistants to be compensated at \$15,700 for one and \$8,000 for the other, and for one Administrative Secretary at a salary of \$9,500.

Since it has proved impossible to fill the position of the senior Administrative Assistant notwithstanding considerable effort, all three positions have been redesigned and the employee involved herein was employed on a trial basis. She soon established her high competence to the full satisfaction of her supervisor. By redesigning the three positions an annual saving of \$4,200 was effected.

From the foregoing it is reasonable to conclude that the Government had been put on notice that, in addition to the project director, the project required the services of one whose annual compensation was to be \$15,700. The grant officials did not question this proposal, and the record does not disclose any criticism of the incumbent, or evidence of dereliction in her performance in the position of Administrative Assistant. Having agreed to the need of employing an administrative assistant at \$15,700 per annum it seems inconsistent for the Director to question, for unreasonableness, compensation at the rate of \$13,500 to the incumbent unless it be for the

mere reason that her earnings in the immediately previous position were considerably less, a position which the Director has expressly stated to be invalid.

For the reasons stated we sustain the appeal and set aside the Determination of disallowance in the amount of \$5,149.

/s/ Stuart H. Clarke

/s/ Thomas Malone

/s/ Irving Wilner, Panel Chairman