

VERMONT LABOR RELATIONS BOARD

APPEAL OF:

LESLIE DEGREENIA and
ROBERT LEWIS

)
)
)
)

DOCKET NO. 88-8

MEMORANDUM AND ORDER

This matter is before the Labor Relations Board as a consolidated appeal from a classification decision of the Commissioner of Personnel pursuant to Article 19 of the collective bargaining agreement between the State of Vermont and the Vermont State Employees' Association ("VSEA") for the Non-Management Unit, effective for the period July 1, 1986 to June 30, 1988 ("Contract").

In February 1987, Leslie DeGreenia and Robert Lewis ("Appellants"), both Maintenance Mechanics A (Pay Grade 12) for the State Buildings Department and stationed at the St. Johnsbury Correctional Facility, filed for a classification review. Appellants requested that their positions be classified as Maintenance Mechanic B (Pay Grade 15). Upon review, the Department of Personnel determined that the positions were properly classified as Maintenance Mechanic A.

Appellants filed a grievance concerning that decision pursuant to Article 19 of the Contract for review by a classification board. The classification board recommended that the positions should be Pay Grade 13 and assigned to a separate class. On January 22, 1988, Jay Wisner, Acting Commissioner of Personnel, rejected the classification board's recommendations and determined that the positions occupied by Appellants should remain in the Maintenance Mechanic A class.

On February 17, 1988, VSEA filed an appeal with the Board on behalf of Appellants, contending that the decision of the Commissioner of Personnel was arbitrary and capricious in violation of Article 19 of the Contract. On April 21, Appellants filed the whole record of the proceeding before the classification board and the decision of the Commissioner of Personnel. Appellants also filed a brief in support of their position. The State filed a brief in support of its position on April 28.

This being the first classification appeal under the revised contractual language, there was an initial question raised as to whether the Board would take evidence in these matters. The Board concluded that, given the Contract's provision that hearings before the Board would not be de novo, it would take no evidence. Oral argument was held on May 26, 1988, before Board Members Dinah Yessne, Acting Chair; William Kemsley, Sr.; and Catherine Frank. Assistant Attorney General Michael Seibert represented the State. Michael Zimmerman, VSEA Staff Attorney, represented Appellants.

Appellants contend that the Commissioner's decision is arbitrary and capricious 1) insofar as it is based on principles other than applying the point factor system; and 2) in applying the point factor analysis.

This is the first case we have decided under the revised procedures negotiated by the parties for handling classification disputes, so at the outset we note that our scope of review in such cases is extremely limited. Article 19, Section 9 of the Contract provides in pertinent part:

An employee aggrieved by an adverse decision of the Commissioner of Personnel may have that decision reviewed by the Vermont Labor Relations Board on the basis of whether the decision was arbitrary and capricious in applying the point factor system utilized by the State to the facts established by the entire record. Any appeal to the Board shall be filed within 30 days of receipt of the Commissioner's decision, or the right to appeal shall be waived. The Board shall not conduct a de novo hearing, but shall base its decision on the whole record of the proceeding before the classification panel and the decision of the Commissioner of Personnel. The VLRB's authority hereunder shall be to review the decision(s) of the Commissioner of Personnel, and nothing herein empowers the Board to substitute its own judgment regarding the proper classification or assignment of position(s) to a pay scale/grade. If the VLRB determines that the decision of the Commissioner of Personnel is arbitrary and capricious, it shall state the reasons for that finding and remand to the Commissioner for appropriate action.

The "arbitrary and capricious" standard for the Board's scope of review means that the Board is contractually obligated to give substantial deference to the Commissioner's decision. An "arbitrary" decision is one fixed or arrived at through an exercise of will or by caprice, without consideration or adjustment with reference to principles, circumstances or significance. Lewandoski and the VSCFF v. Vermont State Colleges, 142 Vt. 446 (1983). "Capricious" is an action characterized by or subject to whim (The American Heritage Dictionary, New College Edition, Houghton Mifflin Co., 1979).

We first address Appellants' claim that the Commissioner's decision was arbitrary and capricious insofar as it was based on principles other than applying the point factor system. Appellants contend that the Commissioner based his decision in large part on advice he received from the Commissioner of the Buildings Department on issues extraneous to an analysis of the point factor system. The State contends that the Board lacks jurisdiction to consider matters extraneous to the Commissioner's use of the point factor system and that,

in any event, it is well within the Commissioner's authority to consider factors beyond the point factor system in reaching a classification decision.

We agree with Appellants that the Commissioner of Personnel acts in an arbitrary and capricious manner by basing a classification decision on factors other than the point factor system.

A review of statutory and contractual provisions makes it clear that classification decisions must be based solely on applying the point factor system. 3 VSA §310(a) provides in pertinent part:

(a) The department of personnel shall adopt a uniform and equitable plan of classification for each position within state service... For purposes of internal position alignment and assignment of positions to salary ranges, the plan shall be based upon a point factor comparison method of job evaluation. As used in this section, "point factor comparison method" means a system under which positions are assigned to salary ranges based on a scale of values against which job evaluations of individual positions are compared.

Article 19 of the Contract reinforces the statutory provision for the exclusivity of the point factor system. Employees have the burden of establishing that the classification decision complained of "is clearly erroneous under the standards provided by the point factor analysis system utilized by the Department of Personnel". Article 19, Section 7. The classification board must base its decision and recommendations on "existing standards established under the point factor system utilized by the Department of Personnel". Article 19, Section 6. If an employee is dissatisfied with the Commissioner's refusal to accept the classification board's decision, he must convince this Board that the Commissioner's "decision was arbitrary and capricious in applying the point factor system utilized by the State to the facts established by the entire record". Article 19, Section 9.

Thus, it is clear that the application of the point factor system is all that may be considered by the classification board, the Commissioner and this Board. To conclude otherwise would render the point factor system meaningless and clearly frustrate the legislative intent for a "uniform and equitable plan of classification". 3 VSA §310(a).

However, it is evident by a review of the Commissioner's decision that his rejection of the classification board's recommendation was not based upon considerations outside the point factor system, but a result of his careful application of the point factor system. It is apparent that any reliance he placed upon input from the Buildings Department Commissioner was part and parcel of this point factor analysis.

We turn to addressing Appellants' further contention that the Commissioner's decision was arbitrary and capricious in applying the point factor analysis. Appellants raise various issues in this respect. We will discuss each in turn.

First, Appellants contend that the Commissioner's decision in disagreeing with the classification board by assigning fewer points to the category of accountability was arbitrary and capricious, given that the Department of Personnel's representative at the classification board hearings represented to the board that he would not oppose the assignment of points to "accountability" ultimately agreed upon by the board. In reaching his own independent classification decision, the Commissioner was not compelled to concur with earlier non-binding representations made by Department of Personnel staff. The rejection of staff decisions does not meet the strict "arbitrary and capricious" test.

Appellants further question the merits of the Commissioner's rationale for rejecting the classification board's assignment of points to "accountability" because it was based on information concerning the dollar impact of the position that was never presented to the classification board. We conclude that it was not arbitrary or capricious for the Commissioner to address the issue of dollar impact. It is one of the legitimate areas of inquiry in analyzing "accountability" under the point factor system and, accordingly, the decision was arrived at in consideration of applicable principles and was not an act of whim.

Appellants next contend that the Commissioner's decision was arbitrary and capricious in assigning less points to the category of "working conditions" than did the classification board. As support for their position, Appellants are critical of the Commissioner's decision not containing a point-by-point rebuttal of the classification board's decision and contend that the Commissioner engaged in speculation when addressing the question of the absence of a correctional officer for protection of Appellants when they were working around inmates.

Again, we find no arbitrary and capricious action. The Contract provides that the Commissioner "shall provide written reasons for his/her decision" when disagreeing with the recommendations of a classification review panel. This contractual requirement falls well short of obligating the Commissioner to engage in a point-by-point rebuttal of the panel's recommendation. A review of the Commissioner's decision indicates he provided adequate written justification for his disagreement with the classification board.

1

We also find no contractual violation with respect to the Commissioner's treatment of the question of the absence of a correctional officer for protection of Appellants. Work among inmates in a correctional facility presents definite hazards to employees which must be recognized in any analysis under the point factor system. However, in commenting that the "perceived level of hazards may not be sufficient to prompt frequent requests for protection", the Commissioner evidently was offering his opinion based on the entire record and was not engaging in unwarranted speculation.

In sum, we conclude that the Commissioner's decision was not arbitrary and capricious because it was based upon applicable classification principles. He simply disagreed with the views of the classification board in applying these classification principles, which was well within his contractual rights. We would expect that, the Department of Personnel having trained the classification boards, the Commissioner would accord the views of classification boards the utmost respect. However, rational disagreement with the panel's views, based on applicable classification principles, does not indicate arbitrary and capricious action.

Finally, we would like to comment on the State's view of the appropriate role of a classification board because, while we need not do so to decide this case, the State's view indicates an inaccurate perception of the classification board's role pursuant to the Contract. The State contends that the classification board exceeded its authority by recommending that the Commissioner create a separate class for the positions occupied by Appellants. The State contends that the classification board's role pursuant to the Contract is

limited to determining whether a position is placed in the proper class and/or whether the class is assigned to the proper pay grade.

Article 19, Section 6 of the Contract provides in pertinent part as follows:

The written decision and recommendations of any classification board... shall be based on findings that the position or positions in question are or are not properly allocated to class and/or the class properly assigned to pay grade according to existing standards established under the point factor system utilized by the Department of Personnel. The written decision and recommendations of the classifications board(s) shall be forwarded to the Commissioner of Personnel for final action... To the extent that the action taken by the Commissioner differs in either class title or pay grade from the recommendations of the classification board, the Commissioner shall provide written reasons for his/her decision.


Pursuant to this contract language, we conclude a classification board does not exceed its authority when it recommends that the Commissioner create a separate class. Such a recommendation is a logical conclusion under the Contract when a classification board concludes that a position is "not properly allocated to class" and there is no existing class into which to place the position.

ORDER

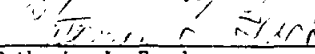
Now therefore, based on the foregoing reasons, it is hereby ORDERED the Appeal of Leslie DeGreenia and Robert Lewis is DISMISSED.

Dated this 2nd day of September, 1988, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD


Dinah Yessne, Acting Chair


William G. Kemsley, Sr.


Catherine L. Frank