

VERMONT LABOR RELATIONS BOARD

APPEAL OF:

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DOCKET NO. 93-63

BERT SMITH

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MEMORANDUM AND ORDER

This matter is before the Vermont Labor Relations Board as an appeal from a classification decision of the Commissioner of Personnel pursuant to Article 16, Section 7, of the collective bargaining agreement between the State of Vermont and the Vermont State Employees' Association effective for the period July 1, 1992 to June 30, 1994 ("Contract").

On November 1, 1993, Bert Smith ("Appellant"), Welfare Fraud Section Chief for the Vermont Department of Social Welfare, filed an appeal with the Labor Relations Board from the decision of the Commissioner of Personnel denying Appellant's grievance concerning the classification of his position. The Department of Personnel classification section had reassigned Appellant's position from pay grade 24 to pay grade 23, and the Commissioner of Personnel denied Appellant's subsequent grievance contending that his position should remain at pay grade 24. In his appeal to the Board from the Commissioner's decision, Appellant contends that the Commissioner's decision violated Article 16, Section 7, of the Contract in that it was arbitrary and capricious in the application of the point factor system to the facts established by the record.

Appellant filed with the Board the whole record of the proceedings before, and the decision of, the Commissioner of Personnel. Appellant filed a brief in support of his position on

April 25, 1994. The State filed a brief in support of its position on May 13, 1994. Oral argument was held before Board Members Louis Toepfer, Acting Chair; Leslie Seaver and Carroll Comstock on May 26, 1994, in the Board hearing room in Montpelier. Appellant appeared on his own behalf. Michael Seibert, Assistant Attorney General, represented the State.

Article 16, Section 7, of the Contract provides in pertinent part as follows with respect to appeals of classification decisions:

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 . . . The board shall not conduct a de novo hearing, but shall base its decision on the whole record of the proceeding before, and the decision of, the Commissioner of Personnel (or designee). 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 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 means that the Board's scope of review in classification cases is extremely limited, and that the Board is contractually obligated to give substantial deference to the Commissioner's decision. Appeal of Cram, 11 VLRB 245, 246-47 (1988). Appeal of DeGreenia and Lewis, 11 VLRB 227, 229 (1988). An "arbitrary" decision is one fixed or arrived at through an exercise of will or caprice, without consideration or adjustment with reference to principles, circumstances or significance. Id. "Capricious" is an action characterized by or

subject to whim. Id. Rational disagreement with an appellant's position, based on applicable classification principles, does not indicate arbitrary and capricious action. Appeal of Berlin, 15 VLRB 245, 247 (1992).

Given the statutory responsibility of the Commissioner of Personnel pursuant to 3 V.S.A. §310 to ensure that state service has a uniform and equitable plan of compensation for each position based upon a point factor method of job evaluation, the Commissioner is obligated to ensure that contractual provisions relating to application of the point factor system to a position are carried out throughout the classification review process. Cram, 11 VLRB at 247. We have jurisdiction to review the Commissioner's actions in this regard where they may impact on the Commissioner's own decision in applying the point factor system because a decision reached in at least partial reliance on inappropriate considerations would be arrived at without consideration or reference to applicable classification principles. Id.

Appellant contends that the decision of the Commissioner of Personnel is arbitrary and capricious because the Commissioner affirmed a classification action reducing the pay grade of Appellant's position, upon Appellant losing quality control functions and gaining Initial Eligibility Verification System ("IEVS") functions, even though the addition of IEVS functions at least compensated for the quality control functions lost. The quality control functions primarily involved the supervision of field staff whom conducted a review of district office benefit

cases which were randomly sampled for error. The IEVS functions involve the management of preventing benefit errors, determining the overpayment of benefits, and establishing and collecting claims.

Appellant's primary contention is that the "knowledge and skills" rating which his position received should be allotted 244 points under the Willis point factor system, rather than the 212 points allotted the position by the Department of Personnel. Appellant's position was allotted 244 points when he was performing quality control functions along with welfare fraud functions. He contends that it is arbitrary and capricious to award the knowledge and skills rating required to administer the welfare fraud and IEVS functions less points, than when he was performing quality control functions, since the requisite knowledge and skills are at least equivalent. If Appellant's position on the number of points awarded is accepted, which also would necessarily result in increased points being awarded in the "mental demands" area, then his position would be assigned to pay grade 24, rather than the pay grade 23 assignment resulting from the Department of Personnel's classification.

The State responds that the IEVS functions which have been added do not compensate for the loss of quality control functions. The State further contends that Appellant's total responsibilities, including his welfare fraud duties, do not represent an advance in breadth or complexity over those duties involved prior to the quality control functions being added to Appellant's position in 1991. The State points out that the IEVS functions are more directly related and similar to Appellant's

fraud duties than were the quality control functions, which required knowledge in a broader area. The State thus concludes that the position has reverted to its previous classification, prior to 1991, as Welfare Fraud Section Chief at pay grade 23.

Upon review of the entire record before the Commissioner of Personnel, we do not concur with Appellant that the Commissioner's decision was arbitrary and capricious. The nature of the disagreement between Appellant and the Department of Personnel rating involves a narrow dispute based upon a subtle interpretation of the point factor analysis system. The parties agree that Appellant's position is designated properly with respect to the specific factors under "job knowledge and skills": job knowledge, managerial skills and interpersonal communications skills. The difference between the parties is with respect to the number of points assigned to that designation. The rater may choose from among 184, 212 and 244 points within that designation, depending upon the assessment of the strength of the job knowledge and skills. The Department of Personnel awarded 212 points, as opposed to the 244 points requested by Appellant.

It is evident that there is simply a rational disagreement on the assignment of points on narrow grounds between the parties which is the product of differing judgments on the application of the appropriate classification principles. Given the substantial deference which we are contractually obligated to give to the decision of the Commissioner, we believe it would be inappropriate under the circumstances to reverse the Commissioner's decision accepting the allotment of 212 points,

rather than 244, in the "job knowledge and skills" rating. Berlin,  
15 VLRB at 249.

Appellant's remaining contention is that he should have been  
awarded some points in the "working conditions" area of his  
position classification. He contends that points should be  
awarded based on the hazards encountered when he accompanies a  
welfare fraud investigator on a field investigation.

The record does not support Appellant's contention that the  
Commissioner's decision was arbitrary and capricious in this  
regard. It has been the Welfare Fraud Section Chief's  
responsibility for many years to participate in investigations  
when necessary, and the position has never been awarded "working  
conditions" points. Given these circumstances, we conclude that  
the Commissioner did not act in an arbitrary and capricious  
manner by accepting the awarding of no such points in this  
classification review. Also, we note that the awarding of points  
in this area would not have been sufficient to change Appellant's  
position from pay grade 23 to pay grade 24.

NOW THEREFORE, based on the foregoing reasons, it is hereby  
ORDERED that the Appeal of Bert Smith is DISMISSED.

Dated this 22<sup>nd</sup> day of June, 1994, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

  
Louis A. Toepfer, Acting Chair

  
Leslie G. Seaver

  
Carroll P. Comstock