

VERMONT LABOR RELATIONS BOARD

APPEAL OF:)	
)	
TRANSPORTATION DISTRICT)	DOCKET NO. 94-59
TECHNICIANS)	
)	

MEMORANDUM AND ORDER

This matter is before the 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 ("VSEA") for the Non-Management Unit, effective for the period July 1, 1994 to June 30, 1996 ("Contract").

On March 24, 1993, James Smith, Ronald Thomas, Scott Keysar, Stanley Robinson, William Noyes, Charles O'Bryan, Gary Schelley, Jack Bonesteel and Robert Fitzgerald ("Appellants"), Transportation Technician Project Supervisors, pay grade 21, submitted a request for classification action requesting the reclassification of their position to pay grade 24. Appellants requested that they be placed in the Transportation Maintenance Technical Supervisor class. On or about July 7, 1993, the Department of Personnel classification section denied Appellants' request for a new pay grade and changed the position title to Transportation District Technician ("TDT"). On or about September 8, 1993, Appellants filed a classification grievance with the Commissioner of Personnel, contending that the classification decision was clearly erroneous as evidenced by the disparity between their pay grades and those of the Transportation District Administrator ("TDA") class (Appellants' Exhibit 9). In November, 1993, the Department of Personnel classification section

provided Appellants with a comparative analysis between the Appellant class and the Transportation General Maintenance Supervisor class, as well as some other classes, in response to the Appellants' classification grievance, but did not compare the Appellants' position with that of the TDA's. On February 7, 1994, Thomas Torti, Commissioner of Personnel, responded to the classification grievance. In such response Torti stated in pertinent part:

I have reviewed a recommendation from John Petersen, my designee, who reviewed your grievance regarding [your] position. Mr. Petersen did not find the classification rating of your position to be clearly erroneous under the point factor analysis system used by the State of Vermont. Mr. Petersen did, however, express concerns about the relationship of your pay grade assignment relative to other supervisory or managerial positions in the Agency of Transportation District Offices.

I have instructed the Classification Section to review the classes Transportation District Administrator and Transportation General Maintenance Supervisors. I am therefore deferring final decision on your grievance at this time but am ordering a new review of all incumbents in the classes Transportation District Technician, Transportation District Administrator, and Transportation General Maintenance Supervisors...(Appellants' Exhibit 6).

On September 12, 1994, Torti informed each Appellant that such review had been completed and stated in pertinent part:

...

Mr. Petersen's initial finding, as you know, was not that the assigned rating was clearly erroneous, but that the difference in pay grades between the [Transportation] District Administrator class and the District Technician class needed to be explored further. This analysis has been completed, and the class Transportation District Technician is found to be properly classified.

Therefore, based on the foregoing, I am officially affirming your position's classification as Transportation District Technician, pay grade 21, and I am concluding the grievance of this classification action (Appellant's Exhibit 4).

Appellants were not provided with a written report responsive to the reasons for the review, specifically a comparative analysis between the Appellant class and the TDA class which Torti had requested the classification section to review. On October 4, 1994, VSEA Senior Field Representative Gail Rushford sent Torti a letter which stated in pertinent part:

...

Since the class was subject to a new review, I expect to be provided with a written report consistent with the contract language (Article 16, Section 3c). This report should be specifically responsive to the reasons for the new review, including a comparative analysis to the other positions/classes which were reviewed concurrently pursuant to your order (Appellants' Exhibit 2).

Neither VSEA nor Appellants received such report. On October 14, 1994, the VSEA filed this appeal on behalf of Appellants. On February 17, 1995, Appellants submitted a brief and the record that had been made available to them of the proceeding before, and the decision, of the Commissioner of Personnel. The State filed a brief in support of its position on March 6, 1995. Oral argument was held before Board members Charles McHugh, Chairman; Leslie Seaver and Carroll Comstock on April 27, 1995, in the Board hearing room in Montpelier. Samuel Palmisano, VSEA Legal Counsel, represented Appellants. Michael Seibert, Assistant Attorney General, represented the State.

We turn to addressing the merits. Article 16, Classification Review and Classification Grievance, of the Contract provides in pertinent part:

SECTION 3. PROCEDURE FOR REVIEW OF CLASSIFICATION

...

b. ...The Request for Review shall state with particularity the change(s) in duties or other circumstances which prompt the Request for Review...

c. ...The Department of Personnel will review and respond to complete requests for review. Such written report will respond directly and pointedly to the specific reasons listed in the request for review and will specify any change in the point factor rating for that position...

SECTION 4. CLASSIFICATION GRIEVANCE

...

g. The Personnel Commissioner (or designee) may request additional information and/or documents from either or both the grievant and classification section and impose deadlines for their submission. Both parties to the grievance will be advised as to any request for additional information/documents...

SECTION 5. BURDEN OF PROOF

In any stage of proceeding under this Article the burden shall be on the grievant to establish that the present classification, pay grade assignment, or any subsequent classification decision arising from the application of these procedures, is clearly erroneous under the standards provided by the point factor analysis system utilized by the Department of Personnel.

SECTION 7 APPEAL TO VLRB

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 West, 16 VLRB 147, 149 (1993). Appeal of Cram, 11 VLRB 245, 245-246 (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. c.f. Degreenia and Lewis, 11 VLRB at 233.

Given the statutory responsibility of the Commissioner pursuant to 3 VSA §310 to ensure that State service has an equitable and uniform 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. West 16 VLRB at 149. 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. Such a decision made in at least partial reliance on inappropriate considerations would be arrived at without consideration or reference to applicable contractual principles of review of classification decisions. Cram, 11 VLRB at 249.

Appellants contend that the Commissioner of Personnel's decision is arbitrary and capricious in that the whole record of the proceeding below is incomplete.

Article 16, Section 7, of the Contract, referring to classification appeals, provides that 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 (or designee)". It is evident by a review of Article 16, Section 4, of the Contract, that the "whole record of the proceeding" before the Commissioner of Personnel consists of all "information and/or documents" provided to the Commissioner by the grievant and classification section of the Department of Personnel, which information and documents must be disclosed to the other party. West, 16 VLRB at 150. Appeal of Fisher, 15 VLRB 159, 520 (1992).

Article 16, Section 3(c) requires the Department of Personnel to review and respond to requests for review. In the matter before us, Commissioner of Personnel Torti essentially expanded the original request for review upon reviewing the classification grievance. He did this through exercising his authority, pursuant to Article 16, Section 4(g), to "request additional information and/or documents" from the classification section by ordering a "new review". Torti specifically instructed the classification section to review the Appellant class, Transportation General Maintenance Supervisors and TDA's. The new review by Commissioner Torti required the classification section to abide by the dictates of Article 16, Section 3(c), which requires the Department of Personnel to respond "directly and pointedly" to such request.

In construing Sections 3(c) and 4(g) together, the Department of Personnel was required to provide Appellants a comparative analysis between their class and the TDA class. The Department

failed in this contractual duty. Although the Commissioner of Personnel informed Appellants that the analysis he had requested had been completed and the Appellants' current classification was proper, documentation of such analysis was not provided to Appellants. The "whole record of the proceeding" before the Commissioner of Personnel consists of all "information and/or documents" provided to the Commissioner by the classification section, which information must be disclosed to the other party. Fisher, 15 VLRB at 520. The whole record of the proceeding before the Commissioner was not disclosed to Appellants here because all the information and/or documents provided to the Commissioner were not disclosed to Appellants; specifically, the comparative analysis between the Appellant class and the TDA's.

The reaching of a decision by the Commissioner without ensuring that Appellants were provided with the whole record before him was arbitrary and capricious. 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. West, 16 VLRB at 149. Cram, 11 VLRB at 247. The Commissioner's decision is arbitrary and capricious if he allows his own decision, or that of the classification section, to be made partially without consideration or reference to applicable contractual principles of review of classification decisions. Cram, 11 VLRB at 249. That is what occurred here when the Commissioner failed to ensure that the classification section met its contractual obligation to disclose to Appellants the comparative

analysis with other classes he had requested and used in reaching his decision.

ORDER

Now therefore, based on the foregoing reasons, it is hereby ordered:


1. The Appeal of James Smith, Ronald Thomas, Scott Keysar, Stanley Robinson, William Noyes, Charles O'Bryan, Gary Schelley, Jack Bonesteel and Robert Fitzgerald is SUSTAINED;
2. This matter is REMANDED to the Commissioner of Personnel for appropriate action consistent with this decision; specifically that the Commissioner remand this matter to the classification section and direct the classification section to comply with his request of February 7, 1994, by responding directly and pointedly to the Commissioner's request for review, and providing copies of such response to Appellants.
3. Within 30 workdays of the receipt of the classification section's response, the Commissioner of Personnel shall issue a decision on Appellants' grievance in this matter.

Dated this 19th day of May, 1995, at Springfield, Vermont.

VERMONT LABOR RELATIONS BOARD


Charles H. McHugh, Chairman


Leslie G. Seaver


Carroll P. Constock