

VERMONT LABOR RELATIONS BOARD

APPEAL OF:)	
)	DOCKET NO. 13-44
THERESA LAY-SLEEPER)	

MEMORANDUM AND ORDER

This matter is before the Labor Relations Board as an appeal from a classification decision of the Commissioner of Human Resources 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 ("Contract").

On December 6, 2013, the Vermont State Employees' Association ("VSEA") filed an appeal with the Vermont Labor Relations Board on behalf of Theresa Lay-Sleeper ("Appellant") from the decision of the Commissioner of Human Resources denying Appellant's grievance concerning the classification of her position - Juvenile Justice Coordinator in the Policy, Planning and Performance Unit of the Family Services Division of the Department for Children and Families ("DCF"), Vermont Agency of Human Services. Appellant's supervisor, Cheryle Bilodeau, had submitted a request for classification review of Appellant's position in April 2013, with no recommendation for a specific pay grade. On April 23, 2013, the DCF Classification Committee issued a Notice of Action, downgrading the pay grade of Appellant's position from 24 to 23. The Commissioner of Human Resources denied Appellant's subsequent grievance. Appellant alleges in the appeal filed with the Board that the Commissioner's decision in applying the point factor system to the facts established by the entire record was arbitrary and capricious in violation of Article 16, Section 7, of the Contract.

Appellant filed a motion on December 31, 2013, to amend her appeal. The State did not oppose the motion, and the Board granted it on January 30, 2014.

Appellant filed the whole record of the proceeding before, and the decision of, the Commissioner of Human Resources on March 14, 2014. She also filed a brief in support of her position on that date. The State filed a brief in support of its position on May 29, 2014. Oral argument was held before Board Members Richard Park, Chairperson; Alan Willard and Edward Clark, Jr., on June 12, 2014, in the Board hearing room in Montpelier. VSEA Staff Attorney Rebecca McBroom represented Appellant. Special Assistant Attorney General Shayna Cavanaugh represented the State.

Article 16 of the Contract provides in pertinent part as follows with respect to classification reviews and appeals of classification decisions:

3. **PROCEDURE FOR REVIEW OF CLASSIFICATION**

...

- (c) . . . Normally within sixty (60) days for a single position . . . the Department of Human Resources or duly constituted departmental review committee 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 for that position. . . .
- (d) Within ten (10) workdays of receipt of the notice from the Department of Human Resources, an employee may request an informal meeting with the departmental classification review committee . . for a discussion of the decision. . .

4. **CLASSIFICATION GRIEVANCE**

...

- (d) A grievance . . shall be filed . . with the Commissioner of Human Resources . . .

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 applied by the

point factor analysis system utilized by the Department of Human Resources.

...

7. **APPEAL TO VLRB**

An employee aggrieved by an adverse decision of the Commissioner of Human Resources 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 Human Resources (or designee). The VLRB's authority hereunder shall be to review the decision(s) of the Commissioner of Human Resources, 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 Human Resources is arbitrary and capricious, it shall state the reason 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 shall give substantial deference to the Commissioner's decision. Appeal of Berlin, 15 VLRB 245, 246 (1992). 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 Smith, 17 VLRB 145, 149 (1994). Appeal of Berlin, 15 VLRB at 247.

Given the statutory responsibility of the Commissioner of Human Resources, 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. The Board has jurisdiction to review the Commissioner's actions in this regard 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 Human Resources was arbitrary and capricious because the downward reclassification of Appellant's position occurred less than four months after the DCF Classification Committee determined that her position was properly classified at pay grade 24, and nothing occurred in this short interval of time to warrant the reduction in pay grade to 23. Appellant contends that her job responsibilities had increased, rather than decreased, between the two notices of classification action in October 2012 and April 2013. Accordingly, she asserts that it was arbitrary and capricious to apply the Willis point factor rating system to downgrade her position by 32 points in the Knowledge and Skills category, resulting in the reduction in pay grade.

In determining whether the Commissioner of Human Resources decision was arbitrary and capricious, it is necessary to review the record to more closely examine the two classification reviews of Appellant's position done several months apart. Appellant submitted a request for classification review ("RFR") in the summer of 2012 seeking an increase in the paygrade of her Juvenile Justice Coordinator position. Appellant had been in the position for the previous 11 years and it had been at pay grade 24 during this period (Record, Exhibits 2 and 3). Appellant's superiors, her immediate supervisor Cheryle

Bilodeau and DCF Director of Operations Dawn O'Toole, both recommended that her position be upgraded from a pay grade 24 to 25 (Record, Exhibit 1).

The DCF Classification Committee issued a Notice of Classification Action on October 17, 2012, determining that the position was properly classified at pay grade 24.

The notice provided in pertinent part:

. . .

A review of the RFR submitted for your position by the DCF Classification Committee has determined that the duties enumerated are consistent with the current pay grade. The Committee could not find new duties at a higher level than the current classification. . . .

Willis Rating/Components:

Knowledge and Skills	E1Y	244
Mental Demands	E4K	106
Accountability	D1D	106
Working Conditions	L1A	0

Total Points 456
(Record, Exhibit 4)

After receiving this Notice of Action, Appellant requested an informal meeting pursuant to Article 16, Section 3(d), of the Contract with the DCF Classification Committee. The informal meeting occurred. Subsequently, the Committee notified Appellant that it was not changing its determination that her position was properly classified at pay grade 24. Appellant did not file a grievance concerning this determination.

On April 8, 2013, Bilodeau submitted another RFR for Appellant's position, with no recommendation for a specific pay grade. Bilodeau included the following statement on the RFR concerning Appellant: "Theresa reviewed this RFR but will not sign it as she does not agree with the manner in which it is written and she would like me to ask for a

PG 26 which I am not prepared to do.” Bilodeau also submitted cover letter with the RFR which stated in pertinent part:

I am submitting an RFR for the Juvenile Justice Coordinator position currently held by Theresa Lay-Sleeper. Theresa submitted an RFR a few months ago for her position and some changes have occurred since that time. During internal management discussions we looked at the structure of the Planning, Policy and Performance Unit which I supervise, and determined how restructuring this unit could best meet the needs of the division. This has led me to resubmitting the RFR for the JJ Coordinator position.

The duties previously mentioned in the JJ Coordinator position including JABG fund oversight, policy development and implementation will be the responsibility of the JJ Administrator position. The JJ Coordinator position is an important member of youth justice planning, but the direct responsibilities of that position are to the council and Title II funds. The JJ Coordinator is the liaison to this council and the duties are outlined in the RFR I am submitting. The current pay grade is 24 and I will let the committee determine if that is still the appropriate pay grade.

The JJ Administrator will have oversight of juvenile justice policy development for Family Services and JABG (Juvenile Accountability and Block Grant) funding. The JJ Administrator through supervising the JJ Coordinator will be able to ensure in reporting to me as the Juvenile Justice Director that programmatic efforts utilizing both JABG and Title II funds are well thought through and aligned with both larger AHS and Family Services efforts.

...

(Record, Exhibit 6)

Bilodeau included an organizational chart with this cover letter and the RFR. The chart indicated that Appellant as Juvenile Justice Coordinator would be supervised directly by the newly created position of Juvenile Justice Administrator, who in turn would report directly to Bilodeau as Policy & Operations Manager/Juvenile Justice Director (Record, Exhibit 7).

The DCF Classification Committee issued a Notice of Classification Action on April 22, 2013, which reassigned Appellant’s position from pay grade 24 to 23. The notice provided in pertinent part:

...

A review of the RFR submitted for your position by the DCF Classification Committee finds, that based upon a restructuring of the assigned Section and major changes in the duties assigned, that the level of responsibility has lessened. As a result, your position and class are reassigned to pay grade 23.

Willis Rating/Components:

Knowledge and Skills	E1Y	212
Mental Demands	E4K	92
Accountability	D1D	106
Working Conditions	L1A	0

Total Points 410
(Record, Exhibit 8)

Appellant's position also had received an "E1Y" rating in the "Knowledge and Skills" category in the October 2012 review, but the position was assigned a lower number of points in the April 2013 review. The Knowledge and Skills component evaluates the job in relation to three dimensions: job knowledge, managerial skills, and interpersonal communications skills (Record, Exhibit 12).

The "E" level is a sub-rating for "job knowledge" and indicates: "Competence is required in a specialized or technological field. This includes a comprehension of complex principles and practices." The "1" level is a sub-rating for "managerial skills" and indicates: "Activities are carried out within a subfunction, or subfunctions, or subordinates are supervised in performing one or more specific subfunctional activities." The "Y" level is a sub-rating for "interpersonal communications skills", and indicates: "Personal contacts with others require the capability to persuade and/or motivate people to take action (Record, Exhibit 12)."

The “E1Y” rating provides for the assignment of either 188, 212 or 244 points in the “Knowledge and Skills” category. 244 points were assigned to Appellant’s position in the October 2012 review. 212 points were assigned to the position in the April 2013 review (Record, Exhibit 12).

The reduction in points in the Knowledge and Skills category from 244 to 212 caused a reduction of 14 points in the Mental Demands category. This is because assignment of points in the Mental Demands Category is directly linked to the points assigned in the Knowledge and Skills category (Record, Exhibit 12).

Positions with a total point range of 403 to 442 are assigned to pay grade 23 under the Willis system. Positions with a total range of 443-486 points are assigned to pay grade 24. Since Appellant’s position had 456 total points in the October 2012 review, her position was assigned to pay grade 24. The decrease in total points to 410 in the April 2013 review caused her position to be reassigned to pay grade 23 (Record, Exhibit 12).

After receiving this Notice of Action, Appellant did not request an informal meeting pursuant to Article 16, Section 3(d), of the Contract with the DCF Classification Committee. She did have a discussion with Bilodeau and one member of the DCF Classification Committee about the classification action. VSEA subsequently filed a grievance on Appellant’s behalf with the Commissioner of Human Resources. The Commissioner denied the grievance on the grounds that the assignment of Appellant’s position to pay grade 23 was not clearly erroneous under the standards provided by the Willis Point Factor Analysis System. This appeal to the Board followed (Record, Exhibits 9, 10 and 11).

Upon the review of the entire record before the Commissioner of Human Resources, we do not concur with Appellant that the Commissioner's decision was arbitrary and capricious. The record does not support Appellant's contention that nothing had occurred in the short interval of time between the October 2012 classification action and the subsequent downward reassignment of the paygrade of Appellant's position in April 2013 to support a reduction in paygrade. The record indicates that there was a restructuring of the unit in which Appellant worked. This resulted in the creation of a new Juvenile Justice Administrator position directly above Appellant in the chain of command which was to assume some of the fund oversight, policy development and implementation responsibilities of Appellant's position.

This development formed the basis of the DCF Classification Committee's conclusion that the level of responsibility of Appellant's position had lessened. Appellant did not take advantage of opportunities in the submission of the request for review, or in seeking an informal meeting with the Classification Committee, to present specific information that her job responsibilities had not decreased. Given the record before the Commissioner of Human Resources, it was not arbitrary and capricious for the Commissioner to conclude that the assignment of a reduced paygrade to Appellant's position by the Committee was not clearly erroneous.

Further, the nature of the disagreement between Appellant and the Willis System rating applied here involves a narrow dispute based on a subtle interpretation of the point factor analysis system. Appellant is not contending that the "E1Y" rating in the "Knowledge and Skills" category was not the proper designation for Appellant's position. The difference between the parties is with respect to the number of points ascribed 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 fact that the Commissioner of Human Resources upheld the decision assigning Appellant's position 212 points, rather than the 244 points sought by Appellant, does not demonstrate an arbitrary and capricious action . 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. Berlin, 25 VLRB at 247. Given the substantial deference which we are contractually obligated to give to the decision of the Commissioner, it would be inappropriate under the circumstances to reverse the Commissioner's decision here. Id.

In sum, upon review of the record and given our limited scope of review, we conclude that the decision of the Commissioner of Human Resources to uphold the decision assigning Appellants' position to pay grade 23 was not arbitrary and capricious in applying the point factor system to the facts established by the entire record.

Our conclusion that the decision met the minimal requirements of the Contract is not without reservations on our part due to the way the State handled the classification review and decision. The result of this review was that an employee whom had held a position at the same paygrade for eleven years had the position downgraded through no fault of her own. This obviously would cause an employee to question the value her employer places on her longterm contributions and would have a detrimental effect on her morale. It also would on the face of it cause a reasonable outside observer to question the fairness of the result.

Nonetheless, the State proceeded with apparent indifference to these serious consequences. The DCF Classification Committee explanation for the downgrade in paygrade was limited to a statement that “based upon a restructuring of the assigned Section and major changes in the duties assigned . . . the level of responsibility has lessened”. Although this general statement is sufficient to withstand the extremely limited scope of review the Board has in classification appeals, a more expansive explanation of the rationale for the paygrade reduction would have demonstrated a more thoughtful understanding of the significant ramifications of the decision on a longterm employee. This would have mitigated to some extent the detrimental effect of the result.

The Board discussed the limitations of the classification appeal process in its 1992 Annual Report, stating: “The appeal to the Board creates a high level of expectation in employees which is not met given the Board’s limited scope of review. The appealing employee, the State Department of Personnel and the Board spend an inordinate amount of time on a process which accomplishes so little, thus causing frustration for all concerned”. The contract provisions in place 22 years ago when the Board expressed these views are substantively the same in the current collective bargaining contract. The State and the VSEA apparently have determined that the limitations of the appeal process work for them. Regardless, we would hope the State would appreciate the harmful effects the downgrading of a position would have on an 11 year employee and provide a more detailed explanation of the reasoning behind lowering her Willis points than what was provided here on the notice of action.

Based on the foregoing reasons, it is ordered that the Appeal of Theresa Lay-Sleeper is dismissed.

Dated this 25th day of July, 2014, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

/s/ Richard W. Park
Richard W. Park, Chairperson

/s/ Alan Willard
Alan Willard

/s/ Edward W. Clark, Jr.
Edward W. Clark, Jr.