

VERMONT LABOR RELATIONS BOARD

APPEAL OF:	)	
	)	DOCKET NO. 88-18
MARY JANE CRAM	)	

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 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 March 1987, Mary Jane Cram ("Appellant"), Stock Clerk B (Pay Grade 10) with the State Department of Health, filed for a classification review. Appellant requested that her position be placed in a new class entitled Central Services Coordinator (Pay Grade 15). Upon review, the Department of Personnel determined that the proper classification for the position was Laboratory Technician (Pay Grade 11).

Appellant filed a grievance concerning that decision pursuant to Article 19 of the Contract for review by a classification board. That board recommended that the decision of the Department of Personnel be affirmed. On February 29, 1988, Jay Wisner, Acting Commissioner of Personnel, concurred with the classification board's recommendation.

On April 1, 1988, VSEA filed an appeal with the Board on behalf of Appellant, contending that the decision of the Commissioner of Personnel was arbitrary and capricious within the meaning of Article 19 of the Contract. On May 19, 1988, Appellant filed with this Board the whole record of the proceeding before the classification board and

decision of the Commissioner of Personnel. Appellant also filed a brief in support of her position on May 19. The State filed a brief in support of its position on May 26.

Oral argument was held on June 9, 1988, before Board Members Charles McHugh, Chairman; William Kemsley, Sr.; and Catherine Frank. Assistant Attorney General Michael Seibert represented the State. Michael Zimmerman, VSEA Staff Attorney, represented Appellant.

Appellant contends that the Commissioner of Personnel's decision was arbitrary and capricious in that: 1) he allowed the classification board to apply the wrong test of review and put his stamp of approval on the application of a non-existent test by the classification board; 2) he did not direct the classification board to disregard Appellant's failure to submit her own point factor analysis; and 3) he did not direct the classification board to disregard the comments of Claude Magnant, Director of Personnel Operations for the Department of Personnel, concerning Appellant's failure to submit a draft specification for her proposed new class.

The State contends that we lack jurisdiction over the issues raised by Appellant; that under the Contract's classification review process the employee only has the right to raise issues with respect to the Commissioner's application of the point factor system to the facts established by the record. While the State concedes the Commissioner may have some responsibility for insuring that the contractual process is followed, the State maintains that the Contract does not grant the Board the authority to consider such issues.

It is true that our scope of review in classification cases is extremely limited. The Board's review of the Commissioner's decision

is limited by Article 19, Section 9 of the Contract to determining "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 "arbitrary and capricious" standard for the Board's scope of review implies 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 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 conclude that we have jurisdiction over the issues raised by Appellant. As overseer of the classification system, the Commissioner of Personnel has a clear statutory responsibility to ensure that State service has an uniform and equitable plan of classification for each position based upon a point factor comparison method of job evaluation. 3 VSA § 310. Given such responsibility, 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. 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.

Moreover, for the Board to conclude that we lack jurisdiction over alleged violations of contractual classification provisions in the manner appealed here would result in no oversight of such contractual provisions. Article 19, Section 8 of the Contract, provides that "the grievance and appeal procedures... for classification disputes shall be the exclusive procedures for seeking review of the classification status of a position". Thus, filing a classification appeal is the only avenue to pursue the claims made by Appellants.

We turn to addressing the merits of each of the issues raised by Appellant. First, we concur that the Commissioner of Personnel's decision was arbitrary and capricious in that he allowed the classification board to apply the wrong test of review and approved of that test in his own decision.

Under Article 19, Section 7 of the Contract, an employee pursuing a classification grievance has the burden of proving to a classification board that "the present classification... (or) pay grade assignment... is clearly erroneous under the standards provided by the point factor analysis system". In its recommendation, the classification board acted contrary to the Contract's dictate to apply the "clearly erroneous" test by reviewing the Department of Personnel decision based on a standard of whether it was "rational and not unreasonable". While the classification board discusses in its recommendation whether the Department of Personnel decision was "clearly erroneous", it is in reference to the views of Appellant's supervisor, not in reference to the classification board's own views. Thus, it is evident that the classification board applied the wrong test of review.

Upon review of the classification board's recommendation, the Commissioner of Personnel sanctioned the application of the wrong test by concurring with the classification panel's recommendation and making no reference to the fact that the wrong test had been applied. In fact, the Commissioner explicitly approved the wrong test by noting the classification board conclusion that the Department of Personnel assessment was "rational and not unreasonable" and indicating that Appellant had "failed to meet the burden of proof necessary to alter these determinations".

This indicates the Commissioner's decision was arbitrary and capricious in applying the point factor system because he allowed the classification board decision, and his own decision, to be made partially without consideration or reference to applicable contractual principles of review of classification decisions. The Commissioner should have remanded the matter to the classification board with instructions to apply the correct test.

Second, we conclude the Commissioner's decision was arbitrary and capricious in that he did not remand to the classification board and direct them to disregard Appellant's failure to submit her own point factor analysis. The classification board, in supporting its point factor analysis, cites the failure of Appellant to "submit a point analysis of her own to be considered". However, there is no contractual requirement for an aggrieved employee to submit a point factor analysis and, while an employee has the burden of proving a classification decision was clearly erroneous, imposing such a requirement is improper. Pursuant to the Contract, it is the classification boards, not aggrieved employees, who are trained by the Department of

Personnel so they will be competent to decide classification disputes. An aggrieved employee has the burden of demonstrating job components which may have been overlooked or erroneously evaluated by the Department of Personnel, but is not required to actually perform the technical point factor analysis for which the employee is not trained.

The failure of the Commissioner to act in any way upon the classification board's improper imposition of such a duty on Appellant, and his adoption of the classification board's recommendations, was arbitrary and capricious. Absent any indication that the Commissioner placed no reliance on this aspect of the classification board recommendation, we conclude that his application of the point factor system was made partially without reference to applicable contractual principles concerning classification grievances.

Finally, we conclude that the Commissioner's decision was arbitrary and capricious through failure to address Magnant's improper comment concerning Appellant's failure to submit a draft specification for her new class. In a memorandum to the classification board summarizing the Department of Personnel's evaluation of the position occupied by Appellant, Magnant placed reliance on the fact that "no draft class specification was presented (by Appellant) as is required when a new class is proposed".

We conclude this was an inappropriate comment by Magnant. While he was correct in indicating that the classification review request form provides that a draft class specification must be attached when creation of a new class is suggested, Magnant selected the improper time to point out the deficiency. Article 19, Section 4(e) provides in pertinent part as follows:

Each classification grievance submitted hereunder shall be reviewed by the Personnel Department for compliance with the procedures established herein. Employees will be notified by the department if their grievances are defective, and given 10 workdays to take corrective measures, if possible. Grievances which are subsequently perfected within the above period of time will thereafter be processed by the Personnel Department in accordance with this article.

Since the Contract provides that employees must be provided notice by the Department of Personnel if grievances are defective and an opportunity to perfect them, the Department of Personnel cannot rely on any defect if employees were not notified. Magnant's comment tainted the classification review process by improperly faulting Appellant for failure to adequately carry the burden of demonstrating that the classification of her position was wrong. While it is unclear what effect Magnant's comments had on either the classification board or the Commissioner, the Commissioner's failure to address the comment in his decision demonstrated arbitrary and capricious action in applying the point factor system. The ultimate result was that the decision was made partially without reference to applicable contractual principles concerning classification grievances.

In sum, the Commissioner's failure to fulfill his responsibility to ensure that each classification decision is uniform and equitable in applying the point factor system resulted in an arbitrary and capricious decision on his part, since his decision applying the point factor system was made at least partially without reference to applicable contractual classification principles.

ORDER

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

1. The Appeal of Mary Jane Cram 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 board which heard this matter and direct the classification board to:
  - a) apply the "clearly erroneous" standard in reviewing the Department of Personnel's classification decision;
  - b) disregard Appellant's failure to submit her own point factor analysis;
  - c) disregard Claude Magnant's comments concerning Appellant's failure to submit a draft specification for her proposed new class; and
  - d) issue a written decision and recommendation in conformity with the above.
3. Within 30 workdays of receipt of the classification board's recommendation, the Commissioner of Personnel shall issue a Notice of Final Action concerning this matter.

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

VERMONT LABOR RELATIONS BOARD

  
Charles H. McHugh, Chairman

  
William F. Kemsley, Sr.

  
Catherine L. Frank