

VERMONT LABOR RELATIONS BOARD

APPEAL OF:)	
)	DOCKET NO. 91-53
PAULINE LIESE)	

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 for the Non-Management Unit, effective for the period July 1, 1990 to June 30, 1992 ("Contract").

On August 23, 1991, Pauline Liese ("Appellant"), Motor Vehicle Arbitration Board Program Specialist, pay grade 17, filed an appeal with the Vermont Labor Relations Board from the decision of the Commissioner of the Department of Personnel denying Appellant's grievance concerning the classification of her position. Appellant had submitted a request for classification action requesting the reclassification of her position to Transportation Board Programs Specialist, pay grade 21. Appellant filed the request at the time the duties of the Motor Vehicle Arbitration Board Program Specialist and Transportation Board Administrative Secretary merged into a single position occupied by Appellant. The Department of Personnel classification section denied Appellant's request, and the Commissioner of Personnel denied Appellant's subsequent grievance contesting the failure to reclassify her position as requested. In her appeal from the Commissioner's decision, Appellant alleges that the Commissioner's decision violated

Article 16 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 submitted the whole record of the proceedings before, and the decision of, the Commissioner of Personnel. Appellant filed a brief in support of her position on December 30, 1991. The State filed a brief in support of its position on January 23, 1992. On January 27, 1992, Appellant filed a Motion to Remand because she had not received a copy of the State's brief in a timely manner. Oral argument was held before Board members Charles McHugh, Chairman; Louis Toepfer and Leslie Seaver on January 29, 1992, in the Board hearing room in Montpelier. Appellant appeared on her own behalf. Michael Seibert, Assistant Attorney General, represented the State. The Board hereby denies Appellant's Motion to Remand. The Board indicated to Appellant at the oral argument that she could have additional time to respond to the State's brief if she so desired. This opportunity, which Appellant has declined, was sufficient to compensate for the State's failure.

We turn to discussing the merits. Article 16 provides in pertinent part as follows:

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 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 Cram, 11 VLRB 245, 246-247 (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 of Personnel 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 process. Gram, 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 Commissioner of Personnel made an arbitrary and capricious decision because it was based on an erroneous and incomplete record without support of substantial credible evidence in the record as a whole. Appellant states that she attempted during the grievance process to clarify and correct inaccuracies in the record to demonstrate the true nature, scope and accountability of her position to highlight the need for a revision to the point factor analysis, but that the Commissioner and designee did not respond to Appellant's attempts to correct the erroneous and incomplete record. Appellant points out that the Commissioner and designee had the option under Article 16, Section 4g of the Contract to request "additional information and/or documents from either or both the grievant and classification section", but that no such request was made even though they were notified of discrepancies in the record.

Appellant's criticism of the Commissioner and designee for not responding explicitly to her attempts to correct the record is unwarranted under the Contract. Article 16, Section 3 (c), of

the Contract does provide that, during the classification review process, the Department of Personnel is required in its written response to a request for review to "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." However, once the classification review process is completed and an employee files a classification grievance, the contractual requirements are much less stringent with respect to the Commissioner of Personnel or designee providing a written rationale for the decision responding to a grievance. Article 16, Section 4(f) simply provides that, after review of the grievance and any grievance meeting held, the Commissioner or designee shall issue a "written decision."

This contractual requirement fell well short of obligating the Commissioner to engage in a point by point response to Appellant's contentions. Appellant did bring to the attention of the Commissioner's designee those errors she perceived in the job analyst's written report and the evaluation summary done by the chief of the classification division of the Department of Personnel. Given the Contract provisions, mere failure to respond in writing to each allegation made by Appellant is insufficient, without more, for us to conclude that the Commissioner and designee failed to consider information presented by Appellant. Appellant imposes more of a burden on the Commissioner and designee than does the Contract, and under the circumstances we must presume all the information presented by Appellant was considered by the Commissioner and designee.

Moreover, upon examination of the record as a whole, Appellant has not demonstrated that many of the written statements of the job analyst and classification chief which Appellant contends are erroneous are in fact erroneous. The statements appear to be either not erroneous on their face or more accurately described as not artfully drafted. The statements made which do not appear to be erroneous upon review of the record as a whole are: 1) that Appellant has been able to take on more duties because there has been a decrease in hearings for the Motor Vehicle Arbitration Board, and 2) that Appellant does not perform managerial responsibilities.

The statements which are not artfully drafted are the statement by the job analyst that Appellant's position deals with two sets of regulations to coordinate the activities of two boards, and the following statements in the classification chief's evaluation summary generally describing Appellant's duties: 1) "major job role of coordinating the Arbitration Board appeals process, including the secretarial duties described in the 1989 description", and 2) "coordinating and performing secretarial duties for a program within a relatively narrow scope, within a department". Appellant, in finding fault with these statements, is in essence requesting that the Board reduce our review to an exercise in semantics. Upon review of the classification chief's evaluation summary and the job analyst's report as a whole, it is apparent that they had an adequate understanding of Appellant's position.

The evaluation summary of the classification chief does contain the erroneous statement that "the quasi-judicial role has been removed from the Transportation Board." Also, Appellant correctly points out that Appellant's involvement with her employer's public hearing program was not referenced by the job analyst as a factor considered while applying the point factor system. However, this error and omission does not result in the conclusion that the Commissioner of Personnel was compelled to conclude that the classification decision was clearly erroneous pursuant to Article 16, Section 5, of the Contract. Prior to the Commissioner's decision, Appellant had pointed out the error and omission to the Commissioner's designee, so this was presumably considered in the final decision. Given our limited scope of review and the substantial deference we must accord to the Commissioner's decision, the Commissioner's conclusion that this error and omission did not make the ultimate classification decision clearly erroneous was not arbitrary and capricious in applying the point factor system.

In sum, the Department of Personnel classification employees reviewing Appellant's position determined, based on applicable classification principles, that the additional duties assumed by Appellant were not sufficient by themselves to change the classification of her position; that the classification would be changed only if the new duties were higher level duties. They reached the conclusion that the new duties did not warrant changing the pay grade 17 assignment of the position. Appellant had ample opportunity to seek to convince the Commissioner of Personnel or designee that the classification decision was clearly erroneous. The Commissioner's conclusion that the ultimate

classification decision was not clearly erroneous was not arbitrary and capricious in applying the point factor system. We conclude that the disputed, insubstantial errors do not rise to the level to meet the standard of clearly erroneous.

Appellant also has made the following allegations with respect to the procedures and actions of the Commissioner or designee after Appellant filed her grievance: 1) the grievance was not analyzed in a timely manner, thus prejudicing Appellant's right to due process; 2) Appellant's case was prejudiced at a meeting with the Commissioner's designee on July 17, 1991; and 3) the Commissioner's designee made statements and took action that caused Appellant to doubt the designee's credibility and expertise in applying the point factor system. We will discuss each of these allegations in turn.

The record indicates that the grievance meeting Appellant had with the Commissioner's designee occurred approximately two and one-half months after the filing of the grievance, although Article 16, Section 4(f) provides that such a meeting shall be held within 15 workdays of the filing of the grievance. Appellant contends that the lack of adherence to a contractual timetable contributed to a diminished retention of facts which resulted in a decision based on an erroneous and incomplete record. We cannot come to the same conclusion as Appellant since to do so would be based on mere speculation without any supporting evidence.

Appellant contends that her case was prejudiced at the grievance meeting with the Commissioner's designee on July 17, 1991, because she was not given notice that Department of Personnel job analysts would be at the meeting and because one of the analysts made an erroneous statement. The Contract contains

no affirmative obligation of notification to a grievant of which persons will be at a meeting, and this presumably was information Appellant could have obtained by contacting the Department of Personnel. Also, Appellant presumably had an opportunity at the meeting to respond to any perceived erroneous statements made by the job analyst. In sum, Appellant's allegations in this regard do not demonstrate any arbitrary and capricious action by the Commissioner or designee in applying the point factor system to the facts established by the entire record.

The same conclusion is reached with respect to Appellant's final allegation that the Commissioner's designee made statements and took action that caused Appellant to doubt the designee's credibility and expertise in applying the point factor system. We have reviewed the several facts alleged by Appellant in her brief in this regard, and conclude that they provide no support for a conclusion that the Commissioner's resultant decision was arbitrary and capricious in applying the point factor system to the facts established by the entire record.

Finally, in her appeal filed with the Board, Appellant alleged that the objectivity of the Commissioner's designee was questionable because she was employed by the Department of Personnel. Appellant did not discuss this allegation in her brief, but we would note that it appears to be standard practice in classification grievances that the Commissioner's designee is an employee of the Department and there is nothing in the Contract to prohibit such a practice.

Now therefore, based on the foregoing reasons, it is hereby
ORDERED that the Appeal of Pauline Liese is DISMISSED.

Dated this 26th day of June, 1992, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD


Charles H. McHugh, Chairman


Louis A. Toepfer


Leslie G. Seaver