

VERMONT LABOR RELATIONS BOARD

APPEAL OF:

PHILIP MATTESON

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DOCKET NO. 92-16

MEMORANDUM AND ORDER

At issue is whether the Labor Relations Board has jurisdiction in this matter. On March 31, 1992, Philip Matteson ("Appellant"), a Transportation Maintenance Worker with the Vermont Agency of Transportation, filed a letter in which he indicated that he would like to have a classification decision made by the Commissioner of Personnel reviewed by the Labor Relations Board. Appellant contended that he had been discriminated against relative to another employee with respect to the classification of their positions. Appellant alleged that he followed the classification review and classification grievance procedure of the collective bargaining agreement between the State and the Vermont State Employees Association in unsuccessfully seeking, through the Department of Personnel, to have his position upgraded. Another employee with the same duties as Appellant, Appellant alleged, had his position upgraded about the same time as Appellant's request was denied. Appellant alleged that the classification review for the other employee was approved internally within the Agency of Transportation, rather than being reviewed by the Department of Personnel, as was Appellant's position. Appellant contended that he was discriminated against by having to go through "different channels" than the other employee.

On May 12, 1992, Timothy Noonan, Board Executive Director, sent a letter to Appellant which provided in pertinent part as follows:

...It is unclear by your letter whether the Labor Relations Board has jurisdiction in this matter because, while you make reference to the State-VSEA Contract, your letter contains no allegations of specific contract provisions violated. In order for the Board to determine whether it has jurisdiction in this matter, the materials which you file should contain specific references to the pertinent section or sections of the contract which you allege have been violated.

If you wish to proceed in this matter, you must file an amended action which contains such references as soon as possible, but no later than May 25, 1992.

In response to this letter, Appellant indicated by letter of May 18, 1992, that he had been through the Classification Review and Classification Grievance provisions of the collective bargaining agreement between the State and the Vermont State Employees' Association for the Non-Management Unit, effective for the period July 1, 1990 to June 30, 1992 ("Contract"), and now was requesting the Board to review this matter.

In determining whether we have jurisdiction to review this matter, we look to Article 16 of the Contract, Classification Review and Classification Grievance, which provides in pertinent part as follows:

SECTION 6. EXCLUSIVE REMEDY

The grievance and appeal procedures provided herein for classification disputes shall be the exclusive procedures for seeking review of the classification status of a position or group of positions.

SECTION 7. APPEAL TO VLRRB

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. Any appeal to the Board shall be filed within thirty (30) days of receipt of the Commissioner's decision, or the right to appeal shall be waived. 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...

Under these provisions, generally our scope of review in classification cases is extremely limited. Our review generally is limited to determining "whether the decision (of the Commissioner of Personnel) was arbitrary and capricious in applying the point factor system utilized by the State to the facts established by the entire record". Grievance of Plunket, 15 VLRB 30, 32 (1992). Appeal of DeGreenia and Lewis, 11 VLRB 227, 228-229 (1988). Appeal of Cram, 11 VLRB 245, 246-247 (1988). The only exception which the Board has made to this extremely limited scope of review in classification cases was in the recently decided case, Grievance of Lowell, 15 VLRB 291, 323-25 (1992). Therein, the Board concluded that the exclusivity provision of Article 16, Section 6, of Contract did not preclude an employee from grieving alleged sex discrimination, prohibited by Article 5 of the Contract, which occurred during the course of a classification review.

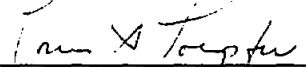
Appellant has made no allegation that the Commissioner of Personnel made an arbitrary and capricious decision in applying the point factor system. Also, he has made no allegation of discrimination prohibited by a specific provision of the Contract which would affect the general rule that our scope of review in classification cases is extremely limited. Thus, we conclude that we lack jurisdiction in this matter.

Now therefore, based on the foregoing reasons, it is hereby ORDERED that this matter is DISMISSED.

Dated this 11th day of September, 1992, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD


Charles H. McHugh, Chairman


Louis A. Toepfer


Leslie G. Seaver