

VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:

THOMAS PLUNKET

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DOCKET NO. 91-39

MEMORANDUM AND ORDER

At issue is whether the Labor Relations Board should grant the Motion to Dismiss filed by the State of Vermont on the ground that the Board lacks jurisdiction.

On June 26, 1991, Thomas Plunket ("Grievant") filed with the Labor Relations Board what he termed a "Step IV grievance". Grievant contended that there were two issues contained in his "grievance": 1) that "the Department of Personnel's classification decision was based on incorrect information about (his) position's responsibilities", and that 2) "the process and tactics of the Administration delayed (his) classification request and grievance for such an extreme period of time that it should have been conceded as "out of time". As a remedy, Grievant requested that his position be included in a different class, with a corresponding increase of one paygrade; and "increased oversight of the classification grievance procedure by the VLRB, or another neutral body, in a manner that will decrease the opportunity for the process to be misused in the future".

By letter of June 26, 1991, Timothy Noonan, Board Executive Director, requested that Grievant clarify his action. In pertinent part, Noonan stated:

Upon review of the materials which you have filed, it actually is unclear whether you are intending to file an appeal of a classification decision pursuant to the collective bargaining agreement between the Vermont State Employees' Association and the State of Vermont or whether you are intending to file a grievance. In either event, the materials which you file should contain specific references to the pertinent sections or sections of the collective bargaining agreement, if applicable, or the pertinent rule or regulation, if applicable... The materials which you have filed contain no such references.

On July 10, 1991, Grievant filed a response to Noonan's June 26, 1991, letter. Therein, Grievant stated, in pertinent part: "(m)y grievance is not an appeal under the Classification Grievance Article, it is a Step IV Grievance of the manner in which that Article was administered".

On November 25, 1991, the State filed a motion to dismiss on the grounds that the Board lacked jurisdiction. Grievant filed a response to the State's Motion to Dismiss on December 4, 1991. There was a hearing in this matter on December 16, 1991, before Board Members Louis A. Toepfer, Acting Chairman; Catherine L. Frank and Leslie G. Seaver. Grievant appeared on his own behalf. Michael Seibert, Assistant Attorney General, represented the State of Vermont. The December 16 proceeding consisted of oral argument by the parties on the State's Motion to Dismiss. Grievant filed a brief on December 30, 1991. The State filed no brief subsequent to the December 16 proceeding.

In deciding whether to grant the State's Motion to Dismiss, we look to the applicable 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 - June 30, 1992 ("Contract"). Article 16 of the Contract, Classification Review and Classification Grievance, provides in pertinent part:

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 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. 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 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". Appeal of DeGreenia and Lewis, 11 VLRB 227, 228-229 (1988). Appeal of Cram, 11 VLRB 245, 246-247 (1988).

Grievant has made no allegation that the Commissioner of Personnel made an arbitrary and capricious decision in applying

the point factor system. Instead, he has clearly indicated that he is not filing an "appeal" pursuant to Article 16, Section 7, of the Contract, but is filing a "grievance of the manner in which (the classification article) is administered". In so doing, he has made a claim over which the Board lacks jurisdiction.

The materials filed by Grievant in this matter indicate that the Department of Personnel took an inordinate amount of time (i.e. more than two years) in providing Grievant with an answer to his classification grievance. Under the circumstances, Grievant is understandably frustrated with the manner in which the classification article of the Contract is administered. Nonetheless, our jurisdiction under this Article is limited to determining whether the Commissioner of Personnel has made an arbitrary and capricious decision in applying the point factor system. Appeal of Dameron and Gower, 10 VLRE 101, 108 (1989). Grievant having made no such claim, we lack jurisdiction in this matter.

Now therefore, based on the foregoing reasons, it is hereby ORDERED that the Motion to Dismiss filed by the State of Vermont is GRANTED and this matter is DISMISSED.

Dated this 29th day of January, 1992, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

Louis A. Toepfer
Louis A. Toepfer, Acting Chair

Catherine L. Frank
Catherine L. Frank

Leslie G. Seaver
Leslie G. Seaver