

APPEAL OF:)
) DOCKET NO. 91-32
HOWARD BERLIN)

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

Appellant submitted the whole record of the proceedings before, and the decision of, the Commissioner of Personnel.

Appellant filed a brief in support of his position on December 31, 1991. The State filed a brief in support of its position on January 23, 1992. 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 his own behalf. Michael Seibert, Assistant Attorney General, represented the State.

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 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. 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 decision of the Commissioner of Personnel is arbitrary and capricious because the Commissioner refused to acknowledge that the action by the Department of Personnel classification section, placing Appellant's position at

the same level in the area of "job knowledge and skills" as the social workers he supervised, was clearly erroneous.

Upon review of the entire record before the Commissioner of Personnel, we do not concur with Appellant that the Commissioner's decision was arbitrary and capricious. While it is true that Appellant's position was rated at the same level as his subordinates in the area of "job knowledge and skills", this does not mean that the rating failed to reflect any differences between the duties and responsibilities of Appellant and those of his subordinates with respect to other criteria. The differences between the positions are reflected in the higher ratings Appellant's position received in the areas of "mental demands" and "accountability." Those differences account for the one pay grade difference in the classification of the positions (i.e., assignment of Appellant's position to pay grade 21, assignment of Social Worker A's to pay grade 20). Thus, the differences between the positions are recognized in categories other than "job knowledge and skills."

Further, the nature of the disagreement between Appellant and the Department of Personnel rating involves a narrow dispute based upon a very subtle interpretation of the point factor analysis system. The parties agree that Appellant's position is designated properly with respect to the specific factors under "job knowledge and skills": job knowledge, managerial skills and interpersonal communications skills. 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

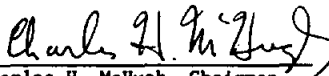
the strength of the job knowledge and skills. The Department of Personnel awarded 184 points, as opposed to the 212 points requested by Appellant. The points requested by Appellant are the same as that assigned to his supervisor, the Income Maintenance District Director. The fact that the Commissioner of Personnel upheld the classification decision assigning Appellant the same number of points in job knowledge and skills as that of his subordinates, as opposed to that of his superior, does not demonstrate an arbitrary and capricious action.

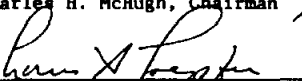
It is evident that there is simply a rational disagreement on the assignment of points on narrow grounds between the parties which is the product of differing judgments on the application of the appropriate classification principles. Given the substantial deference which we are contractually obligated to give to the decision of the Commissioner, we believe it would be inappropriate under the circumstances to reverse the Commissioner's decision here.

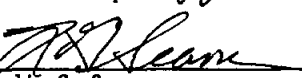
Now therefore, based on the foregoing reasons, it is hereby ORDERED that the Appeal of Howard Berlin is DISMISSED.

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

VERMONT LABOR RELATIONS BOARD


Charles H. McHugh, Chairman


Louis A. Toepfer


Leslie G. Seaver