

VERMONT LABOR RELATIONS BOARD

APPEAL OF:)
) DOCKET NO. 92-15
GREGG FISHER)

MEMORANDUM AND ORDER

At issue is whether the Labor Relations Board should grant the Application for Subpoena filed by Gregg Fisher, Investigator for the Secretary of State ("Appellant"), pursuant to Section 12.8 of the Board Rules of Practice. Appellant requests that the Board issue a subpoena in this classification appeal requiring the State to produce all written materials within the possession and/or control of the Department of Personnel relating to the reclassification of the Investigative Unit of the Office of the Secretary of State. Included within Appellant's request are the classification analyst's interview notes, inter/intra office communications, Department of Personnel materials relating to performance of desk audits and general reclassification procedures, and job descriptions and classification analyses of the positions of classification analyst and investigators. Appellant contends that these materials constitute part of the record in this matter. The State objects to the Application for Subpoena on the grounds that the materials requested by Appellant are not part of the record.

We conclude that the collective bargaining contract between the State and the VSEA for the Non-Management Unit, effective for the period July 1, 1990 - June 30, 1992, precludes the Board from granting Appellant's application for subpoena. In essence, Appellant is seeking to convert the proceeding before the Board

into a fact-finding process by requesting that we require the State to turn over these materials to him. This is something the Contract clearly proscribes.

Article 16, Section 7, of the Contract, referring to classification appeals, provides that 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)". It is evident by a review of Article 16, Section 4, of the Contract, that the "whole record of the proceeding" before the Commissioner of Personnel consists of all "information and/or documents" provided to the Commissioner by the grievant and classification section of the Department of Personnel, which information and documents must be disclosed to the other party.

Accordingly, the materials requested by Appellant in his application for subpoena are not relevant to the appeal to the Board unless they were submitted to the Commissioner pursuant to Article 16, Section 4, of the Contract. Otherwise, the Board would be acting contrary to the dictates of the Contract that we do not take any evidence in classification appeals. Appeal of DeGreenia and Lewis, 11 VLRB 227, 228 (1988). If any of the materials he requests were, in fact, submitted to the Commissioner pursuant to Article 16, Section 4, of the Contract, such materials can be readily provided to us by the parties without the need of a subpoena.

NOW THEREFORE, based on the foregoing reasons, it is hereby
ORDERED that Appellant's Application for Subpoena is DENIED.

Dated this 10th day of December, 1992, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

Charles H. McHugh
Charles H. McHugh, Chairman

Catherine L. Frank
Catherine L. Frank

Carroll P. Comstock
Carroll P. Comstock