

VERMONT LABOR RELATIONS BOARD

APPEAL OF: )  
 ) DOCKET NO. 96-56  
JEFFREY RICKARDS )

### FINDINGS OF FACT, OPINION 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, Inc. ("VSEA") for the Non-Management Unit, effective for the period July 1, 1994 to June 30, 1996 ("Contract"),

On January 19, 1996, Jeffrey Rickards ("Appellant"), Occupational Safety Coordinator in the Department of State Buildings, pay grade 19, submitted a request for classification action requesting the reclassification of his position to pay grade 21. Appellant requested that he be placed in the Hazardous Waste/Safety Engineer class. On March 29, 1996, and April 16, 1996, the classification section denied Appellant's request for a new pay grade. On April 22, 1996, Appellant filed a classification grievance with the Commissioner of Personnel, contending that the classification section's decision was clearly erroneous because his duties and responsibilities are equivalent to those of a Hazardous Materials and Waste Coordinator position. On May 28, 1996, the Commissioner affirmed the classification section's decision.

In his appeal to the Board from the Commissioner's decision, Appellant contends that the Commissioner's decision violated Article 16, Section 7, 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 filed with the Board 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 October 30, 1996. The State filed a brief in support of its position on November 14, 1996. Oral argument was held before Board Members Catherine Frank, Chairperson; Carroll Comstock and Richard Park on December 5, 1996, in the Board hearing room in Montpelier. Appellant appeared on his own behalf. Michael Seibert, Assistant Attorney General, represented the State.

Article 16, Section 7, of the Contract provides in pertinent part as follows with respect to appeals of classification decisions:

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 reason 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 Berlin, 15 VLRB 245, 246 (1992). Appeal of Cram, 11 VLRB 245, 246-47 (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. Appeal of Smith, 17 VLRB 145, 149 (1994). Appeal of Berlin, 15 VLRB 245, 247 (1992).

Given the statutory responsibility of the Commissioner of Personnel, pursuant to 3 V.S.A. §310, to ensure that State service has a 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. The Board has jurisdiction to review and remand the Commissioner's decision when a Commissioner relied on inappropriate considerations and without consideration or reference to applicable classification principles. Id.

At the outset, the State contends that Appellant submitted certain documents to the Board, specifically Appellant Exhibits 12A, 12A-2, 12B, 12C and 12D, which were not part of the record before the Commissioner of Personnel. Article 16, Section 7, of the Contract provides that the Board will 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. 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. Article 16, Section 4, Contract; Appeal of Fisher, 15 VLRB 519, 520 (1992).

We conclude that Appellant Exhibits 12A, 12A-2, 12B, 12C and 12D are not properly before us because they were not part of the "whole record of the proceeding" before the Commissioner of Personnel. Although Appellant may have used the documents in question during his desk audits with the classification section, there is no evidence that either he or the classification section provided the documents to the Commissioner of Personnel, as required by Article 16, Section 4. Id. We also are not persuaded by Appellant's further argument that the Department of Personnel acknowledged receipt of these documents on October 31, 1996, in the course of this appeal. The Contract requires that the Commissioner receive documents before he makes his decision, and here the Commissioner made his decision approximately five months earlier, on May 28, 1996.

We turn to discussing the merits of Appellant's appeal. Appellant contends that the decision of the Commissioner of Personnel is arbitrary and capricious because he affirmed a classification action that erroneously applied the point factor system to his position. Appellant's primary contention is that his duties and responsibilities have changed from worker safety to managing a hazardous materials program for his department and his duties are now equivalent to an Agency of Transportation Hazardous Materials and Waste Coordinator, pay grade 21. Appellant contends that his position should receive higher point factor ratings in the categories

of knowledge and skills and working conditions through placement in a more highly rated component in the "job knowledge and skills" category.

The classification section acknowledged that Appellant's duties have changed since his position was originally classified, and it compared his duties and responsibilities to those of the Transportation Hazardous Materials and Waste Coordinator position. It determined that, although there are some similar duties between the positions, there are also significant differences that warrant a higher pay grade for the Transportation Coordinator position due to the Transportation Coordinator managing more hazardous materials and waste at more sites in the State and also managing more programs. It is apparent that the classification section viewed the job knowledge of Appellant's position to be on the border between two components in the job knowledge and skills category, and elected to assign Appellant the highest numerical rating in the lower rated of the two components. Upon review of the record, and given our limited scope of review and the substantial deference we must accord the Commissioner's decision, we conclude that the Commissioner did not act in an arbitrary and capricious manner by failing to conclude that the classification section's application of the point factor system in this regard was erroneous.

Appellant also contends that the Commissioner's decision was arbitrary and capricious with respect to working conditions in that there is some inherent danger in working with hazardous materials. The classification section recognized that Appellant has occasional exposure to hazardous materials in the performance of his job; however, it determined that the actual exposure to risk is quite minimal. Again,

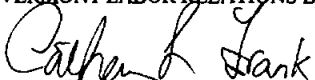
upon review of the record, and given our limited scope of review and the substantial deference we must accord the Commissioner's decision, we conclude that the Commissioner did not act in an arbitrary and capricious manner by failing to conclude that the classification section's application of the point factor system in this regard was erroneous.


Thus, we conclude that the Commissioner of Personnel's decision to uphold the decision of the classification section of the Department of Personnel, assigning Appellant's position to pay grade 19, was not arbitrary and capricious in applying the point factor system.

NOW THEREFORE, based on the foregoing reasons, it is hereby ORDERED that the Appeal of Jeffrey Rickards is DISMISSED.

Dated this 6<sup>th</sup> day of February, 1997, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

  
Catherine L. Frank, Chairperson

  
Carroll P. Comstock

  
Richard W. Park