

VERMONT LABOR RELATIONS BOARD

APPEAL OF:	)	
	)	DOCKET NO. 98-77
DAVID STONECLIFFE	)	

MEMORANDUM 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 ("VSEA") for the Non-Management Unit, effective for the period July 1, 1997 to June 30, 1999 ("Contract").

In July, 1998, the Department of Personnel reallocated the Agency of Human Services position held by David Stonecliffe ("Appellant") from Automated Systems Specialist B, Pay Grade 21, to Network Administrator I, Pay Grade 20. Appellant filed a classification grievance with the Commissioner of Personnel over the reclassification and downgrade of his position. On October 23, 1998, Appellant received notification from Personnel Commissioner Eileen Boland denying the grievance. On November 23, 1998, Appellant appealed the Commissioner's decision to the Labor Relations Board. In the appeal, Appellant contends that the Commissioner's decision violated Article 16 of the Contract. He requests that he be reclassified as a Network Administrator II, Pay Grade 23.

Appellant filed with the Board the record of the proceedings before, and the decision of, the Commissioner of Personnel. Appellant filed a brief in support of his position on May 28, 1999. The State filed a brief in support of its position on June 7, 1999. Oral argument was held before Board Members Catherine Frank, Chairperson;

Carroll Comstock and Edward Zuccaro on June 10, 1999, in the Board hearing room in Montpelier. Appellant represented himself. David Herlihy, Department of Personnel Legal Counsel, 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 the Commissioner's actions in this regard 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 first contends that the decision of the Commissioner of Personnel is arbitrary and capricious because of the "D" level rating he received in the "Job Knowledge" area of the "Knowledge and Skills" category. Appellant contends that he should have received a higher "E" level rating. Under the guidelines followed by the Department of Personnel in classifying positions, a "D" level rating is applicable for jobs requiring a "beginning measure of knowledge in a specialized or technological field". An "E" level rating is appropriate for jobs requiring "full competence in a specialized or technological field".

Appellant contends that it was arbitrary and capricious to assign his position less points in this area than were assigned when the position was last reviewed in 1988 given the advances in computer technology over the years, and given the continuous increase in the duties and expectations of Appellant's position. Grievant further contends that it is illogical and arbitrary to rate his job in the Job Knowledge and Skills category as requiring a "beginning measure of knowledge", yet assign him a rating in the Mental

Demands category which indicates that "jobs at this particular level have a variety of varied and/or complex procedures".

The Department of Personnel contends that the "D" rating assigned Appellant is appropriate given that he is in an entry-level position in the highly technical, specialized and complex discipline of network administration. The Department justifies the downgrading of the position since it was last reviewed in 1988 due to a number of changes which have occurred, including the adding of a position with supervisory authority over Appellant.

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 upholding the Classification Section's determination in this regard. Although there can be rational disagreement with the rating assigned the position, Appellant did not meet his high burden of demonstrating the Department's application of the point factor system violated the Contract. We are not prepared to overturn the Department's conclusion that Appellant's position was more appropriately given a rating reflecting a "beginning measure" of knowledge in his field rather than "full competence". It is particularly significant in this regard that a position has been added with supervisory authority over Appellant, resulting in technical oversight of his work product.

Also, it was not illogical under the point factor system to give Appellant's position a lower level rating for job knowledge when the position was given a high mental demands rating based on the position having "varied and complex procedures". A

Network Administrator can deal with varied and complex procedures without having full competence in their field.

Although Appellant has not demonstrated arbitrary and capricious action by the Commissioner in applying the point factor system, we cannot help but question the adequacy of the existing system in rating positions in the computer technology field. The reasonableness of a job evaluation system, which results in the downgrade of a position which requires that the incumbent constantly upgrades and keeps abreast of new, evolving and increasing complex technology, flies in the face of logic. In sum, while the Department of Personnel did not apply the existing point factor system in an arbitrary and capricious manner, the existing point factor system itself appears to no longer result in a reasonable evaluation of computer technology positions.

Appellant next contends that the Commissioner's decision was arbitrary and capricious because of the "Size of Impact" rating of "2" he received in the "Accountability" category. Under the guidelines followed by the Department of Personnel in classifying positions, there are size of impact ratings from 1 to 4, and the rating of 2 applies to jobs with a "moderate impact" of \$500,000 – 5,000,000. Appellant contends that his position has an impact well beyond the \$5,000,000 maximum of Level 2 given that he maintains the automated systems of the Secretary of Human Services, who controls the largest budget and staff of any agency in State government.

There is no support in the record for Appellant's assertion in this regard. It does not follow, without providing specific information, that the size of the Agency of Human Services budget results in a conclusion that the impact of Appellant's position exceeds \$5,000,000. Thus, we conclude that Appellant has not demonstrated that the

Commissioner acted in an arbitrary and capricious manner by upholding the "Accountability" category rating.


Finally, we address Appellants' apparent contention that his position was classified at a lower level to avoid his position having the same pay grade as his supervisor. Appellant's supervisor is classified as a Network Administrator II, Pay Grade 23. Pursuant to the Contract, our decision must be based on the record of the proceeding before the Department of Personnel. Appellant has pointed to no documents in the record in which the Department of Personnel takes the position that the classification of Appellant's position was based on seeking to avoid Appellant's position having the same pay grade as his supervisor. Thus, we find no merit to this contention by Appellant.

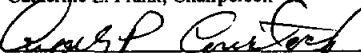
In sum, we conclude that the Commissioner of Personnel's decision to uphold the decision of the Classification Section of the Department of Personnel, assigning Appellants' position to pay grade 20, was not arbitrary and capricious in applying the point factor system.


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

Dated this 2nd day of August, 1999, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

  
Catherine L. Frank, Chairperson

  
Carroll P. Comstock

  
Edward R. Zuccaro