

VERMONT LABOR RELATIONS BOARD

APPEAL OF:)	
)	
VERMONT STATE EMPLOYEES')	
ASSOCIATION AND)	DOCKET NO. 98-87
DEPARTMENT OF SOCIAL)	
WELFARE ELIGIBILITY)	
SPECIALISTS)	

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").

On October 24, 1997, Department of Social Welfare Eligibility Specialists submitted a request for classification action to the Department of Personnel, requesting that they be reclassified as Family Services Program Specialists and that their pay grade be changed from 18 to 20. On July 31, 1998, after conducting a field audit, the Department of Personnel Classification Section notified the employees that the request for reclassification and upgrade was denied. On October 1, 1998, the Eligibility Specialists filed a classification grievance with the Commissioner of Personnel over the denial of the request for reclassification and upgrade. On November 30, 1998, Personnel Commissioner Eileen Boland denied the grievance. On December 30, 1998, the VSEA, on behalf of itself and the Eligibility Specialists ("Appellants"), appealed the Commissioner's decision to the Labor Relations Board. In the appeal, Appellants contend 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.

Appellants filed with the Board the whole record of the proceedings before, and the decision of, the Commissioner of Personnel. Appellants filed a brief in support of their 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. VSEA Deputy Legal Counsel Mark Heyman represented Appellants. 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.

Appellants contend that the decision of the Commissioner of Personnel is arbitrary and capricious because the ratings they received under "Knowledge and Skills" and "Accountability" categories were not based on the full scope of the Eligibility Specialists' actual duties and responsibilities. Appellants further contend that the ratings they received were the result of a flawed classification process.

Appellants contest the "N" rating received by the Eligibility Specialists in the "Interpersonal Skills" area of the Knowledge and Skills category. Appellants contend a higher "Y" rating would have been appropriate. Under the guidelines followed by the Classification Section in classifying positions, "N" applies to jobs "in which influencing

others is a major responsibility", and can "be thought of as nudging others along a path which they may be inclined to follow". "Y" is the "giving religion" level in which "motivating others . . . or getting them to do something that they might not otherwise do is the key to the success of the job".

Appellants maintain that the higher "Y" rating is appropriate because the changes in the welfare system since the passage of the Welfare Reform Act have altered the duties of the Eligibility Specialists from merely determining a client's eligibility for a set amount of benefits to providing clients with the knowledge, resources and motivation needed to meet their obligations under the new work requirements of the welfare laws and regulations. Appellants contend that a large part of the Eligibility Specialists' job is motivating their clients.

The Department of Personnel Classification Section concluded that the motivational aspect of the Eligibility Specialists' job was not strong enough to warrant the highest "Y" rating in the Interpersonal Skills area. It was determined that the primary role for an Eligibility Specialist remains determination of eligibility for financial assistance. While encouraging clients to participate in programs that will remove barriers to being employed is necessary, it was determined that the primary incentive for clients to participate in such programs is loss of benefits if they do not participate. 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 concluding that the Classification Section's determination in this regard was not clearly erroneous. The record indicates that the Classification Section and Appellants have a rational disagreement based on applicable

classification principles; such rational disagreement does not warrant a conclusion that the Contract has been violated.

Appellants also contend the Commissioner's decision was arbitrary and capricious in not finding clearly erroneous the Classification Section's assignment of a "C" level rating in the "Freedom to Take Action" area of the "Accountability" category. Appellants contend the higher "D" level rating would have been appropriate. Under the guidelines followed by the Classification Section in classifying positions, a "C" level rating "defines positions that are controlled by work procedures and methods with a number of alternative courses of action available at stages in the work process". It is applicable when the "characteristics of the position are such that activities and methods are clearly defined, and/or work is frequently reviewed." A "D" level rating is appropriate for "incumbents working under a variety of procedures or routines with a substantial degree of selection between alternatives available". It applies when the "characteristics of the position are such that activities and methods are generally defined, and/or efforts are reviewed after the fact." Appellants contend that the range of Eligibility Specialists' responsibilities does not allow for activities and methods that are clearly defined, and their work product is not subject to constant review.

The Classification Section noted that the primary role of the Eligibility Specialist remains determination of eligibility for financial assistance, and selected the "C" rating on the grounds that there was a minimal amount of discretion in determining the amount of benefits to be allowed. 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

concluding that the Classification Section's application of the point factor system in this regard was not clearly erroneous. The fact that Eligibility Specialists' casework may not be subject to constant review does not necessarily result in a determination under the applicable standards that a higher "D" rating in "Freedom to Take Action" is warranted. The record indicates that the Classification Section and Appellants have a rational disagreement as to applying applicable classification standards to the various components of Appellants' job duties. Again, such rational disagreement does not warrant a conclusion that the Contract has been violated.

Finally, we address Appellants' contention that the audit in this case was fatally flawed, thus resulting in an arbitrary and capricious decision, because less than 10 percent of the position incumbents were involved in the audit, a percentage not constituting anywhere near a representative sample of position incumbents. We find no basis to conclude this demonstrates arbitrary and capricious action, particularly given that Article 16, Section 3(c), of the Contract gives the Department of Personnel discretion on whether to conduct audits. It would be inappropriate to find arbitrary and capricious action under the Contract, due to a small number of position incumbents being involved in an audit, when the Contract does not even require that an audit be performed.

Thus, 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 18, was not arbitrary and capricious in applying the point factor system.

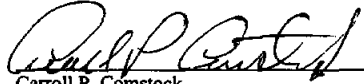
NOW THEREFORE, based on the foregoing reasons, it is hereby ORDERED that the Appeal of the Vermont State Employees' Association and Department of Social Welfare Eligibility Specialists is DISMISSED.

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

VERMONT LABOR RELATIONS BOARD



Catherine L. Frank, Chairperson



Carroll P. Comstock



Edward R. Zuccaro