

VERMONT LABOR RELATIONS BOARD

APPEAL OF:)	
)	DOCKET NO. 00-9
DOUGLAS GILLIES)	

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 ("Contract").

On December 20, 1998, the Agency of Human Services filed with the Department of Personnel a management request to review the classification of the Disability Determination Services Examiner C position, pay grade 20. Douglas Gillies ("Appellant") worked in that position. On June 4, 1999, the Classification Unit of the Department of Personnel notified Appellant that the title of his position was changed to Disability Determination Services Specialist III, but that the position would remain at pay grade 20. On or about September 7, 1999, the VSEA filed a classification grievance on behalf of Appellant, contending that the classification of Appellant's position was erroneous and should be assigned to pay grade 21.

On November 5, 1999, Personnel Commissioner Eileen Boland notified Appellant that she was remanding the classification review to the Classification Section. On remand, the Classification Section did not change the pay grade assigned to the position. On January 24, 2000, Commissioner Boland informed Appellant by letter that she was affirming the position's classification at pay grade 20. On January 24, 2000, VSEA, on behalf of 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, and that his position should have been assigned to pay grade 21.

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 November 28, 2000. The State filed a brief in support of its position on December 8, 2000. Oral argument was held before Board Members Edward Zuccaro, Acting Chairperson; and John Zampieri on December 14, 2000, in the Board hearing room in Montpelier. VSEA Deputy Counsel Michael Casey represented Appellant. Assistant Attorney General William Reynolds 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 was arbitrary and capricious because her action on November 5, 1999, remanding the classification review to the Classification Section was performed without regard to, or consideration of, the mandated procedures contained in Article 16 of the Contract. The record indicates that Commissioner Boland remanded the review to the Classification Section after Douglas Pine, the hearing officer she had designated to hear Appellant's classification grievance and make a recommendation to her, sent her a memorandum concluding that Appellant had met the burden of demonstrating that the rating of his position was clearly erroneous. Pine recommended the following: 1) that classification

staff be instructed to perform a job audit of Appellant's position; 2) that classification staff meet with and fully consider Agency of Human Service Personnel Administrator Joe Benner's audit, analysis and rating of Appellant's position; and 3) that classification staff re-evaluate Appellant's position. Upon receipt of a copy of Pine's memorandum to Commissioner Boland, two members of the Classification Section wrote detailed memoranda in which they defended the Classification Section's decision and were critical of Pine's memorandum. These memoranda were reviewed by Commissioner Boland, after which she took her remand action on November 5. Her letter to Appellant announcing the remand provided as follows:

I have examined the record related to your grievance of the classification review of the above position.

Based on the record and additional information provided by Classification Division staff after the hearing conducted by Doug Pine, I would be unable to find that the classification of your position was clearly erroneous. However, I am troubled by the fact that additional information arose after the hearing, and by questions about certain aspects of the process used to rate this position. Accordingly, I have decided to remand this review to the Classification Unit. Your request will be reviewed anew. While this remand will delay the process, it will allow opportunity for an audit of your duties and fair consideration of all relevant information, including the analysis prepared by Joseph Benner for your Department. It will also ensure that all information on which I might rely will be part of the record at the time of the hearing provided for by the collective bargaining agreement, if the outcome of the remand does not preclude a grievance and you still desire to dispute the rating.

I will delay my final decision in this matter until the Classification Unit submits a report, to be completed by December 4, 1999.

Appellant contends that Commissioner Boland's remand violated Article 16, Section 4(f) of the Contract, which provides in pertinent part as follows:

The Personnel Commissioner (or designee) shall review the grievance, and if a meeting has been requested, hold such meeting within fifteen (15) workdays. A written decision shall be issued within fifteen (15) workdays of such meeting . . . The time periods for holding a meeting and/or issuing a decision may be extended by mutual consent of the grievant and the Commissioner of Personnel (or designee).

Appellant argues that Article 16, Section 4(f) was violated because an actual written decision was not issued by the Commissioner within 15 workdays of the hearing, and Appellant did not consent to the Commissioner's unilateral action to extend the time for filing a written decision. Appellant maintains that the Commissioner's actions also violated Article 16, Section 6, of the Contract, which provides that "(t)he grievance and appeal procedures provided herein for classification disputes shall be the exclusive procedures for seeking review of the classification status of a position or group of positions." Appellant argues that this section was violated because remands are not an authorized procedure under Article 16.

We disagree that the Commissioner's remand violated the provisions of Article 16. Section 4(g) of Article 16 permits the Commissioner's action. It provides:

The Commissioner of Personnel (or designee) may request additional information and/or documents from either or both the grievant and classification division and impose deadlines for their submission. Both parties to the grievance will be advised as to any request for additional information/documents. The due dates for a hearing and/or decision are automatically extended by the time allowed for submission of additional information/documents.

We conclude that Commissioner Boland's remand constituted a "request" for "additional information" within the meaning of Section 4(g). This contract language contemplates that the Commissioner may need additional information before reaching a decision on a classification grievance, and that both parties to the grievance will be privy to the requested information. By remanding the review of Appellant's position to the Classification Section for "an audit of (Appellant's) duties and fair consideration of all relevant information", Commissioner Boland essentially asked for additional information before reaching her decision.

Her action also ensured that any information upon which she may have relied in reaching her decision, including any memoranda from the Classification Section, would be part of the record available to Appellant. In her letter to Appellant announcing the remand, the Commissioner stated that the remand “will also ensure that all information on which I might rely will be part of the record”. This was consistent with the evident intent of Section 4(g) that both parties to a classification grievance have notice of the information relied on by the Commissioner.

Since Commissioner Boland’s remand constituted a request for additional information, the “due dates for a . . . decision” were “automatically extended by the time allowed for submission of additional information” pursuant to Section 4(g). Thus, we disagree with Appellant that the remand by the Commissioner violated the provisions of Article 16 of the Contract.

Appellant next contends that the Commissioner’s decision was arbitrary and capricious because there is no relevant evidence to justify reducing the “Accountability” rating of Appellant’s position by ten points from where it was prior to the classification review. A review of the record does not support Appellant’s position that there was no relevant evidence for reducing the Accountability rating. The record indicates that the Classification Section relied on evidence of an increase in supervision of Appellant’s position beginning in October 1998 to support reducing the Accountability rating. The record further indicates that the Classification Section concluded that the previous rating of Appellant’s position had erroneously based the Accountability rating on Appellant’s position having a supportive impact of \$5 million to \$20 million, when there was evidence that the actual supportive impact was lower.

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 determinations 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 was in violation of the Contract.

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.

Based on the foregoing reasons, it is hereby ordered that the Appeal of Douglas Gillies is dismissed.

Dated this ____ day of December, 2000, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

Edward R. Zuccaro, Acting Chairperson

John J. Zampieri