VERMONT LABOR RELATIONS BOARD

APPEAL OF:	)	
	)	DOCKET NO. 17-58
DRAGICA GAGULIC	)	

MEMORANDUM AND ORDER

This matter is before the Labor Relations Board as an appeal filed by the Vermont State Employees' Association ("VSEA") on behalf of Dragica Gagulic ("Appellant") from a classification decision of the Commissioner of Human Resources 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 Supervisory Unit, effective for the period July 1, 2016 to June 30, 2018 ("Contract").

Appellant and a co-worker held the position of Operations Administrator, pay grade 27, within the Operations Unit of the State of Vermont Department for Children and Families ("DCF") for several years. In early 2017, DCF Operations Manager Timothy Cutler determined that, based on the allocation of duties between Appellant and her fellow Operations Administrator, Appellant's job duties were narrower than those set forth in the Operations Administrator job description. In March 2017, Cutler submitted a Request for Classification Review ("RFR") of Appellant's position based on the changed responsibilities of Appellant's position. Cutler stated that "a more appropriate classification" for Appellant's position "would be the existing job specification Business Application Support Specialist at a pay grade 25".

The DCF Classification Committee met on March 15, 2017, to discuss Appellant's position. Classification Analyst Jenny Audet issued a Notice of Classification Action on March 17, 2017, for a "no fault downward reallocation" of Appellant's position to "the job class of Business Process Analyst", pay grade 25. The notice included as well a change in the bargaining

unit designation of Appellant's position from supervisory to non-management. The notice indicated the following assignment of points under the Willis system with respect to specific components and in total:

Knowledge & Skills	F1Y	244
Mental Demands	E4L	122
Accountability	E3S	160
Working Conditions	L1A	0
Total Points		526

After receipt of the Notice of Classification Action, Appellant requested an informal meeting with the Classification Committee for a discussion of the decision pursuant to Article 16, Section 3(d) of the Contract. The meeting was held on April 19, 2017. Grievant provided additional information regarding her job duties at the meeting. Subsequent to the meeting, Cutler submitted at the Classification Committee's request a memorandum to the Committee responding to the information provided by Appellant at the informal meeting. After further Committee review at a May 17, 2017, meeting. Audet issued a corrected Notice of Classification Action indicating that Appellant's position was reallocated to the "newly created job class of BFIS Functional Coordinator, pay grade 25." The notice indicated as well the following assignment of points under the Willis system with respect to specific components and in total:

Knowledge & Skills	F1Y	244
Mental Demands	E4K	106
Accountability	E3S	140
Working Conditions	L1A	0
Total Points		490

Appellant filed a classification grievance with the Commissioner of Human Resources, Beth Fastiggi. Commissioner Fastiggi denied the grievance, concluding in a November 27, 2017, decision that the point factor rating for Appellant's position and its assignment to the class of

BFIS Functional Coordinator, pay grade 25, was not "clearly erroneous" under the standards provided by the Willis Point Factor Analysis System.

On December 21, 2017, VSEA filed an appeal of the Commissioner's decision with the Labor Relations Board on behalf of Appellant. 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 record of the proceedings before, and the decision of, the Commissioner of Human Resources on May 25, 2018. Appellant filed a brief in support of her position on May 25, 2018. She filed an Addendum to the Record on June 8, 2018. The State filed a brief in support of its position on June 8, 2018. Oral argument was held on June 21, 2018, before Board Members Robert Greemore, Acting Chairperson; James Kiehle and Alan Willard, in the Labor Relations Board hearing room in Montpelier. VSEA Staff Attorney Kelly Everhart represented Appellant. Emily Adams, 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 Human Resources 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 Human Resources (or designee). The VLRB's authority hereunder shall be to review the decision(s) of the Commissioner of Human Resources, 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 at 247.

Given the statutory responsibility of the Commissioner of Human Resources, 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 contends that the decision of the Commissioner of Human Resources is arbitrary and capricious because the State knew what pay grade it wished to assign Appellant’s position, disregarded the Guide to Position Measurement for the Willis system, and instead relied on inappropriate considerations and inaccurate information from Appellant’s supervisor to achieve its goal. Appellant contends that the decision inappropriately relied on an inaccurate accounting of Appellant’s existing job duties and on changes to Appellant’s job duties that had not yet occurred.

Appellant has not established that the classification action here was a preconceived decision based on inaccurate information and in disregard of application of the Willis point factor system. After Appellant brought deficiencies in the request for review prepared by Appellant's supervisor to the attention of the Classification Committee following the initial Notice of Classification Action by the Committee, the Committee reviewed and analyzed additional information provided by Appellant and her supervisor. The record establishes that this additional information appropriately included addressing whether job duties currently were being performed by Appellant. The Committee then issued a corrected classification action based on this input. The record does not establish that the Committee disregarded application of the Willis point factor system in analyzing this additional information and issuing a corrected action.

Appellant also specifically questions the assignment of points in the State's application of the Willis point factor system with respect to the Knowledge and Skills component. Appellant contends that the assignment of 244 points to the F1Y rating in Knowledge and Skills was based on inaccurate information. Appellant's basis for this claim is the following statement in the State's explanation of the assignment of points with respect to this component: "Given the expectation that this position will gather and coordinate information as a conduit to pass along the lower-range was most appropriate at this factor which still recognizes how complicated this system is." Appellant asserts that the State's explanation of Appellant as a mere conduit is woefully inaccurate given that Appellant held on to the majority of her duties supporting the earlier classification of her position assigned to pay grade 27 and took on more work as the staff managing the system continued to dwindle. Appellant contends that, if the review of her position was based on accurate information, it would have been appropriate to assign it one of the higher numerical values of the F1Y rating, either 280 or 320 points.

Upon review of the entire record before the Commissioner of Human Resources, we do not agree with Appellant that the Commissioner's decision was arbitrary and capricious. The nature of the disagreement between Appellant and the State involves a narrow dispute based upon a subtle interpretation of the point factor analysis system. Appeal of Smith, 17 VLRB at 149. Appeal of Berlin, 15 VLRB at 248. The parties agree that Appellant's position is designated properly, i.e., F1Y, with respect to the specific factors under the Job Knowledge & Skills component: job knowledge, managerial skills and interpersonal communication skills. The difference between the parties is with respect to the number of points assigned to that designation. The rater may choose from among 244, 280 and 320 points within that designation, depending upon the assessment of the strength of the job knowledge and skills. The Classification Committee awarded 244 points, as opposed to the 280 or 320 points requested by Appellant.

It is evident that there is simply a rational disagreement on the assignment of points on narrow grounds between the parties which is the product of differing judgments on the application of the appropriate classification principles. Given the substantial deference which we are contractually obligated to give to the decision of the Commissioner of Human Resources, it would be inappropriate under the circumstances to reverse the Commissioner's decision accepting the allotment of 244 points. Appeal of Smith, 17 VLRB at 149. Appeal of Berlin, 15 VLRB at 248.

Appellant next questions the assignment of points with respect to the Mental Demands component of the Willis point factor system. Appellant asserts that it was arbitrary and capricious for the Human Resources Commissioner to affirm the Classification Committee decision to decrease the Mental Demands points for Appellant's position from 122 to 106 after

the informal meeting to discuss the classification decision. Appellant contends that it was clearly erroneous for the Committee to not assign her position a higher score considering that her position requires her to troubleshoot a complex system daily while exercising a tremendous amount of independent judgment.

The State explains its assignment of points with respect to this component as follows on the document prepared by the classification analyst at the time of the corrected Notice of Classification action:

> "(K) This level represents the lower factor rating. This remains in line with the chosen point range from above. The choice of factor ratings here is not based on clearly defined criteria like other rating factors, instead the letter options represent percentages which are paired with the Knowledge and Skills points to derive the Mental Demands points."

Again, it is evident that there is simply a rational disagreement on the assignment of points on narrow grounds between the parties which is the product of differing judgments on the application of the appropriate classification principles. The parties agree that Appellant's position is designated properly, i.e., E4, with respect to the specific factors of independent judgment and problem solving under the Mental Demands component: The difference between the parties is with respect to the number of points assigned to that designation. The Classification Committee assigned 106 points; Appellant contends 122 points should have been assigned. Given the substantial deference which we are contractually obligated to give to the decision of the Commissioner of Human Resources, it would be inappropriate under the circumstances to reverse the Commissioner's decision accepting the allotment of106 points.

Thus, we conclude that the decision of the Commissioner of Human Resources - determining that the point factor rating for Appellant's position and its assignment to the class of BFIS Functional Coordinator, pay grade 25, was not "clearly erroneous" under the standards

provided by the Willis Point Factor Analysis System - was not arbitrary and capricious in applying the point factor system.

Based on the foregoing reasons, it is ordered that the Appeal of Dragica Gagulic is dismissed.

Dated this 31st day of July 2018, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

/s/ Robert Greemore

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Robert Greemore, Acting Chairperson

/s/ James C. Kiehle

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James C. Kiehle

/s/ Alan Willard

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Alan Willard