

VERMONT LABOR RELATIONS BOARD

APPEAL OF:)	
)	DOCKET NO. 18-51
HEATHER MATTISON)	

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 Heather Mattison ("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 Non-Management Unit, effective for the period July 1, 2016 to June 30, 2018 ("Contract").

On March 1, 2017, Timothy Cutler, Director of Operations for the Child Development Division ("CDD") of the Department for Children and Families ("DCF"), submitted a Request for Classification Review ("RFR") for Appellant's position. Cutler indicated that a review of the current position classification and the actual duties of the position had led to his determination that the position should be reclassified from CDD Operations Administrator, pay grade 27, to CDD Data and Outreach Coordinator, with a recommendation of a minimum pay grade 25 position. The DCF Classification Committee met to discuss the RFR, and on March 17, 2017, Classification Analyst Jenny Audet issued a Notice of Classification Action providing for a "no fault downward reallocation" of Appellant's position to the job class of Data and Outreach Coordinator, pay grade 25. The notice indicated the following assignment of points under the Willis system with respect to specific components and in total:

Knowledge & Skills	E1Y	244
Mental Demands	E4L	122
Accountability	E3S	160
Working Conditions	L1A	0

Total Points 526
(Record, Exhibits 1 and 2)

On January 25, 2018, Appellant initiated an employee RFR to reclassify her position. Appellant indicated that new duties of the position had been assigned to her following the downward reallocation of her position. The DCF Classification Committee met on February 21, 2018, to discuss the RFR, and Audet issued a Notice of Classification Action on February 21, 2018, indicating that the position was properly classified at pay grade 25. The notice provided as follows:

Summary of Classification Review & Decision

Based on the information submitted in the Request for Review for your position reviewed at the DCF Classification Committee meeting held on 2-21-2018, there has been no change to the classification. The duties outlined are consistent with the current job class of Data & Outreach Coordinator, pay grade 25 and the assigned Willis rating remains appropriate.

Willis Rating Components:

Knowledge & Skills	E1Y	244
Mental Demands	E4L	122
Accountability	E3S	160
Working Conditions	L1A	0

Total Points 526

Descriptions of the Willis Components can be found on our website:

. . . The document is titled “Guide to Position Measurement”. You may also obtain a copy of this document from your HR Administrator or from VSEA. . .
(Record, Exhibits 3 and 4)

After receiving this notice, Appellant received a copy of the supervisor comments Cutler had made on the RFR. She disagreed with the content of the comments and requested a meeting with the DCF Deputy Commissioner and Cutler. On March 18, 2018, after meeting with Appellant and the DCF Deputy Commissioner, Cutler revised his comments on the RFR and sent

the revised comments to the DCF Classification Committee with a memorandum providing in pertinent part:

Please accept the attached revised Supervisor's Section . . . to the Request for Classification Review submitted by Heather Mattison . . . Based upon a conversation convened and moderated by (DCF Deputy Commissioner) Reeva Murphy, Heather and I had a discussion of her job duties that included an assessment of complexity and oversight and reached consensus regarding current expectations. The updated document reflects that consensus. To the degree that the Supervisor's comments impacted the classification decision reached previously, I leave it to the Committee's discretion to reconsider their previous assessment based upon the new information.
(Record, Exhibits 6 and 7)

In the revised version of supervisor comments, Cutler provided a greater level of detail regarding the responsibilities of Appellant's position. He also added statements in several sections of the comments indicating that Appellant's descriptions of certain duties and skills were accurate. 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 March 21, 2018. Grievant was present with VSEA Representative Brian Morse. The DCF Classification Committee Chairperson informed Appellant that she would have ten minutes to speak before the committee. At the meeting, Appellant and Morse provided additional information, both verbal and written, concerning her job duties (Record, Exhibits 7 and 8).

On March 27, 2018, Audet informed Appellant by email: "The DCF Classification Committee again reviewed the Request for Review (RFR) form for your position submitted on January 25, 2018, and the additional information presented and discussed at your informal meeting. The Committee agreed that the Willis rating remains appropriate. The duties are consistent with the classification indicated in the Notice of Classification Action dated February 21, 2018." Grievant's position was assigned the same number of points under the Willis system

as had been assigned in the February 21, 2018, Notice of Classification Action (Record, Exhibits 9, 10).

Appellant filed a classification grievance with the Department of Human Resources (“DHR”) on April 11, 2018. Grievant’s VSEA representative requested information from the State in conjunction with representing Appellant in the grievance. Among other information, the State provided grids indicating the ratings and points each member of the Classification Committee assigned to Appellant’s position, as well as their comments indicating that Appellant’s position was properly classified, with respect to the February 21 and March 27 classification actions (Record, Exhibits 5, 10, 11, 12, 13).

Beth Fastiggi, DHR Commissioner, designated Aditei Lagu, Labor Relations Manager for DHR, to conduct a grievance meeting. Lagu held a meeting on June 22, 2018. Grievant and Morse were present at the meeting. On October 11, 2018, Lagu sent a memorandum to Commissioner Fastiggi that provided in pertinent part:

Mattison and her representative argued that there were clearly mistakes made in the review and that there was a failure to consider new information provided in the informal meeting. They stated the long list of new job duties required a higher level of Knowledge & Skills and Mental Demands. They also argued that other somewhat comparable positions in State government had higher pay grades assigned to them. VSEA argued that there was no documentation or discussion, or notes related to the rating process. VSEA argued that it was implausible that seven (7) different people on the Committee arrived at the exact same rulings across categories over two (2) different meetings.

DHR argued that all the additional information provided at the informal meeting was taken into consideration. They stated that additional job duties do not necessarily result in a reallocation or reassignment of a position. DHR noted there was only one new job duty identified in the RFR and that duty was not a higher level job duty. In response to the “somewhat comparable” positions that VSEA referenced, DHR pointed out that there may be specific job duties in positions that may be comparable, but the positions need to be evaluated in their entirety. DHR also stated that the Committee is trained in the Willis system and followed the appropriate process in reaching its determination. The Committee members do their evaluations individually and then the ratings are discussed verbally at the meeting. The final rating is a consensus rating.

After having carefully reviewed all materials submitted by VSEA/Mattison, and considering the testimony presented by the Parties, I find Mattison failed to establish that the present classification and pay grade assignment were clearly erroneous under the Willis standards. Therefore, I recommend this grievance be denied . . .

(Record, Exhibit 22)

Commissioner Fastiggi sent a letter to Appellant dated October 25, 2018. Therein, she indicated that she was denying the classification grievance based on the recommendation of Lagu (Record, Exhibit 15).

On November 13, 2018, VSEA filed an appeal of the Commissioner's decision with the Labor Relations Board on behalf of Appellant, contending that the decision of the Commissioner of Human Resources to deny the grievance was arbitrary and capricious in violation of Article 16, Section 7, of the Contract in that it ignored significant duties requiring higher scores under the Willis system, which scores justified an upgrade of Grievant's position.

VSEA filed with the Board the record of the proceedings before, and the decision of, the Commissioner of Human Resources on May 15, 2019. VSEA filed a brief in support of Appellant's position on May 15, 2019. On May 30, 2019, the State filed a brief in support of its position, and also filed three exhibits in addition to those provided by VSEA.

Oral argument was held on June 6, 2019, before Board Members Richard Park, Chairperson; David Boulanger, and Karen Saudek in the Labor Relations Board hearing room in Montpelier. VSEA Staff Attorney Kelly Everhart represented Appellant. Michelle Anderson, Assistant Attorney General, represented the State.

Article 16 of the Contract provides in pertinent part as follows with respect to classification reviews and appeals of classification decisions:

3. **PROCEDURE FOR REVIEW OF CLASSIFICATION**

...

- (c) . . . Normally within sixty (60) days for a single position . . . the Department of Human Resources or duly constituted departmental review committee will review and respond to complete requests for review. Such written report will respond directly and pointedly to the specific reasons listed in the request for review and will specify any change in the point factor for that position. . . .
- (d) Within ten (10) workdays of receipt of the notice from the Department of Human Resources, an employee may request an informal meeting with the departmental classification review committee . . for a discussion of the decision. . .

4. **CLASSIFICATION GRIEVANCE**

...

- (d) A grievance . . shall be filed . . with the Commissioner of Human Resources . .

5. **BURDEN OF PROOF**

In any stage of proceeding under this Article the burden shall be on the grievant to establish that the present classification, pay grade assignment, or any subsequent classification decision arising from the application of these procedures, is clearly erroneous under the standards applied by the point factor analysis system utilized by the Department of Human Resources.

...

7. **APPEAL TO VLRB**

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 Human Resources 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. Appellant contends that the State disregarded all guidance from the Willis Guide to Position Measurement and acted arbitrarily by failing to consider additional information, including revisions to the supervisor comments made by Appellant's supervisor. Appellant asserts that the failure to consider the additional information is significant because, if the reclassification analysis contained accurate information which recognized the reality of Appellant's position, it would have been appropriate to "shade up" her position in the

Knowledge & Skills category, and Mental Demands category, and assign her additional points under the Willis point factor system.

Appellant has not established that the State failed to consider additional information or acted in disregard of application of the Willis point factor system. After Appellant brought defects in the supervisor comments section of the Request to Review to the attention of the Classification Committee following the initial Notice of Classification Action by the Committee, which comments were revised by the supervisor, the Committee reviewed and analyzed the additional information provided by Appellant, including the revised supervisor comments. The Committee then reconsidered its initial decision and applied the Willis point factor system based on this input. The Committee then issued another classification action. The fact that the Committee did not change its original rating does not indicate without more evidence in the record that the Committee failed to consider the additional information or disregarded application of the Willis point factor system.

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 does not express disagreement with the E1Y rating assigned to this component by the State, but asserts that the position should have been awarded more than 244 points for this component. However, as pointed out by the Classification Analyst in the Willis Rating Analysis that she completed, 244 points was the highest amount of points appropriate for an E1Y rating (Record, Exhibit 21).

We reach a similar conclusion with respect to Appellant's questioning of the assignment of points with respect to the Mental Demands component. Appellant does not indicate disagreement with the E4L rating assigned to this component but asserts that the position should

have been awarded more than 122 points for this component. Again, as stated by the Classification Analyst in the Willis Rating Analysis that she completed, the amount of points specified in the Willis system for an E4L rating, when coupled with 244 Knowledge and Skills points, is 122 (Record, Exhibit 21).

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 with respect to the allotment of points to Appellant's position. 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 points under the point factor rating system. Appeal of Smith, 17 VLRB at 149. Appeal of Berlin, 15 VLRB at 248.

Appellant further contends that the classification decision was problematic because the State failed to provide any written justification for its actions other than the assignment of points under the Willis system. Appellant asserts that there should have been direct and pointed responses to Appellant's request to be upgraded so that Appellant can understand how the point factor system had been applied to her duties. Appellant maintains that, by failing to provide her any written explanation for its assessment and only affording her ten minutes to speak in front of the Classification Committee during the informal meeting, the State denied Appellant any reasonable opportunity to advocate for herself.

The State notified Appellant of the specific rating and assignment of points for each component, and in total, in applying the Willis point factor system. There is a detailed explanation of the evaluation components, factors, ratings and assigned points in the Willis Guide to Position Measurement available to VSEA and Appellant. The State also informed

Appellant that “there has been no change to the classification”, and that the “duties outlined are consistent with the current job class of Data & Outreach Coordinator, pay grade 25 and the assigned Willis rating remains appropriate.” Grievant has failed to demonstrate arbitrary and capricious action by the State in this regard. The information provided by the State is sufficient to withstand the extremely limited scope of review the Board has in classification appeals.

Appeal of Lay-Sleeper, 33 VLRB 89, 99 (2014).

We further conclude that Appellant has failed to demonstrate arbitrary and capricious action by the State in limiting her to ten minutes to speak to the Classification Committee during the informal meeting that she requested. There is nothing in the record indicating that this time limitation violated an established process or a provision of the Contract. Also, Appellant’s attorney indicated at the oral argument that Appellant did not request additional time during the informal meeting to address the committee. Given these circumstances, and in light of our extremely limited scope of review in classification appeals, we are not inclined to conclude this constituted arbitrary and capricious action. Id.

Thus, we conclude that Appellant has not demonstrated that the decision of the Commissioner of Human Resources was arbitrary and capricious in applying the point factor system.

Based on the foregoing reasons, it is ordered that the Appeal of Heather Mattison is dismissed.

Dated this 3rd of July 2019, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

/s/ Richard W. Park

Richard W. Park, Chairperson

/s/ David R. Boulanger

David R. Boulanger

/s/ Karen F. Saudek

Karen F. Saudek