Classification of State Employees

In 1978, the Supreme Court ruled that the Board did not have jurisdiction over classification grievances under the State Employees Labor Relations Act.[1] The Legislature responded by allowing the appeal procedures for classification to be established by collective bargaining.[2] The Vermont State Employees' Association and the State subsequently negotiated various classification procedures.

In their most recent contracts, the parties have agreed that an employee could appeal the final classification decision of the Commissioner of Human Resources to the Board. In such an appeal, the review is limited to "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 classification procedures set forth in the contracts are the exclusive procedures for seeking review of the classification status of a position or a group of positions.

The contracts further provide that the Board shall not conduct a *de novo* hearing in classification appeals, but shall base its decision on the record before the commissioner. As a result, the Board does not take evidence in such matters. The Board proceeds as follows in classification appeals: 1) the appellant is required to submit the whole record of the proceedings before, and the decision of, the commissioner of human resources to the Board, and also is required at the same time to file a brief in support of the appeal; 2) the State then is required to file a brief in support of its position; and 3) oral argument is then scheduled to take place before a three member panel of the Board. The Board decides the matter subsequent to the oral argument through issuance of a written decision.

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[1] Grievance of McMahon, 136 Vt. 512, 514 (1978).
[2] 1979, No. 59, §10 [adding subsection (g) to 3 V.S.A. §310].

The arbitrary and capricious standard governing the Board's scope of review established by the contract means that the Board's scope of review in classification cases is extremely limited and that the Board is obligated to give substantial deference to the commissioner's decision.[3] 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.[4] "Capricious" is an action characterized by or subject to whim.[5] Rational disagreement with an appellant's position, based on applicable classification principles, does not indicate arbitrary and capricious action.[6]

Given the statutory responsibility of the Commissioner of Human Resources 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,[7] 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.[8] The Board has jurisdiction to review the commissioner's actions in this regard, where they may impact on the commissioner's own decision in applying the point factor system, because a decision reached in at least partial reliance on inappropriate considerations would be arrived at without consideration or reference to applicable classification principles.[9]

The Board has carved out only a few exceptions to this limited scope of review in classification cases. In one case, the Board concluded that the exclusivity

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[3] 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).
[4] Id.
[5] Id.
[6] Appeal of Smith, 17 VLRB 145, 149 (1994). Appeal of Berlin, 15 VLRB 245, 247 (1992).
[7] 3 V.S.A. §310.
[8] Cram, 11 VLRB at 247.
[9] Id.

provision of the classification article of the Contract did not preclude an employee from grieving alleged sex discrimination, prohibited by the Contract, which occurred during the course of a classification review.[10] In another case, the Board concluded that employees and the union were not precluded from challenging through the grievance procedure denial of access to information, during the course of a classification review, which was reasonably necessary to properly prepare for a classification grievance hearing before the Commissioner of Human Resources.[11]

The Board has distinguished its typical cases, where it conducts *de novo* hearings, and classification appeals, where it simply conducts oral argument based on the record established before the commissioner.[12] The Supreme Court has stated that the correction for the Board's limited scope of review, and any deficiencies in the administration of the classification system, must come, if at all, in the collective bargaining process.[13]

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[10] Grievance of Lowell, 15 VLRB 291, 323-25 (1992).
[11] Grievance of VSEA, West and Cray, 18 VLRB 461, 483-87 (1995), *Affirmed*, 165 Vt. 445 (1996).
[12] Appeal of West, 15 VLRB 517 (1992). Appeal of Fisher, 15 VLRB 519 (1992); *Affirmed*, (Unpublished decision, Supreme Ct. Docket No. 93-027, 1994).
[13] Grievance of Plunket, (Unpublished decision, 1992). Fisher, supra.