

VERMONT LABOR RELATIONS BOARD

APPEAL OF VERMONT STATE:)	
EMPLOYEES' ASSOCIATION (RE:)	DOCKET NO. 18-37
CORRECTIONS SERVICE SPECIALIST II)	
RECLASSIFICATION))	

MEMORANDUM AND ORDER

The issue to be decided is whether the Labor Relations Board should grant the motion filed by the State of Vermont ("State") on July 09, 2019, to exclude from the record in this classification appeal certain exhibits sought to be included by the Vermont State Employees' Association ("VSEA"), and to add to the record certain exhibits sought by the State. VSEA filed a response in opposition to the motion on July 22, 2019.

In ruling on this motion, it is important to understand the context in which this motion is filed. This case is a classification appeal. In August 2017, certain employees holding the position Corrections Services Specialist II in the Department of Corrections ("DOC") submitted a Request for Classification Review to the Department of Human Resources. At the time, the Corrections Services Specialist II classification consisted of positions both within DOC correctional facilities and at DOC field offices. The result of the classification review was that positions at DOC field offices that previously were classified as Corrections Services Specialist II were reclassified as Probation and Parole Officers, and the reclassified positions were reassigned to a higher pay grade. The positions at DOC correctional facilities classified as Corrections Services Specialist II remained in that classification and the pay grade of the positions did not change.

The Board's scope of review in classification appeals is limited. Article 16 of the VSEA-State Contracts provide that an employee may appeal the final classification decision of the Commissioner of Human Resources to the Board. In such an appeal, the review is limited by

Article 16, Section 7, of the Contract 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". Article 16, Section 7, further provides that 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)." As a result, the Board does not take evidence in such matters.

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. Appeal of West, 15 VLRB 517 (1992). Appeal of Fisher, 15 VLRB 519 (1992); *Affirmed*, (Unpublished decision, Supreme Ct. Docket No. 93-027, 1994). 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. Grievance of Plunket, (Unpublished decision, Supreme Court Docket No. 92-110, 1992). Fisher, *supra*.

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.

On June 21, 2019, VSEA filed a brief in support of the appeal and exhibits that VSEA contends constitute the record on appeal. The State, in its motion now before the Board for consideration, moves to exclude Exhibits 2, 6 and 8 submitted by VSEA from the record, and

moves to include Exhibit 14 in the record. VSEA objects to State's Exhibit 14 being included in the record. The parties disagree as to whether these exhibits are part of the "whole record of the proceedings before . . . the Commissioner of Human Resources (or designee)".

We first consider whether to include Exhibits 2, 6 and 8 as part of the record. Exhibit 2 consists of the classification appeal filed by VSEA with the Board, plus letters relating to VSEA's requests after the classification appeal was filed for access to various records.

Exhibit 6 is a January 22 and 23, 2018, email exchange between Aimee Pope, Department of Human Resources Classification and Compensation Manager, and Classification Analyst Laura DeForge, setting forth a timeline on the classification review of positions at issue in this appeal. The parties agree that there is no evidence that this email exchange was part of the record presented to the Commissioner of Human Resources in the classification grievance at issue in this matter.

Exhibit 8 consists of email communications, and attached documents, between and among Department of Human Resources employees, Department of Corrections management, Vermont State Employees' Association representatives, and the Probation and Parole employees in the Corrections Services Specialist II positions whom submitted a request for review of the classification of their positions in August 2017. The email communications span the period beginning several months before the request for review was submitted and ending in July 2018 when a final notice of classification action was issued. The subject matter of the emails is the reclassification of the positions including reclassifying the Corrections Services Specialist II positions working in the DOC field offices as Probation and Parole Officers. The parties agree that there is no evidence that these materials were part of the record presented to the Commissioner of Human Resources in the classification grievance at issue in this matter.

We conclude that the Contract precludes the Board from granting VSEA's requests to include Exhibits 2, 6 and 8 as part of the record in this matter. In essence, Appellant is seeking to convert the proceeding before the Board into a fact-finding process by seeking admission of such exhibits. This is something the Contract clearly proscribes.

Article 16, Section 7, of the Contract, referring to classification appeals, provides that the Board "shall not conduct a de novo hearing, but shall base its decision on the whole record of the proceedings before, and the decision of, the Commissioner of Human Resources (or designee)". It is evident by a review of Article 16, Section 4, of the Contract that the "whole record of the proceeding" before the Commissioner of Human Resources consists of all "information and/or documents" provided to the Commissioner by the grievant and reclassification division of the Department of Human Resources, which information and documents must be disclosed to the other party. Appeal of Fisher, 15 VLRB at 520.

Accordingly, the exhibits requested by VSEA to be included in the record are not relevant to the appeal to the Board unless they were submitted to the Commissioner pursuant to Article 16, Section 4, of the Contract. Otherwise, the Board would be acting contrary to the dictates of the Contract that we do not take any evidence in classification appeals. Appeal of Fisher, 15 VLRB at 520. Appeal of DeGreenia and Lewis, 11 VLRB 227, 228 (1988).

Exhibit 2 obviously was not submitted to the Commissioner during the classification grievance process since it consists of documents generated subsequent to the Commissioner deciding the classification grievance. The parties agree that there is no evidence that Exhibits 6 and 8 were part of the record presented to the Commissioner of Human Resources in the classification grievance. Accordingly, we grant the State's motion to exclude Exhibits 2, 6 and 8 from the record of the appeal.

We next address whether to grant the State's motion to admit Exhibit 14 as part of the record.¹ Exhibit 14 is a two-page exhibit. The first page is a letter from Human Resources Commissioner Beth Fastiggi to VSEA Representatives Michael O'Day and Bob South denying the classification grievance involved in this appeal. The second page is a memorandum from Shelley Morton, Labor Relations Manager, to Commissioner Fastiggi recommending that the classification grievance be denied. VSEA represents that this memorandum was not provided to VSEA until the State filed its motion now before the Board.

The first page of Exhibit 14 is added to the record since it is the action being appealed in this matter, and it was provided to VSEA. The second page of the exhibit is not added to the record since it was not disclosed to VSEA until the motion under review herein was filed.

Appeal of Fisher, 15 VLRB at 520.

Based on the foregoing reasons, it is ordered:

1. The motion of the State of Vermont to exclude Exhibits 2, 6 and 8 from the record in this matter is granted.
2. The motion of the State of Vermont to add Exhibit 14, page one, to the record is granted; the motion of the State to add Exhibit 14, page two, is denied.
3. The Vermont State Employees' Association shall resubmit its brief in support of its position, and shall delete any reference to Exhibits 2, 6 and 8. This brief is due to be filed by October 22, 2019.
4. The State of Vermont shall file a brief in support of its position by November 5, 2019.

¹ The State also requests that Exhibit 13 be admitted as part of the record. Exhibit 13 consists of December 28, 2017, and May 14, 2018, Notices of Classification Action concerning Correctional Services Specialist II and Probation and Parole Officer positions. VSEA does not oppose the inclusion of this exhibit in the record. It is accordingly considered part of the record pursuant to agreement of the parties.

5. Oral argument on this classification appeal shall be held before the Labor Relations Board on November 21, 2019, at 9 a.m.

Dated this 27th day of September 2019, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

/s/ Robert Greemore

Robert Greemore

/s/ David R. Boulanger

David R. Boulanger

/s/ Karen F. Saudek

Karen F. Saudek