

VERMONT LABOR RELATIONS BOARD

APPEAL OF:

)

)

DOCKET NO. 00-69

PAUL BARCI

)

MEMORANDUM AND ORDER

The issue before the Labor Relations Board is whether to grant a motion filed by Appellant Paul Barci ("Appellant") to compel discovery. This case involves an appeal over the disciplinary demotion of Appellant from State Police Sergeant to the rank of Corporal. In appealing the demotion and requesting that it be rescinded, Appellant contends that the Department of Public Safety ("Employer") violated Article 14 of the collective bargaining agreement between the Vermont State Employees' Association and the State of Vermont for the State Police Unit ("Contract") by imposing discipline without just cause, bypassing progressive discipline, not imposing discipline in a uniform and consistent manner, and not preferring charges in a timely manner.

In the motion to compel filed on August 23, 2001, Appellant requests that the Board issue an order compelling the Department of Public Safety ("Employer") to respond to the following Requests to Produce of Appellant:

Request No. 1: Reports of all allegations of misconduct by state police officers, and the findings as to such allegations, submitted by the Commissioner of Public Safety to the State Police Advisory Commission since January 1, 1995. Such reports may be redacted so that the name of the individual state police officer is not revealed so long as the log shows the alleged misconduct and disposition, and in such a form to permit a determination whether discipline is imposed on members uniformly.

Request No. 2: Copies of the written log made with respect to each allegation of misconduct relating to any state police officer maintained pursuant to 20 V.S.A. Section 1923(c) since January 1, 1995. Such reports may be redacted so that the name of the individual state police officer is not revealed so long as the log shows the alleged misconduct and disposition, and is in such a form as to permit a determination whether discipline is imposed on members uniformly.

Request No. 3: Copies of the Command and Review Sheets (or records) relating to the preferral of charges against Detective Sergeant Paul Barci and his demotion.

The Employer filed a response in opposition to the motion to compel on September 12, 2001.

We first address Requests No. 1 and No. 2. In ruling on the motion, we seek to respect the confidentiality provisions of 21 V.S.A. Section 1923(d) without negating Appellant's right to seek to establish his allegation that the Employer violated the Contract by not applying discipline to him in a uniform and consistent manner. Appeal of Danforth, 23 VLRB 51, 55 (2000). This can be done by requiring that Appellant be provided with summaries of internal affairs records concerning certain allegations of misconduct against state police officers, and findings as to such allegations, between January 1, 1995, and the date Appellant was disciplined. Id. Appeal of Danforth, 23 VLRB 288, 293-98 (2000).

Appellant requests production of summaries of records concerning allegations of misconduct covered by numerous sections of the Employer's Code of Conduct, specifically the following: Sections 4.0, 5.0, 6.0, 7.0, 8.0, 10.0, 11.0, 12.0, 13.0, 15.1, 16.1 and 17.1 of part (a); and Section 4.0, 11.0, 14.0, 17.0 and 19.1 of part (b). We conclude that, in order to allow Appellant to seek to establish his claim that discipline was not applied to him in a uniform and consistent manner, the Employer is required to provide Appellant with information regarding a more limited category of cases than sought by Appellant. Appeal of Danforth, 23 VLRB at 55.

Appellant was charged with violating Section 13.1, Part A, of the Employer's Code of Conduct, which provides: "Members shall receive, process, and report

allegations of misconduct and allegations of improper conduct in accordance with the provisions of Article III of the Department Rules and Regulations.” The basis for the charge was Appellant’s alleged failure to report concerns expressed to him by a medical doctor, about possible criminal conduct by another state trooper, to either a superior officer or the office of internal affairs. In his motion to compel, Appellant has provided no justification for a need to obtain information about allegations of misconduct in categories of cases other than the specific section of the Code of Conduct he was charged with violating.

Thus, we conclude that the Employer is required to provide Appellant with summaries of all allegations of misconduct by state police officers, and the findings as to such allegations, between January 1, 1995, and the date Appellant was disciplined, covered by Section 13.1 of Part A of the Employer’s Code of Conduct. Summaries of alleged offenses covered by this section should be sufficient to allow Appellant to seek to establish his claim that discipline was not applied to him in a uniform and consistent manner. Id. at 56.

The summaries of allegations and findings should be prepared so that the identity of the involved state police officer is not revealed, and the summaries should set forth the alleged misconduct and the disposition in such a form to permit a determination whether discipline is imposed on members uniformly and consistently. Id. The Board will be prepared to issue protective orders as necessary to ensure that the identities of involved state police officers is not revealed. Id.

We next address Appellant’s Request No. 3, in which he seeks to obtain copies of the command and review sheets (or records) relating to the preferral of charges against

him. We decline to issue an order compelling the Employer to respond to this request. As we held in Danforth, 23 VLRB at 57-59, provisions of the Employer's Rules and Regulations provide members with sufficient notification and information relating to allegations of misconduct and improper conduct against them, and sufficient protection that unsubstantiated allegations cannot be used against them, such that the access to internal affairs records sought by Appellant is not required.

Based on the foregoing reasons, it is ordered that the motion to compel discovery filed by Appellant is granted to the extent consistent with this decision, and the Employer is required to provide Appellant with summaries of all allegations of misconduct by state police officers, and the findings as to such allegations, between January 1, 1995, and the date Appellant was disciplined, covered by Section 13.1 of Part A of the Employer's Code of Conduct.

Dated this 30th day of November, 2001, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

Catherine L. Frank, Chairperson

Carroll P. Comstock

Richard W. Park

John J. Zampieri

Edward R. Zuccaro