

VERMONT LABOR RELATIONS BOARD

APPEAL OF:

JOEL DAVIDSON

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DOCKET NO. 06-6

MEMORANDUM AND ORDER

The issue before the Labor Relations Board is whether to grant a Motion to Limit Discovery filed by Appellant Joel Davidson (“Appellant”). Appellant seeks an order prohibiting the Vermont Department of Public Safety (“Employer”) from compelling him to attend a deposition in connection with the back pay due him during the period from his dismissal as a State Police member to his reinstatement. Appellant asserts that the Employer already has questioned him on this issue when the Employer deposed him in August 2006, and also has served extensive interrogatories on him concerning this issue. Appellant asserts that the Employer is able to obtain all the information it needs in Appellant’s response to the interrogatories, and that it is unreasonably cumulative, burdensome and expensive to require Appellant to attend a deposition to answer questions that could easily be posed in interrogatories.

The Employer opposes the motion to limit discovery. The Employer contends that it needs to depose Appellant in connection with the important issue of whether he has made sufficient efforts to mitigate his damages by seeking other employment after his dismissal. The Employer maintains that Appellant’s responses to interrogatories are not sufficient to ensure that the Employer obtains all the information it needs on this issue because there is no guarantee that Appellant will provide complete and responsive answers to its interrogatories. Given the short timeframe between now and the June 14 hearing before the Labor Relations Board on this issue, the Employer asserts that it has

no other recourse to ensure that it gets the information requested other than through a deposition. The Employer further contends that Appellant will not be unduly burdened by the deposition; noting that the Employer has agreed to hold the deposition in Rutland to make it more convenient for Appellant and his counsel.

The discovery provisions of the Vermont Rules of Civil Procedure, which apply to appeals by state police members of disciplinary actions taken against them pursuant to Section 52.1 of the Board Rules of Practice, provide that “(a)fter commencement of the action, any party may take the testimony of any person, including a party, by deposition upon oral examination”. V.R.C.P. 30. The scope of the deposition” is to “obtain discovery regarding any matter . . . which is relevant to the subject matter involved in the pending action”. V.R.C.P. 26(b)(1). “The frequency or extent of use of the discovery methods . . . shall be limited if it is determined that . . . the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive;” or “the discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties’ resources, and the importance of the issue at stake in the litigation”. Id.

We conclude that it is not appropriate under the circumstances to limit the Employer’s ability to use the frequently employed discovery device of a deposition. The issue of whether Appellant made sufficient efforts to mitigate his damages through seeking interim employment is crucial in determining the amount of back pay to which Appellant is entitled as a result of his improper dismissal, and involves a substantial amount of public funds. The Employer’s questioning of Appellant on this issue at a

deposition more than nine months ago falls well short of providing sufficient updated information. Further, given the short timeframe between now and a June 14 hearing before the Board, it would be inadequate to rely on Appellant's responses to interrogatories to provide the Employer with a reasonable opportunity to explore this issue.

Nonetheless, Appellant contends that, should he be required to attend a deposition, the Employer should be held liable for all additional expenses incurred by him, including legal costs and payment for the stenographic transcript. We conclude that the Employer already has made reasonable accommodations to reduce the burden on Appellant by agreeing to hold the deposition in Rutland, resulting in much less travel for Appellant and his attorney.

Based on the foregoing reasons, it is ordered that Appellant's motion to limit discovery is denied.

Dated this 31st day of May, 2007, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

Edward R. Zuccaro, Chairperson

Joan B. Wilson

Leonard J. Berliner