

VERMONT LABOR RELATIONS BOARD

| | | |
|---------------|---|------------------|
| GRIEVANCE OF: |) | |
| |) | DOCKET NO. 15-46 |
| THOMAS BENOIT |) | |

MEMORANDUM AND ORDER

The issue before the Labor Relations Board is whether to grant a motion filed by the Vermont State Employees' Association ("VSEA") on behalf of Thomas Benoit ("Grievant") to compel discovery. Grievant is claiming in this grievance that the State Department of Environmental Conservation ("Employer") violated Articles 5 and 18 of the collective bargaining contract in not promoting Grievant, an Environmental Analyst V with the Employer, to the newly created Environmental Analyst VI/Solid Waste Supervisor position. Grievant alleges that he possessed better qualifications for the supervisor position than the successful candidate, but was denied the promotion partially due to his union involvement and prior grievance activity. Grievant asserts that the interviewers failed to consider Grievant's considerable supervisory experience and relevant qualifications due to his union activity. Grievant requested as a remedy that he be awarded the Solid Waste Supervisor position.

In the motion to compel discovery, VSEA requests that the Board order the Employer to produce information regarding other unsuccessful applicants interviewed for the Solid Waste Supervisor position. Specifically, VSEA requests application materials, performance evaluations of applicants, and documents and records of the ratings or rating criteria for candidates interviewed. VSEA contends that providing this information is crucial to allow him to evaluate the conduct of the interview panel to determine whether Grievant was in any way treated differently or singled out during the selection process. VSEA asserts that it is imperative that VSEA review the interview materials of the candidates interviewed to make the determination

whether Grievant's qualifications were properly and fairly considered when compared to the consideration given to other applicants. VSEA contends that the Employer's refusal to provide any information regarding any of the applicants interviewed other than Grievant and the selected applicant is contrary to Labor Relations Board precedents and without merit.

The Employer responds that VSEA and Grievant do not have the right to the requested information for the other unsuccessful job applicants. The Employer contends, among other things, that information regarding the other unsuccessful candidates is both irrelevant and not reasonably calculated to lead to the discovery of relevant evidence.

In ruling on a motion to compel discovery, the Board applies Rule 26(b)(1) of the Vermont Rules of Civil Procedure, which provides that "parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action". The information sought is discoverable "if it appears reasonably calculated to lead to the discovery of admissible evidence".

We conclude that the requested information is not relevant and does not appear reasonably calculated to lead to the discovery of admissible evidence. VSEA has not demonstrated how the information requested leads down the path of furthering the inquiry relevant to the grievance of whether Grievant possessed better qualifications for the supervisor position than the successful candidate, but was denied the promotion partially due to his union involvement and prior grievance activity. The relevant analysis given the allegations in the grievance is whether Grievant was evaluated in a non-discriminatory manner consistent with the person selected for the position, and whether he was better qualified for the supervisor position than the selected candidate. VSEA has failed to provide sufficient explanation as to how information about the other unsuccessful candidates is reasonably calculated to lead to the

discovery of admissible evidence. Although VSEA contends that the Employer's failure to provide the information is contrary to previous decisions of this Board, VSEA has not cited any Board decisions with circumstances similar or comparable to this case.

Based on the foregoing reasons, it is ordered that the Motion to Compel Discovery filed by VSEA on behalf of Grievant is denied.

Dated this 26th day of May, 2016, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

/s/ Richard W. Park

Richard W. Park

/s/ James C. Kiehle

James C. Kiehle

/s/ Alan Willard

Alan Willard