

VERMONT LABOR RELATIONS BOARD

PETITION OF:)	
)	DOCKET NO. 16-52
JOEL DAVIDSON)	

MEMORANDUM AND ORDER

Joel Davidson filed a petition with the Labor Relations Board on November 2, 2016, seeking removal of all references to his name from the Board website in seven decisions involving him issued by the Board between May of 2007 and December 2009. We need to decide whether to grant this petition.

Davidson filed his petition pursuant to Section 19.3 of Board Rules of Practice which provides that “(a) grievant whom the Board exonerated of misconduct in a decision . . . may file a petition with the Board in writing to have his or her name redacted from the version of the Board decision that is posted on the Board website.” Section 19.3 states that the “Board shall respond to a properly filed petition by redacting the grievant’s name from the Board decision posted on the website provided that the grievant was exonerated of misconduct.”

Section 19.3 of the Board Rules was promulgated pursuant to Act No. 101 of the 2016 Session of the Vermont General Assembly. Act No. 101 amended Section 928 of the State Employees Labor Relations Act, 3 V.S.A. § 901 *et seq.*, (“SELRA”) by adding Section 2 which provides in pertinent part that the “Board shall adopt rules necessary to permit a grievant whom, in a decision issued after December 31, 1994, the Board exonerated of misconduct for which he or she was disciplined to petition the Board to redact his or her name from the version of the Board’s decision that is posted on the Board’s website.”

The Board needs to decide whether the provisions of Section 928(2) of SELRA apply to any of the decisions for which Davidson seeks redaction of his name. Four of the decisions for

which he seeks redaction were issued in a case, VLRB Docket No. 06-06, in which Davidson filed an appeal of his dismissal from his position as Sergeant with the Vermont State Police. Davidson did not file the appeal in Docket No. 06-06 pursuant to SELRA.

This was because SELRA has provided at all times pertinent that its provisions “shall apply to the state police in the department of public safety except for matters of discipline, disciplinary action, transfer or suspension and those items specifically covered by statute.” 3 V.S.A. §1004. Instead, state police members may file “appeals” from disciplinary action taken by the Commissioner of Public Safety pursuant to 20 V.S.A. §1880. The Board hears and makes final determination on these appeals pursuant to 20 V.S.A. §1880(c). Davidson filed his appeal in Docket No. 06-6 pursuant to Section 1880(c).

The Board determined that the employer did not prove the charges against Davidson, reversed the dismissal, and reinstated him with full back pay and benefits. Appeal of Davidson, 29 VLRB 105. The other three decisions issued by the Board in Docket No. 06-06 concerned issues arising during the back pay proceedings in the case. 29 VLRB 166 (2007); 29 VLRB 243 (2007); 30 VLRB 363 (2009).

In sum, Davidson was exonerated of misconduct in the Docket No. 06-06 proceedings, but the case did not arise from a grievance filed under SELRA. Thus, there is a question whether the redaction requirement in Section 928(2) of SELRA is applicable to the four decisions in this case since the redaction requirement is limited to grievances filed under SELRA.

In ruling on this petition, we follow the rules of statutory construction set forth by the Vermont Supreme Court. The primary objective in interpreting statutes is to give effect to the intent of the Legislature, which we attempt to discern first by looking to the language of the statute. Grievance of West and Cray, 165 Vt. 445, 449 (1996). Petition of Vermont State

Employees' Association (re: State Police Lieutenants), 31 VLRB 331, 339 (2011). In determining legislative intent, we look beyond the language of a particular section, standing alone, to the whole statute. Id. Provisions that are part of the same statutory scheme must be read in context and the entire statutory scheme read together so the legislative intention can be ascertained from the whole of the enactments. In re Grievance of Danforth, 174 Vt. 231, 238 (2002). Petition of Vermont State Employees' Association (re: State Police Lieutenants), 31 VLRB at 339

In applying these rules of statutory construction, we conclude that the redaction requirement in Section 928(2) of SELRA is not applicable to the four decisions issued by the Board in Docket No. 06-6. SELRA explicitly provides that SELRA does not apply to disciplinary actions taken against state police members, and appeals to the Board in state police discipline cases arise from 20 V.S.A. §1880 rather than SELRA. Thus, the redaction requirement in Section 928(2) of SELRA applying to grievances arising under SELRA does not apply to an appeal by a state police member contesting a dismissal since the grievance provisions of SELRA do not apply to such a matter.

The remaining three Board decisions for which Davidson seeks redaction were issued in a case, Docket No. 08-29, which did involve a grievance filed by Davidson. In the grievance, Davidson contended that the employer discriminated against him due to his successful pursuit of the appeal which reversed his dismissal and resulted in his reinstatement to employment pursuant to Board decision. Davidson specifically asserted that the employer discriminated against him by the following improper actions: 1) failing to reinstate him to his pre-dismissal position as Curriculum Coordinator, 2) failing to allow him to attend professional career development trainings, 3) refusing to promote him; 4) failing to provide him overtime opportunities and pay

commensurate with his pre-termination levels and/or commensurate with other employees; 5) failing to assign him to the employer's lab team; and 6) failing to properly compensate him in a manner that makes him whole for his wrongful discharge.

The Board ultimately decided to sustain the grievance to the extent that the employer failed to equitably provide Davidson with overtime opportunities, and denied the grievance in all other respects. 30 VLRB 150 (2009), 30 VLRB 204 (2009); 30 VLRB 337 (2009). Although the Board decisions in this case resulted from a grievance filed by Davidson, Section 928(2) of SELRA is not applicable. The requirement applies to a grievance decision in which the Board exonerated the grievant of misconduct in the decision. The Board grievance decisions in Docket No. 08-29 did not address whether Davidson should be exonerated for misconduct. Instead, they were limited to addressing claims of Davidson that the employer took actions discriminating against him, none of which alleged actions involved charging Davidson with misconduct.

Based on the foregoing reasons, it is ordered that the Petition of Joel Davidson in this matter is dismissed.

Dated this 21st day of December, 2016, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

/s/ Gary F. Karnedy

Gary F. Karnedy, Chairperson

/s/ Richard W. Park

Richard W. Park

/s/ James C. Kiehle

James C. Kiehle