

VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:

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DOCKET NO. 13-23

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RICHARD GALLOW

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MEMORANDUM AND ORDER

On November 12, 2015, the Vermont State Employees' Association ("VSEA") filed a Motion for Partial Summary Judgment on behalf of Richard Gallow ("Grievant"). This grievance contests the dismissal of Grievant from his state correctional officer position. The dismissal was based on five separate incidents of alleged misconduct involving women. Grievant contends that the material facts, undisputed by Grievant and viewed in the light most favorable to the State, establish that three of these alleged incidents were known to the Department of Corrections months or years before Grievant was disciplined, and that the Department either fully investigated the allegation and determined to not impose discipline, or had decided that the complaint warranted no further investigation.

Grievant moves for partial summary judgment on the following allegations, on the grounds that the State's delay in imposing discipline negates any cause for discipline: 1) a December 31, 2008 alleged incident involving LP and NW at the University Mall in South Burlington; 2) a May 14, 2009 alleged incident involving AG at the 1-89 rest area in Georgia, Vermont; and 3) a November or December 2010 alleged incident involving AL at the Chittenden Regional Correctional Facility in South Burlington. Grievant asserts that the provision in Article 14 of the collective bargaining agreement between VSEA and the State requiring the employer to "act promptly to impose discipline . . . within a reasonable time of the offense" precludes discipline for these incidents.

On December 18, 2015, the State filed a Response in Opposition to Grievant's Motion for Partial Summary Judgment. Grievant filed a Reply to State's Opposition to Motion for Partial Summary Judgment on January 19, 2016. The Labor Relations Board issued an Order on March 14, 2016, requiring additional filings from the parties consistent with Board Rules of Practice adopting Rule 56 of Vermont Rules of Civil Procedure. Pursuant to this Order, the State filed a Statement of Additional Undisputed Material Facts on April 5, 2015; and Grievant filed a Reply to the State's Supplemental Statement of Material Facts on April 19, 2016.

Oral argument on Grievant's Motion for Partial Summary Judgment was held on May 9, 2016, in the Labor Relations Board hearing room before Board Members Gary Karnedy, Chairperson; Edward Clark, Jr. (by telephone), and Robert Greemore. VSEA General Counsel Timothy Belcher represented Grievant. Assistant Attorney General William Reynolds represented the State.

The most common method by which cases are closed or partially closed by Board decision prior to any evidentiary hearing is through filing a motion for summary judgment pursuant to Rule 56 of the Vermont Rules of Civil Procedure, which has been incorporated into Section 12.1 of Board Rules of Practice. Summary judgment may be granted only if there exists "no genuine issue as to any material fact and . . . the movant is entitled to judgment as a matter of law". V.R.C.P. 56(a). The moving party has the burden of proving that there is no genuine issue as to any material fact, and the non-moving party must be given the benefit of all reasonable doubts and inferences in determining whether a genuine issue of material fact exists. Hodgdon v. Mount Mansfield Co., 160 Vt. 150, 158-59 (1992). Price v. Leland, 149 Vt. 518, 521 (1988). Grievance of VSEA, Nottingham, et al, 26 VLRB 258-59 (2003). Grievance of Cray, 25 VLRB 93, 94 (2002). Grievances of Choudhary, 15 VLRB 118, 179-80 (1992).

Before granting summary judgment, the Board provides the party opposing the motion a reasonable opportunity to show the existence of a fact question. Kelly v. Town of Barnard, 155 Vt. 296, 299-300 (1990). Choudhary, 15 VLRB at 180. To defeat a motion for summary judgment, an issue of fact in dispute must be both genuine and material; that is, the evidence is such that a reasonable factfinder could return a verdict for the non-moving party. Anderson v. Liberty Lobby, 477 U.S. 242 (1986). Choudhary, 15 VLRB at 180. In deciding if there is a genuine issue of material fact, the opposing party must be given the benefit of all reasonable doubts and inferences in determining whether a genuine issue exists. Messier v. Metropolitan Life Ins. Co., 154 Vt. 406, 409 (1990).

Upon review of the materials filed by the parties in this case, and in consideration of the positions of the parties set forth at the May 9 oral argument, we conclude that there are genuine issues of material fact with respect to each of the three incidents for which Grievant moves for partial summary judgment. Even accepting the material facts presented by Grievant as unrefuted and accurate, the supplemental statement of material facts presented by the State indicates that the facts presented by Grievant are insufficient for us to conclude that Grievant is entitled to partial summary judgment as a matter of law. This case requires the fuller development of facts afforded by an evidentiary hearing on the merits to adequately rule on Grievant's allegations that the State's delay in imposing discipline negates any cause for discipline with respect to each of the three incidents.

Based on the foregoing reasons, it is ordered that Grievant's Motion for Partial Summary Judgment is denied.

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

VERMONT LABOR RELATIONS BOARD

/s/ Gary F. Karnedy

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Gary F. Karnedy, Chairperson

/s/ Edward W. Clark

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Edward W. Clark, Jr.

/s/ Robert Greemore

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Robert Greemore