

Discipline of State Police

Unlike other state employees, discipline of State Police officers is governed by statute. The statutory language provides that the Board shall hear and make final determination on appeals by State Police members from disciplinary action taken by the Department of Public Safety Commissioner.¹ Under Board Rules of Practice, the Board conducts a *de novo* review of the facts leading up to the imposition of discipline to the extent such *de novo* review is specifically authorized by the statutory language.²

Authorization to conduct a *de novo* hearing means that “the case shall be heard the same as though it had not been heard before.”³ Under the statutory language as it exists at present, the Board conducts a *de novo* evidentiary hearing similar to proceedings for other disciplined state employees.⁴ The statutory language further expressly gives the Board the authority to rule on the disciplinary action taken by the Commissioner, and in exercising its authority the Board must determine whether the Commissioner’s action is consistent with the provisions of the collective bargaining agreement.⁵

In one case involving the dismissal of a state police officer, the Board struggled with the question of how to respect statutory provisions requiring the confidentiality of internal affairs records⁶ without negating the officer’s right to establish her allegations that she received discriminatory and inconsistent treatment in being dismissed in violation of the collective bargaining agreement.⁷ The Board concluded this could be done by requiring that the employer provide the officer with

¹ 20 V.S.A. §1880.

² Article 44, Board Rules of Practice.

³ In re Danforth, 174 Vt. 231, 238 (2002).

⁴ Appeal of Penka, 21 VLRB 182 (1998).

⁵ Appeal of Danforth, 23 VLRB 288, 290-92 (2000). *Affirmed*, 174 Vt. 231, 236-240 (2002).

⁶ 20 V.S.A. §1923(d).

⁷ Appeal of Danforth, 23 VLRB 51 (2000), 23 VLRB 288 (2000).

certain summaries of internal affairs records concerning allegations of misconduct against state police officers.⁸ The Board required that summaries be prepared so that the identity of the involved state police officer was not revealed, and indicated a willingness to issue protective orders as necessary to ensure that the identity of the involved officer was not revealed.⁹ The Supreme Court affirmed this ruling.¹⁰ The Board has applied these standards in two other state police discipline cases.¹¹ Also, in a subsequent state police dismissal case, the Board issued a protective order to ensure that the identities of involved state police officers in other cases of alleged misconduct were not revealed.¹²

The Board also ruled on the relevant time period for evidence of alleged inconsistent discipline. The Board concluded that evidence of alleged inconsistent discipline is not relevant to the Board's review of the officer's dismissal to the extent that it involves alleged improper conduct by other employees of which management was unaware at the time of the officer's dismissal.¹³ The Board stated: "Since our duty is to police the exercise of discretion by the employer to ensure the employer considered the relevant factors in each particular case and took action within tolerable limits of reasonableness, the relevant focus is on management's actions and knowledge at the time the dismissal decision was made".¹⁴ The Supreme Court affirmed this holding of the Board.¹⁵

The Board has issued several decisions in recent years addressing whether just cause existed for the dismissal of state police officers. The Board upheld the

⁸ 23 VLRB at 55-57.

⁹ Id.

¹⁰ 174 Vt. at 240-43.

¹¹ Appeal of Barci, 24 VLRB 193 (2001). Appeal of Madore, 24 VLRB 201 (2001).

¹² Appeal of Danforth, 27 VLRB 79, 81-84 (2004).

¹³ Appeal of Danforth, 23 VLRB at 294-297.

¹⁴ Id. at 295.

¹⁵ 174 Vt. at 243-45.

dismissal of a state police sergeant for engaging in a pattern of deception, and otherwise failing to cooperate, in the investigation of alleged misconduct by another officer and the subsequent investigation of her own actions.¹⁶ In a case where the dismissed officer did not contest that just cause existed for his dismissal if the employer did not violate the timeliness provisions of the contract, the Board determined that the trooper had not demonstrated that: 1) the employer did not institute disciplinary proceedings within a reasonable time after a violation of the code of conduct occurred, or was discovered, and 2) the employer did not prefer charges in a timely manner.¹⁷

In two other cases, the Board concluded that just cause did not exist for the dismissal of state troopers. In a case where a dismissed trooper presented the defense of post-traumatic stress disorder to charges made against him, the Board concluded that the employer had not established untruthfulness charges against a trooper stemming from an incident in which the trooper was held at gunpoint.¹⁸ The Board likewise determined in another case that the employer had not established untruthfulness charges against a state police sergeant, and thus ordered the reinstatement of the sergeant.¹⁹

Also, pursuant to statute, State Police members may grieve a transfer to the Board if they are claiming that the transfer was discriminatory and/or disciplinary.²⁰

¹⁶ Appeal of Danforth, 27 VLRB 153 (2004).

¹⁷ Appeal of Madore, 27 VLRB 202 (2004).

¹⁸ Appeal of Revene, 27 VLRB 282 (2004).

¹⁹ Appeal of Davidson, 29 VLRB 105 (2007).

²⁰ 20 V.S.A. §1921(b). Grievance and Appeal of Moriarty, 11 VLRB 183, 203 (1988).