

VERMONT LABOR RELATIONS BOARD

APPEAL OF:

DENNIS MADORE

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DOCKET NO. 01-1

MEMORANDUM AND ORDER

The issue before the Labor Relations Board is whether to grant a motion filed by Appellant Dennis Madore (“Appellant”) to compel discovery. This case involves an appeal over the dismissal of Appellant from his position of State Police Lieutenant. In appealing the dismissal and requesting that it be rescinded, Appellant contends that the Department of Public Safety (“Employer”) violated Article 14 of the collective bargaining agreement between the Vermont State Employees’ Association and the State of Vermont for the State Police Unit (“Contract”) by imposing discipline without just cause, bypassing progressive discipline, not imposing discipline in a uniform and consistent manner, not preferring charges in a timely manner, and not instituting disciplinary proceedings within a reasonable time after a violation of the Code of Conduct occurred and was discovered.

In the motion to compel filed on August 27, 2001, Appellant requests that the Board issue an order compelling the Department of Public Safety (“Employer”) to respond to the following Requests to Produce of Appellant:

Request No. 1: Reports of all allegations of misconduct by state police officers, and the findings as to such allegations, submitted by the Commissioner of Public Safety to the State Police Advisory Commission since January 1, 1995. Such reports may be redacted so that the name of the individual state police officer is not revealed so long as the log shows the alleged misconduct and disposition, and in such a form to permit a determination whether discipline is imposed on members uniformly.

Request No. 2: Copies of the written log made with respect to each allegation of misconduct relating to any state police officer maintained pursuant to 20 V.S.A.

Section 1923(c) since January 1, 1995. Such reports may be redacted so that the name of the individual state police officer is not revealed so long as the log shows the alleged misconduct and disposition, and is in such a form as to permit a determination whether discipline is imposed on members uniformly.

Request No. 3: Copies of the Command and Review Sheets (or records) relating to the preferral of charges against, and dismissal from employment of, Lieutenant Dennis Madore.

The Employer filed a response in opposition to the motion to compel on September 12, 2001.

We first address Requests No. 1 and No. 2. In ruling on the motion, we seek to respect the confidentiality provisions of 21 V.S.A. Section 1923(d) without negating Appellant's right to seek to establish his allegation that the Employer violated the Contract by not applying discipline to him in a uniform and consistent manner. Appeal of Danforth, 23 VLRB 51, 55 (2000). This can be achieved by requiring that Appellant be provided with summaries of internal affairs records concerning certain allegations of misconduct against state police officers, and findings as to such allegations, between January 1, 1995, and the date Appellant was disciplined. Id. Appeal of Danforth, 23 VLRB 288, 293-98 (2000).

Appellant requests production of summaries of records concerning allegations of misconduct covered by numerous sections of the Employer's Code of Conduct, specifically the following: all part (a) violations; and Sections 4.0, 7.0, 11.0, 14.0, 17.0 and 19.1 of part (b); and section 20.0 of part (c). We conclude that in order to allow Appellant to seek to establish his claim that discipline was not applied to him in a uniform manner, the Employer is required to provide Appellant with information in a more limited category of cases than requested by Appellant. Appeal of Danforth, 23 VLRB at 55.

Appellant was charged with violating Section 3.1 (Criminal Conduct – Felony) and Section 14.1 (Truthfulness) of Part A of the Employer’s Code of Conduct; and Section 3.1 (Conduct Unbecoming) and Section 4.1 (Criminal Conduct – Misdemeanor) of Part B of the Department’s Code of Conduct. The charges were based on Appellant’s alleged misdemeanor crimes of domestic assault, the felony of perjury, and not fully and truthfully answering questions during an internal affairs interview.

Some, but not all, Part A offenses are relevant to Appellant’s allegation that he was not disciplined in a consistent and uniform manner. The specific sections of Part A that Appellant allegedly violated – Sections 3.1 and 14.1 – are relevant offenses. Other relevant offenses are those for which dismissal is the sanction for the first offense. Violations that fit in this category are: a) Section 1.0, Bribes; b) Section 2.0, Cheating on Examinations; and c) Section 9.0, Falsification and Misuse of Property and Evidence. Danforth, 23 VLRB at 55. Another applicable Part A offense is one similar in nature to a violation of the truthfulness provisions of Section 14.0, namely alleged violations of Section 8.0, False Statements. Id.

Some Part B offenses are relevant to Appellant’s allegations. Offenses covered by the section of Part B that Appellant allegedly violated and for which he seeks information – Section 4.1 – are relevant. Another applicable Part B offense is one similar in nature to a violation of the truthfulness provisions of Section 14.0, namely alleged violations of Section 7.0, False Statements. Id. at 56.

Thus, we conclude that the Employer is required to provide Appellant with summaries of all allegations of misconduct by state police officers, and the findings as to such allegations, between January 1, 1995, and the date Appellant was disciplined,

covered by Sections 1.0, 2.0, 3.1, 8.0, 9.0 and 14.1 of Part A; and Sections 4.1 and 7.0 of Part B of the Employer's Code of Conduct. Summaries of alleged offenses covered by these sections should be sufficient to allow Appellant to seek to establish his claim that discipline was not applied to him in a uniform and consistent manner. Id. at 56.

The summaries of allegations and findings should be prepared so that the identity of the involved state police officer is not revealed, and the summaries should set forth the alleged misconduct and the disposition in such a form to permit a determination whether discipline is imposed on members uniformly and consistently. Id. The Board will be prepared to issue protective orders as necessary to ensure that the identities of involved state police officers are not revealed. Id.

We next address Appellant's Request No. 3, in which he requests copies of the command and review sheets (or records) relating to the preferral of charges against him. We decline to issue an order compelling the Employer to respond to this request. As we held in Danforth, 23 VLRB at 57-59, provisions of the Employer's Rules and Regulations provide members with sufficient notification and information relating to allegations of misconduct and improper conduct against them, and sufficient protection that unsubstantiated allegations cannot be used against them, such that the access to internal affairs records sought by Appellant is not required.

Based on the foregoing reasons, it is ordered that the motion to compel discovery filed by Appellant is granted to the extent consistent with this decision and is otherwise denied, and the Employer is required to provide Appellant with summaries of all allegations of misconduct by state police officers, and the findings as to such allegations, between January 1, 1995, and the date Appellant was disciplined, covered by Sections

1.0, 2.0, 3.1, 8.0, 9.0 and 14.1 of Part A; and Sections 4.1 and 7.0 of Part B; of the Employer's Code of Conduct.

Dated this 5th day of December, 2001, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

Catherine L. Frank, Chairperson

Carroll P. Comstock

Richard W. Park

John J. Zampieri

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