

VERMONT LABOR RELATIONS BOARD

APPEAL OF:

GLORIA DANFORTH

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DOCKET NO. 99-62

MEMORANDUM AND ORDER

The issue before the Labor Relations Board is whether to grant a motion filed by Dennis Madore on February 8, 2001, to quash a subpoena duces tecum served by Appellant Gloria Danforth (“Appellant”) on him in connection with the appeal of her dismissal from employment as a State Police Detective Sergeant. Appellant filed a memorandum in opposition to the motion on March 5, 2001. On April 17, 2001, the Department of Public Safety filed a motion to join Madore’s motion to quash the subpoena.

This case originated on September 30, 1999, when Appellant filed an appeal with the Labor Relations Board over her dismissal. The Labor Relations Board has issued three previous discovery orders in this matter. 23 VLRB 51 (February 25, 2000), 23 VLRB 288 (December 14, 2000), 24 VLRB 52 (February 21, 2001).

The subpoena served by Appellant on Madore commands him to produce certain documents relating to a Vermont State Police Office of Internal Affairs (“IAU” investigation involving him in his position as State Police Lieutenant. Madore contends that the subpoena should be quashed because the documents it seeks to obtain are protected from discovery as privileged matter by 20 V.S.A. Section 1923(d), as well as a prior decision of the Labor Relations Board. As an additional basis for quashing the subpoena, Madore notes that a subpoena may be quashed pursuant to V.R.C.P. 45 (c) (3) (A) (iv) if it “subjects a person to undue burden”, and it would be an undue burden upon

his rights for IAU records to be released over his objection because he is currently in the midst of a Labor Relations Board proceeding concerning his dismissal.

In response to the motion to quash, Appellant indicates that she seeks this material to determine whether the collective bargaining agreement's provisions requiring uniform and consistent discipline were honored by comparing the severity of the offense for which she was dismissed with the severity of the offenses for which Madore was dismissed. In addition, Appellant indicates that she seeks to compare the timing of IAU investigative interviews with witnesses and the amount of time given to obtain access to legal counsel. Appellant contends that of particular relevance to her would be any information establishing that any of the acts of misconduct for which Madore was dismissed were known, or should have been known, by responsible managers within the Department of Public Safety either prior to Appellant's dismissal or after Appellant's dismissal. Appellant contends that Madore may not properly assert a privilege with respect to the subpoenaed materials, and that there has been a complete waiver of any privilege by the Employer and Madore because the Employer has released the requested information to Madore in connection with disciplinary action imposed against him and Madore has filed a public appeal of his dismissal to this Board.

In an earlier discovery decision issued in this case, we declined to require the Employer to release the internal affairs information concerning Lieutenant Madore. 23 VLRB 288. We concluded that the information is privileged matter protected from disclosure, and there was no proper manner to provide Appellant with access to information from the internal affairs files without violating the confidentiality provisions of 20 V.S.A. Section 1923(d). Id. at 298-300.

The fact that Appellant is now requesting the same internal affairs information from Madore, rather than the Employer, does not change our conclusion. If we were to conclude otherwise, the effect would be to make the confidentiality provisions of Section 1923(d) meaningless and violate Madore's right to confidentiality concerning internal affairs records involving him. We do not find persuasive Appellant's contention that there has been a waiver of privilege because the Employer has released the requested information to Madore in connection with disciplinary action imposed against him and Madore has filed a public appeal of his dismissal to this Board. This does not mean the requested information has lost its confidential nature at this point in time. Madore currently is in the midst of an appeal before the Labor Relations Board concerning his dismissal, and release of this information at this time may interfere with his ability to prepare and present his case and represent his interests as he believes appropriate.

Appellant is not without other options given our decision to not require the release of the internal affairs information concerning Madore. As we stated in our earlier discovery decision in this case:

She is not foreclosed from employing alternative discovery avenues to seek to establish her contention that she received discriminatory and inconsistent treatment compared to Madore. Appellant can depose management officials who played a role in Appellant's dismissal, and inquire of them what knowledge they had of Madore's alleged improper conduct at the time disciplinary action was being considered against Appellant. Also, in this regard, the reports from the Barre City Police Department received by the Employer relating to Madore's conduct, which Appellant seeks from the Employer by subpoena, alternatively can be sought by Appellant contacting the Barre City Police Department. Further, Appellant can depose Lieutenant Madore, and inquire as to whether any disciplinary investigation had commenced against him, or any disciplinary action had been taken against him, by the time Appellant was dismissed. 23 VLRB at 299-300.

Based on the foregoing reasons, it is ordered that Dennis Madore's motion to quash the subpoena duces tecum served on him is granted.

Dated this 4th day of May, 2001, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

Catherine L. Frank, Chairperson

Richard W. Park

Edward R. Zuccaro