VERMONT LABOR RELATIONS BOARD

APPEAL OF:	)	
	)	DOCKET NO. 16-06
VEMRONT TROOPERS ASSOCIATION	)	
AND LEWIS HATCH	)	

MEMORANDUM AND ORDER

On December 6, 2016, Lewis Hatch ("Appellant") filed a Motion for Summary Judgment, accompanied by a Statement of Undisputed Material Facts, requesting that the Labor Relations Board sustain the appeal of his termination pursuant to V.R.C.P. Rule 56 (c)(3). Appellant requests that the Board order the State of Vermont ("State") to reinstate him to his former position as Trooper with the Vermont State Police with back pay and benefits. In support of his motion, Appellant asserts that the State has violated the collective bargaining agreement between the State and the Vermont Troopers Association by failing to adhere to the mandatory contractual timelines for investigating and disposing of non-criminal complaints against members of the State Police.

Appellant moves for summary judgment on all the charges the State made against him to support his dismissal because the charges are untimely, thus negating any cause for discipline of Appellant. Appellant asserts that the State's violation of the following provision in Article 14, Section 2(b) of the collective bargaining agreement precludes discipline:

> Disciplinary proceedings shall be instituted within a reasonable time after the violation of the Code of Conduct occurred or was discovered and disciplinary action shall be taken within a reasonable time after disciplinary charges have been proved or admitted. Non-criminal internal investigations should normally be completed within thirty (30) work days, and notice of disposition should normally be given within thirty (30) work days after completion of the investigation.

Appellant asserts that there is no genuine issue of material fact in dispute with regard to the State's violation of this provision of the collective bargaining agreement, and that this matter

can be properly disposed of by way of summary judgment prior to a full evidentiary hearing on the merits. On January 26, 2017, the State filed an Opposition to Appellant's Motion for Summary Judgment, accompanied by a Response to Appellant's Statement of Undisputed Material Facts and a Statement of Additional Undisputed Material Facts.

One method by which cases are decided by the Board 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 Article 41, and Section 12.1, of Board *Rules of Practice*. Summary judgment shall be granted only if there exists "no genuine dispute 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, we conclude that there are genuine issues of material fact with respect to each of the charges against Appellant for which Appellant moves for summary judgment. The State's response to Appellant's Statement of Undisputed Material Facts and the State's Statement of Additional Undisputed Material Facts indicate that there are genuine and material facts in dispute in this matter. We cannot conclude at this juncture that Appellant is entitled to 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 Appellant's allegations that the State's delay in imposing discipline negates any cause for discipline of Appellant.

Based on the foregoing reasons, Appellant's Motion for Summary Judgment is denied.

Dated this 16th day of February, 2017, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

/s/ Gary F. Karnedy

Gary F. Karnedy, Chairperson

/s/ Richard W. Park

Richard W. Park

/s/ Edward W. Clark

Edward W. Clark, Jr.