

VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF

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DOCKET NO. 20-60

ERIC HOLMGREN

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FINDINGS OF FACT, OPINION, AND ORDER

On December 21, 2020, Eric Holmgren (“Mr. Holmgren” “Grievant”), a Food Safety Specialist employed by the Vermont Agency of Agriculture Food & Markets (“Employer” “AAFM” “Agency”), filed a Grievance with the Vermont Labor Relations Board (“Board”), alleging that in selecting an outside candidate for the Meat Safety Compliance Enforcement Specialist (“MSCES”) position, the Employer failed to adhere to the “merit system” principles outlined in 3 V.S.A. § 312 (b) (1), and violated State Policy 4.0, by not selecting and advancing Grievant, an internal candidate, for the position. Grievant also claims the Employer violated Article 15 of the Collective Bargaining Agreement when it failed to issue a decision on the Step III Grievance within five workdays.

On October 14, 2021, the Board, comprised of members Robert Greemore, Acting Chairperson, Alan Willard, and Roger Donegan, held a hearing on the Grievance. Grievant appeared and represented himself. Assistant Attorney General William B. Reynolds represented the Employer. The parties filed briefs with the Board on November 17, 2021.

FINDINGS OF FACT

1. Mr. Holmgren began working with Employer in 2005 as a Food Safety Specialist with the Meat Inspection Division of the AAFM. Grievant Exhibit 4.
2. The AAFM is comprised of six Divisions. The Meat Inspection Division is part of the Food and Safety Consumer Protection Division. In addition to the Meat Inspection

Division, the Food and Safety Consumer Protection Division contains four other divisions, animal health, dairy regulatory program, weights and measures, and the produce program. Each has a regulatory component.

3. The Meat Inspection Section contains a Chief Meat Inspector, and a Meat Safety Compliance Enforcement Specialist position.
4. The USDA Food Safety Inspection Service has authorized the state to conduct its meat inspection program through a cooperative agreement.
5. During his tenure, Mr. Holmgren expressed interest in working in the compliance program within the Agency.
6. In 2010, Mr. Holmgren attended training on Surveillance Inspection and Enforcement Methodology (“SIEMS”) sponsored by the USDA.
7. Thereafter, the Grievant often assisted the AAFM MSCES, Mr. Mitchell, on enforcement and compliance duties. Mr. Mitchell sent Grievant into the field on enforcement and training cases, sometimes alone, and at other times accompanied by Mr. Mitchell.
8. Mr. Holmgren received excellent and outstanding annual performance reviews.
9. In 2014, Mr. Holmgren’s position was upgraded from Food Safety Specialist to a Food Safety Specialist III AC Compliance Investigator, to reflect the increased compliance work he had been performing. The position upgrade resulted in an increase in paygrade for Mr. Holmgren.
10. Dr. Katherine McNamara is the current Deputy Director of the Food Safety Consumer Protection Division, Assistant State Veterinarian, and Head of Service for the Meat and Poultry Inspection Section of the AAFM. Dr. McNamara received a Bachelor of Science in biological sciences and a Doctor of Veterinary Medicine.

11. Dr. McNamara has worked with the Agency since 2006. She was first hired as Assistant State Veterinarian. In 2007, she also assumed the role of Head of Service in Inspection. In 2015, this position was reclassified, and she is now Deputy Director of the Food Safety Consumer Protection Division.
12. Dr. McNamara oversees the MSCES position as well as the Chief of Meat and Poultry Inspection.
13. The MSCES supervises the regulatory oversight of packaged meat and poultry in-commerce, which includes retailers, wholesalers, warehouses and transporters, and distributors.
14. In March 2020, the incumbent MSCES advised Dr. McNamara that he would be retiring the following month.
15. Dr. McNamara requested and received approval for AAFM to rehire the position. Thereafter, Dr. McNamara worked with the Human Resources talent acquisition specialist to update the job specifications for the position which had not been updated since 2015. After receiving approval for the job specifications, the position was posted.
16. The position was posted on SuccessFactors, a computer program that monitors the recruitment process for a position. It tracks the applicants through the various stages of the recruitment process.
17. The position was announced within the Agency as well as through other outside organizations. Dr. McNamara emailed the job to the entire Agency and posted the position on the Agency website, its Facebook page, and social media. The position was also posted on the American Association of Meat Processors job board, a national and internal organization with broad membership. The position was sent to other directors of

state meat and poultry inspection programs in the United States and through Dr.

McNamara's contacts with other state and the USDA Food Inspection Services. It was also posted on the Farm to Plate network.

18. The Job Specifications for the Position outlined the following Knowledge, Skills, and Abilities:

Knowledge to evaluate the public health risk of certain products and conduct appropriate surveillance activities commensurate with that risk

Knowledge and ability to detain product in commerce during the course of an investigation.

Knowledge and ability to conduct comprehensive investigations and case documentation in a Report of Investigation that supports the findings of violation of the Statutes, Regulations and any other applicable laws.

Knowledge of the types of meat and poultry processing.

Knowledge of the USDA FSIS CID Directives and Notices, and the ability to adapt these processes to fit within the limits of state statutes.

Ability to write Letters of Warning, Notices of Violation, Cease and Desist Orders, and Final Orders.

Ability to coordinate and liaison with USDA FSIS CID (Federal Compliance Investigators) to perform joint investigations of firms in Vermont

Ability to independently interpret and apply federal and state laws, regulations, and policies.

Ability to independently prioritize and schedule daily activities to accomplish required objectives.

Grievant Exhibit 2.

19. The candidates that met the minimum qualifications for the position were placed on the hiring manager review status where Dr. McNamara could access them.

20. Dr. McNamara convened a hiring panel consisting of herself, Thea Schwartz, the

Assistant Attorney General assigned to the Agency, and Randy Quenneville, the Chief

Meat Inspector. Ms. Schwartz and Mr. Quenneville were recruited because each would work closely with the person hired for the position.

21. Dr. McNamara distributed to the other two members of the hiring committee, the application materials for the qualified applicants.

22. The hiring committee scored the candidates based on the same matrix. Eight candidates were considered qualified for the position. The selected candidate received a 74, and Mr. Holmgren received a 71. State Exhibit 5.
23. The selected candidate graduated from Miami University in 1990, with a Bachelor of Science Degree in chemistry and pre-veterinarian studies. He received a Doctorate Degree in veterinary medicine from the Ohio State University in 1994. In 2016, the selected candidate graduated from Troy University with a Master of Public Administration. State Exhibit 5.
24. Mr. Holmgren graduated from Massasoit Community College in 1995, with a Certificate in business management and accounting. He is a member of the International Association for Food Protection. Grievant Exhibit 4.
25. The hiring committee selected five applicants to interview. Four of the applicants, including Mr. Holmgren, were state employees. The selected candidate was not a state employee.
26. After one of the candidates dropped out, the panel interviewed the four remaining qualified candidates.
27. Prior to the interview, Dr. McNamara sent each of the applicants a four-page list of job duties for the position.
28. Prior to the interview, Dr. McNamara solicited interview questions from the other panelists. She also reviewed the Human Resources guide to hiring and reference checking and reviewed examples of behavioral questions for the candidates. From the questions provided by the panel members and the interview questions from Human

Resources sources, she developed questions that would fit within the interview time.

Each of the candidates were asked the same questions.

29. At each of the four interviews, Dr. McNamara read an agenda outlining the interview process. Each of the interviews followed the same agenda.

30. In addition to the interview, the interviewees were provided with an at home writing assignment containing the same prompt.

31. After receiving the writing assignments, the interview panel met to review and discuss the candidates.

32. The interview panel believed that the selected candidate rose above the other applicants from his cover letter and qualifications and experience to his interview and post-interview writing sample.

33. The selected candidate included a cover letter with his application materials that outlined his skills and abilities and framed them in a way that demonstrated the strength of his candidacy. The cover letter was also well written and conveyed the selected candidate's enthusiasm and interest in the position.

34. Mr. Holmgren did not include a cover letter with his application materials and at the hearing explained that a cover letter was not requested with the application materials.

35. During his interview, the selected candidate was articulate and demonstrated effective communication skills. He was able to respond to questions by referencing examples from his experience and work history.

36. Mr. Holmgren concedes that he did not present well at the interview. Mr. Holmgren did not seem engaged in his interview and according to Dr. McNamara at times appeared

indifferent. He offered brief responses to questions and did not fully answer several questions. He did not display effective oral communication skills.

37. Mr. Holmgren believed that a number of interview questions were selected to trigger an argument between he and Mr. Quenneville.

38. Dr. McNamara testified that all of the interviewees were asked the same questions and none of the questions were chosen to trigger or start a dispute or conflict between Mr. Quenneville and Mr. Holmgren.

39. In his post-interview writing sample, Mr. Holmgren did not demonstrate skill in writing and his sample lacked organization.

40. The selected candidate's writing assignment was organized, provided an overview or introduction, and incorporated the Agency's strategic plan and goals. It methodically demonstrated how the candidate would educate himself about the Agency and ended with a conclusion.

41. The selected candidate was trained as an inspector and as a public health veterinarian through which he gained knowledge of federal acts and regulations and the organization and policies of the USDA. As a public health officer with the National Guard and as a public health veterinarian, the selected candidate gained training and experience in public health aspects related to foodborne illnesses and epidemiology and the biosecurity related to them.

42. The hiring panel found the selected candidate to be the most qualified for the position due to his extensive training and education, his credentials in investigation and case documentation and enforcement action decision-making. The hiring panel also considered compelling his experience working as an Inspector General for the Vermont

National Guard and his training and experience with the USDA Food Safety Inspection Service as a public health veterinarian.

43. The selected candidate was offered the position.

44. Mr. Holmgren grieved the Employer's appointment of the selected candidate and this appeal followed.

OPINION

Mr. Holmgren alleges that the State violated the merit system principles of V.S.A. § 312(b)(1), when it failed to hire him for the Meat Safety Compliance Enforcement Specialist (“MSCES”) position. The merit system principles of 3 V.S.A. § 312(b), include “recruiting, selecting, and advancing employees on the basis of their relative ability, knowledge, and skills, including open consideration of qualified applicants for initial appointment.” 3 V.S.A. § 312(b)(1).

Mr. Holmgren also alleges the State violated State Policy 4.0 when it failed to select the most qualified candidate for the MSCES position. Mr. Holmgren maintains that by hiring an external candidate, the State failed in its obligation to foster internal advancement for current employees. State Policy 4.0 provides in pertinent part:

It is the policy of the State of Vermont to meet its workforce needs through systematic recruitment and selection programs that identify, attract, and select the most qualified applicants for State employment, while at the same time providing equal employment opportunity for all applicants.

The hiring of applicants for all positions shall be carried out with consideration of the balance of skills needed to maintain the State’s ability to meet the demand for services as well as encouraging diverse representation in the workforce. The State’s programs and practices shall foster internal advancement opportunities for current employees.

Neither the statute nor State Policy 4.0, require the Employer/State to hire an internal candidate over an external candidate. Instead, the statute requires the Employer to provide opportunities for advancement, “including open consideration of qualified applicants for initial appointment.” Policy 4.0 requires the Employer to provide “advancement opportunities for current employees.”

The State complied with the requirements of both the statute and Policy 4.0. Mr. Holmgren was provided the opportunity to apply for the open position and advanced to the interview stage of the hiring process. Mr. Holmgren as well as three other state employees were considered qualified and advanced to the interview stage of the process. Mr. Holmgren was provided the same opportunity as the selected candidate. He had an opportunity to interview with the hiring panel and provide a post-interview writing sample.

Similarly, Mr. Holmgren was considered a qualified candidate for the MSCS position in compliance with the statute. His application was evaluated, and he was offered the same opportunity as the selected candidate to interview for the position. The Employer's decision to hire another candidate does not undermine its compliance with the statute.

Although Mr. Holmgren was qualified for the position, the Employer chose the selected candidate because it considered that candidate to be superior among the candidates and the most qualified for the position. The numerous reasons the employer provided for hiring the selected candidate are reasonable and based on an evaluation of the skills needed to perform the MSCES duties and the experience, training, and demonstrated oral and written communication skills of the selected candidate. The selected candidate is federally trained and credentialed and operated in a compliance and investigatory capacity conducting investigations, case documentation, and executing enforcement action decisions as Inspector General in the Vermont Air National Guard. The selected candidate's veterinary experience and training provided him with extensive knowledge of food safety and sanitation, epidemiology, and infectious diseases. The selected candidate also served in Public Health Veterinarian positions for the United States Department of Agriculture and Food Safety and Inspection Service.

The Grievant has failed to demonstrate the employer violated or failed to adhere to the policy or statute in hiring the selected candidate.

Mr. Holmgren also claims the Employer violated Article 15 (3)(c)(4) of the contract by not notifying the employee and his representative of its decision on his Grievance within five workdays after the Step III Grievance. The Employer concedes that it violated this provision of the contract. The remedy for such violations, however, is that the Grievant “may proceed to the next step” in the Grievance process. Article 15 (3)(c)(6). Mr. Holmgren has availed himself of the remedy under the contract, he filed a Step IV Grievance. Because Grievant has received the remedy allowed under the contract, his timeliness claim is moot.

ORDER

Based on the foregoing findings of fact and for the foregoing reasons, it is ordered that the Grievance of Eric Holmgren is dismissed.

Dated this 18th of March 2022, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

/s/ Robert Greemore

Robert Greemore

/s/ Alan Willard

Alan Willard

/s/ Roger Donegan

Roger Donegan