IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

KENNETH E. KING,

Plaintiff,

v.

DAVID L. DITTER,

Defendant.

ORDER

06-C-257-C

Before the court is plaintiff's third group of motions complaining about discovery: Motion To Stay or Deny Summary Judgment, with supporting brief and affidavit (dkts. 42-44); Motion to Determine Sufficiency of Objections (dkt. 45); Motion To Compel Discovery (dkt. 46); and Motion for Sanctions (dkt. 47). On January 22, 2007, defendant filed a letter in response to all these motions (dkt. 48).

In this prisoner lawsuit, plaintiff complains that defendant, who runs the institution's for-profit print shop, retaliated against him on three occasions (October 2005, November 2005 and February 2006) because plaintiff complained about racism and other malfeasance. Defendant denies retaliation, and recently filed for summary judgment.[1] Defendant claims, among other things, that plaintiff's October 2005 pay reduction was common to all hi-speed copy machine operators; that no negative job action was taken against plaintiff in November 2005; and that in February 2006 defendant reduced plaintiff's pay because of poor performance but did not fire him. In his proposed findings of fact, defendant identifies one of these print jobs by number

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[1] Plaintiff's response is due February 5, 2007, with defendant's reply due February 15, 2007. Trial is scheduled for June 4, 2007.

(295863) and states that one or two others were handled internally without documentation. Plaintiff gave notice of his resignation rather than accept a pay cut. Later that same day, defendant did fire plaintiff upon hearing reports that plaintiff was bad mouthing defendant and print shop staff to other inmates. *See* Defendant's proposed findings of fact (dkt. 36) and brief in support of summary judgment (dkt. 35).

In his leadoff motion, plaintiff asks to stay or deny summary judgment because he has not received all the discovery to which he is entitled. Plaintiff claims that defendant, by counsel, has "unethically" proposed facts in support of summary judgment that are "false and misleading" as will be shown by other evidence that defendant refuses to disclose. *See* plaintiff's brief, dkt. 43, at 2. The withheld information most irksome to plaintiff is that the institution will not identify to him the worker with whom plaintiff allegedly had problems. Plaintiff also wants more information responsive to his December 4, 2006 third request for production of documents Nos. 1-6, responses to which defendant timely served on January 5, 2007. Plaintiff sent copies of these documents to the court in a separate cover letter dated January 12, 2007.

Having carefully reviewed these discovery requests against the allegations and responses actually at issue in this lawsuit, I conclude that defendant's objections are well-taken. Plaintiff has become obsessed with proving that he did not botch the job with Sales Order # 295606; but this job is not listed by defendant as a cause for reducing plaintiff's hourly wage. *See* defendant's proposed findings of fact, dkt. 36, at ¶¶ 40-48. It may be that plaintiff has correctly identified one of the other jobs he is alleged to have botched, but the court already addressed this in ruling on plaintiff's first motion to compel. *See* dkt. 23 at 3. Certainly plaintiff is entitled to

information undergirding defendant's claims of dissatisfaction with plaintiff's job performance, but if defendant cannot recall this specific job and is not relying on this job, then discovery of additional information about this job does not advance the argument or the analysis.

Plaintiff appears equally obsessed with learning the identity of the inmate worker who complained to defendant about plaintiff, a complaint on which defendant took no disciplinary action. *See id.* at ¶ 34. Plaintiff also seems fixated on the defendant's previous use of the plural "inmate worker**s**" when only one inmate in one incident has been proposed in support of summary judgment. The court can merely note that this is the defendant's position now, and if plaintiff believes that this change is persuasive impeachment, then he may argue it. He is not, however, entitled to discovery of information that does not exist.

Plaintiff's other motions fall like dominos. Plaintiff is very angry at what he views as discovery abuses by defendant, but defendant has met its obligations in this case. True, the court has granted in part some of plaintiff's motions to compel, but this was based on interpretations of relevance that the court resolved in plaintiff's favor, not on any stonewalling or malfeasance by defendant or the AAG defending this case. Given the palpable anger that imbues plaintiff's submissions throughout this lawsuit, it should not be surprising that plaintiff also is exasperated with this court, since in his view the court is tolerating persistent discovery abuse by the defendant and his attorney. Not so. Plaintiff has made serious allegations of constitutional wrongdoing against defendant and the court has allowed him to proceed on his claims pursuant to the applicable rules. Defendant has done a more than adequate job of

providing necessary discovery. Plaintiff has the information he needs from defendant to respond to the pending motion for summary judgment.

Since plaintiff's response to defendant's summary judgment motion is due in less than a week, in the interests of fairness I will allow plaintiff until February 20, 2007, within which to file his response. Defendant's reply is due March 2, 2007.

ORDER

For the reasons and in the manner stated above, it is ORDERED that plaintiff's pending discovery and sanctions motions (Dkts. 42, 45, 46 and 47) are DENIED except that the briefing schedule is modified in the manner indicated.

Entered this 30th day of January, 2007.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge